

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
COMMERCIAL DIVISION
HIGH COURT MISC. APPLICATION NO. 798 OF 2019
(ARISING FROM HCT-00-CC-CS-0953-2018)

TYRE EXPRESS UGANDA LTD ::::::::::::::::::::::::::::::::::: APPLICANT

VS

TRANSTRAC LIMITED ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE HENRY PETER ADONYO

RULING

1. Background:

This is an application for the review of a consent judgment which was entered into before this Honourable Court on the 8th May 2019 before Hon Justice David Wangutusi, by the parties who were represented by Mr. Isaac Walukaaga and Ms .Christine Atukwase . It is brought by notice of motion under section 33 of the Judicature Act cap. 6, section 82 and 98 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules S.I 71-1 for orders that;

- i. The honourable court reviews the judgment and orders in Civil Suit No. 953/2018.

- ii. The said consent judgment and orders be set aside.
- iii. The costs of the application be provided for.

The grounds of the application were that:

1. The applicant did not consent to the purported consent judgment.
2. The applicant did not authorize the person who allegedly consented on behalf of the applicant and is not known to it.
3. There is no valid consent executed between the parties as purported.
4. The applicant is aggrieved by the said consent judgment, decree and orders.
5. The applicant is not indebted to the Respondent as claimed.

To support this application is an affidavit sworn by Mr. George Baitwa, the Managing Director of the Applicant who deposes that the consent judgment of 8th May, 2019 be set aside on the basis that when the consent judgment was executed in court the applicant was not represented on that date.

Mr. Surendra Babu, Accounts Manager of the Respondent swore an affidavit in reply to the application. He deponed in paragraph 4 of the affidavit that the terms of the consent were presented by the Applicant's representative, a one Ms. Christine Atukwasa and that any allegation that she is not any employee of the applicant is a plan to escape from liability.

2. Issues for consideration:

1. Whether there are court grounds for review.
2. What are the remedies available to the parties.

3. Submissions:

When this application came up for hearing the applicant's lawyer, Mr. Sam Osongol raised three grounds as supporting this application for a review as set out in **FX Mubike vs UEB HCMA No. 98/2005** and these are ;

- a) That there is a mistake or manifest mistake apparent on the face of the record
- b) That there is a discovery of new and important evidence after exercise of due diligence which was not within the applicant's knowledge
- c) That any other sufficient reason exists or in general which would enable the court to set aside an agreement.

In his submission learned counsel for the applicant submitted that he was relying on ground three set above on the basis that sufficient reason exists to set aside the agreement.

According to counsel, the said Atukwase Christine who purported to act on behalf of the Applicant is not known to the Applicant either as Director, employee or agent with the person who purportedly appeared in court on behalf of the Applicant company and who proceeded to enter into the consent judgment which was signed in

court on the date in question was unknown to the Applicant with no one having been authorized by the applicant to enter into consent on its behalf.

Further, learned counsel for the applicant added that that even the day in question counsels on record as representing the applicants were neither present in court nor had been authorized to enter into a consent agreement.

That since the applicant was neither represented and that the person who was in court had not been authorised to enter any consent on behalf of the applicant then any transaction purportedly on behalf of the applicant should be rendered null and void for lack of consent as was held in the case of ***Attorney General and Another vs John Mark Kamoga Supreme Court Case Civil Appeal No. 8 of 2004*** where it was held that a court of law is obliged to set aside a judgment which is vitiated by lack of consent.

On the issue of remedies, the applicant prayed to the court to review and set aside the consent judgment and to set down the matter for hearing inter parties since the applicant had a good defence as seen from its written statement of defence.

In response, Mr. Walukaaga counsel for the respondent opposed the application contending that the applicant had not shown sufficient evidence in court vitiating the fact that one Christine Atukwasa who signed the consent agreement was not its representative or employee authorised to do so for no evidence such as the payroll or

list of employees was tendered in court with the burden of proving that the said Christine Atukwasa was unknown to the Applicant which denial must be done by concrete evidence and not mere averments.

Citing ***Attorney General and Another vs John Mark Kamoga***, counsel submitted that the applicant had not pointed to any fraud or collusion or mistake of fact or ignorance of material facts. Thus according to counsel for the respondent the court should find that the applicant had not put forward sufficient reasons to have set aside the consent judgment and that even if the consent judgment were to be set aside the Applicant did not have a plausible defence to the Respondent's claim for Ug. Shs. 159, 210,000/=.

4. Analysis of evidence and the Decision of the Court:

Under **Section 82 of the Civil Procedure Act** it is provided that any person who considering himself or herself aggrieved by a decree or order of a Court may apply to that court for the review of judgment to have set aside the decree or order made by it and the court may make such order on the decree or order as it thinks fit with the guiding principle relating to the of review of a court order being that it is only the court that passed that judgment or order which can review it.

Regarding sufficient reason, there must be sufficient grounds as provided within the rules.

The head suit record of proceedings shows that the applicant made an application for leave to appear and defend and this which was fixed for 8th May 2019 before the trial judge Hon. Justice David Wangutusi.

On that date when the matter came up for hearing, Ms. Atukwasa Christine was present in court purportedly representing the applicant and Counsel Isaac Walukaaga represented the respondent. The applicant was not represented by counsel in court.

The parties before court moved court that they were willing to consent upon terms which were announced in court. The court on being moved went on to enter a consent judgment accordingly.

The Applicant is aggrieved with the consent entered purportedly on its behalf by someone it terms a stranger and has thus applied to this Honourable Court to have the said consent agreement reviewed and set aside.

In support of its application for review and the setting aside of the consent judgment, the Applicant avers that the person who purported to enter the consent agreement on behalf of the Applicant was neither its director, employee nor agent and was unknown to the Applicant.

Mr. Isaac Walukaaga counsel for the respondent opposes this application stating that the applicant has not proved in court that

the said Ms. Christine Atukwasa was not authorised to consent on its behalf by adducing records of employment or lists of employees going further to state that the applicant did not even have a good defence to the matter pleaded to in the head suit

He asked court not to allow the application.

I have had the occasion to peruse the head file particularly the pleadings, affidavits for and against what is contained in the plaint, parties' representation and the like.

I have also reviewed the proceedings of the court of 8th May 2019. From the record, the Applicant is stated to have been represented by one Christine Atukwase. The Applicant was not represented by counsel although the respondent was. This was Ms. Atukwase's first time to appear in court purportedly representing the applicant who was always represented by its counsel called Ms. Kobusingye.

Ms. Christine Atukwase did not prove to court either that she was representing the applicant or that she was authorised to represent the applicant although the court gave her audience. It is apparent from the record and circumstances of the case that this Ms Atukwase was an imposter who purportedly claimed to represent the applicant yet she had never been on record as doing so and in fact previously when the matter was in court, there was always counsel representing the applicant accompanied by an officer of the applicant. On this occasion someone purporting to represent the

applicant without counsel was in court and went on to procure a consent which is now being challenged as having been procured without the explicit consent of the Applicant.

From the conduct of the matter and the fact that upon the said consent being brought to the attention of the applicant a protest in form of a letter signed and filed on record by one Geoffrey Baitwa dated 29th August, 2019 who upon becoming aware of the purported consent judgment which was served upon them by the Respondent's counsel three months later, wrote to the court denying knowledge of the said Christine Atukwase and or having given instructions to anyone to enter such a consent on its behalf categorically stating that the applicant was always represented by R. Mackay Advocates who had not been instructed to enter into any consent. .

From the affidavit in support of this application and the submissions made in court coupled with the protest letter from the applicant, it is clear to me that there was not only lack of representation of the applicant on the date in question when the alleged consent agreement was made but that the person who purportedly claimed to be representing the applicant was unknown to the applicant.

Unfortunately the court did not inquire on the day it allowed the person who purportedly was representing the applicant to prove first that she had instructions from the applicant or was an

employee, a director or even a shareholder of the applicant which is a limited liability company.

Were the court to inquire so it would not have acted as it did and would have not allowed a consent judgment to be entered for want of consent for want of consent vitiates a consent judgment and consent of the parties cannot be presumed as was held in the case of ***Otim Talib and 3 Others vs URA and Another Misc. Application No. 94/2017***

Arising from what is on record and the evidence before me there was I am satisfied that the Applicant has shown sufficient cause to have set aside the consent judgment for it has clearly proved that it never authorised anyone person, counsel inclusive to enter into any consent on its behalf.

In the premises, this is case in which the court's inherent powers under Section 98 of the Civil Procedure Act can be invoked to correct an error or an illegality on court record as was pointed out in the case of Makula International vs. Cardinal Nsubuga.

In the circumstances, I would allow this application by setting aside the consent judgment in Civil Suit No. 953 of 2018 with costs to be in the cause and the head suit to be heard inter party.

5. Orders:

- a. This Application is allowed.
- b. The consent judgment in Civil Suit No. 953 of 2018 is hereby set aside.
- c. The dispute between the parties to be heard interparty.
- d. The Costs to be in the cause.

.....

HON. DR. JUSTICE HENRY PETER ADONYO

JUDGE

21ST FEBRUARY 2020