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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**COMMERCIAL DIVISION**

**MISC. APPLICATION NO. 416 of 2020**

**(ARISING OUT OF CIVIL SUIT NO. 296 of 2020)**

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**UGANDA REVENUE AUTHORITY.....APPLICANT**

**VERSUS**

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**JACKSON WABYONA.....RESPONDENT**

**BEFORE: HON. JUSTICE DR. HENRY PETER ADONYO**

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**RULING**

**a. Background:**

This application was brought by notice of motion under sections 6, 7 and 98 of the Civil Procedure Act, Order 6 Rule 30, Order 7 Rule 11 (a), (d) and (e) and Order 52 Rules 1 and 3 of the Civil Procedure Rules Cap. 71-1 seeking orders

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that;



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- 5 i. The Plaintiff in Civil Suit No. 296 of 2020, Jackson Wabyona vs Tullow Uganda Limited, Tullow Uganda Operations Pty Limited and 3 Others be struck out/rejected, and / or the suit be dismissed with costs
- ii. Costs of the Application be provided for

The grounds of the application, as set out in the affidavit of Ms. Gloria Akatuhurira, supervisor in the legal department of the Applicant which is attached to the same.

In an affidavit in support of the application, Ms. Gloria T. Akatuhirwa deponed that the Respondent lacks locus standi to question the agreement of the parties, and that the suit violates the principle of finality of litigation, as it seeks to reopen the Settlement Deed.

Mr. Wabyona Jackson pointed out in his affidavit in reply that he is aggrieved as follows;

- i. The impugned Settlement Deed was arbitrarily and illegally signed by public officials without authority and mandate and in breach of the law
- 20 ii. The Settlement Deed compromised the tax liability by reducing the taxes payable to the Consolidated Fund from USD 542,793,821 to USD 250,000,000
- iii. As a result of the compromise the taxes payable to the Consolidated Fund and Petroleum Fund were written off.
- 25 iv. Article 152 (2) of the Constitution and section 35 of the Public Finance Management Act, 2015 which laws relate to waiver of taxes or public

  
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5 resources were not complied with and as such the Settlement Deed was  
illegal and a nullity

v. The rule of law coupled with the principles of good governance,  
accountability and transparency were infringed and violated

10 vi. Since the Minister did not seek the approval of Parliament, there was  
lack of transparency and accountability

**b. Submissions:**

**i. Applicant's submissions:**

On whether the Applicant lacks locus standi to bring HCCS No. 296 of 2020,  
Applicant's counsel submitted that the Respondent is not a party to the  
15 Settlement Deed and cannot purport to be aggrieved by it, and that the  
Respondent failed to show the existence of his interests and rights, and the  
manner in which they were affected.

Submitting on the second issue, to wit, whether the plaint discloses a cause of  
action against the Applicant, counsel argued that the consequence of a lack of  
20 locus standi is a lack of cause of action, and that the plaint should be struck out  
for not disclosing a cause of action. Counsel also submitted that the plaint also  
fails to disclose that the Respondent enjoyed public rights which were violated;  
and particulars of fraud that the Respondent alleges were to particularised,  
which offends Order 6 rule 3 and should result in the dismissal of the suit under  
25 Order 7 rule 11 of the Civil Procedure Rules.



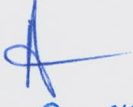
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5 Thirdly, on whether HCCS No. 296 of 2020, instituted against the Applicant by  
the Respondent is barred by the lis pendens rule, it was counsel's submissions  
that the Respondent lodged another suit Miscellaneous Application No. 137 of  
2017 against the Applicant and Tullow Uganda, which seeks to annul the  
consent decree which was extracted from the Settlement Deed and is still  
10 pending before court. That the issues raised by the Respondent in that  
application are the same issues raised by him in HCCS No. 296 of 2020. Counsel  
prayed that the court finds that the lis pendens rule applies and that the suit be  
dismissed.

Another issue raised by counsel was the whether the Respondent's suit is an  
15 abuse of Court process, the Applicant's counsel submitted that the Respondent  
seeks to question a tax dispute that was closed and settled five years ago, and  
that as one who was not party to the Deed, should not be allowed to abuse court  
processes.

Regarding whether the Respondent's suit violates the principle of finality of  
20 litigation, Counsel argued the since the litigation between the Tullow Companies  
and the Uganda Revenue Authority in High Court Civil Appeal No. 19 of 2014;  
Tullow Uganda Ltd; Tullow Uganda Operations Pty Ltd vs URA was concluded  
and should not be re-opened, as this would offend the principle of bringing  
finality to litigation

25 The Applicant also raised two more issues, including whether the suit violates  
article 128 of the 1995 Constitution of the Republic of Uganda, thereby

  
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5 interfering with the independence of the judiciary; and whether the suit violates  
article 126 (2) (b) of the 1995 Constitution of Uganda, providing for speedy  
resolution of disputes and reconciliation between the parties. Counsel argued  
that the suit is an interference of the Court's independence, as it attempts to  
scrutinize and question, a matter that was already completed and settled  
10 between the parties.

**ii. Respondent's submissions:**

Counsel submitted that on non-disclosure of a cause of action, the court should  
not look beyond the plaint and its annexures, and that the plaint in HCCS No.  
296 of 2020 clearly discloses six causes of action.

15 It was also the Respondent's case that the matter does involves 'a high  
constitutional principle'. Furthermore, that the higher constitutional principle  
was established in paragraph 26 read together with paragraphs 4, 9 and 16 of  
the respondent's affidavit in reply. That a member of the public may come to  
court to ensure that the law is enforced or upheld. The Respondent also  
20 submitted that he had demonstrated sufficient interest since all the questions in  
HCCS No. 296 of 2020 are public interest matters.

On the Applicant's submission that the suit offends the principle of *lis alibi  
pendens*, the Respondent submitted that HCCS No. 296 of 2020 makes different  
claims and is seeking different reliefs from HCMA No. 137 of 2017 and therefore  
25 the plaint in the former suit does not offend the rule.


  
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5      **c. Decision:**

I have carefully perused the parties' submissions and I find as follows;

On *locus standi*, it is true that the Respondent was not party to the Settlement Deed, the consent order arising therefrom and that as such, he must demonstrate that he has sufficient interest to seek annulment of the Settlement  
10 Deed. I refer to ***Hon. Abdu Katuntu and Another vs MTN Uganda and 6 Others HCCS No. 248 of 2012***. In that case, the court laid out several elements that an Applicant must meet in order to bring an action under article 17 of the Constitution of Uganda, and to have *locus standi* for actions of this nature;

- Granting of *locus standi* is an exercise of judicial discretion
- 15 - The Plaintiff must demonstrate that he is a citizen of Uganda. The Plaintiff must also demonstrate that he or she sufficient interest and that he is not just a mere busy body
- The issue raised for decision are sufficiently grave and of sufficient public importance
- 20 - The Applicant should demonstrate that the issues brought for consideration of the court involve a matter of a 'High Constitutional principle'.
- The Applicant must also demonstrate what steps he has taken to protect and preserve the public property in question and that the steps did not  
25 lead to a remedy.

  
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5 The Respondent is a citizen of Uganda, the issues raised are of sufficient public importance. I however find that the Respondent has not demonstrated that the issues involve a matter of high constitutional principle and that the he has not demonstrated what steps he has taken to protect and preserve the public property. On the latter issue, the Respondent filed Miscellaneous Application No. 10 137 of 2017 which is still pending before the court, which suit was intended to remedy the same issues raised in HCCS No. 296 of 2020. In my opinion, this should be the first step that the Respondent takes to demonstrate his intention to protect and preserve public property. Without the completion of this first step, the Respondent's subsequent actions would be premature.

15 On whether the issues raised by the Respondent in HCCS No. 296 of 2020, involve matters of high constitutional principle, applying ***Kikungwe Issa and 4 Others vs Standard Bank Investment and 3 Others HCMA No. 394 of 2004 and No. 395 of 2004***, I note that the Respondent has the opportunity to raise grievances concerning the legality of the Settlement Deed and Consent Order in 20 HCMA No. 137 of 2017. I have perused the said application, and in my view it raises similar issues on the tax liability of the Tullow Uganda Ltd and its sister company and whether or not, the Applicant in this matter is mandated to waive taxes.

As such, it is my finding that the Respondent in ***Katuntu vs MTN and Issa*** 25 ***Kikungwe*** above and has not met the requirements for *locus standi*.

5 Having found that the Respondent has failed the locus standi test, it follows that the cause of action has not been proved.

On the *lis alibi pendens*, section 6 of the Civil Procedure Rules provides that 'no court shall proceed with any suit or proceeding in which the matter in issue is directly and substantially in issue in a previously instituted suit or proceedings  
10 between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed.

My analysis is that both HCCS No. 296 of 2020 and HCMA No. 137 of 2017  
15 contain similar claims. The Settlement Deed that was executed on 18<sup>th</sup> June 2015 which he challenges in HCCS No. 296 of 2020 and a consent order/ decree that was extracted therefrom on 19<sup>th</sup> June 2015 which was he seeks to review and set aside in HCMA No. 137 of 2017 all pertain to the same subject matter. Specifically while HCMA No. 137 of 2017 seeks to set aside the consent decree/  
20 order, HCCS No. 296 of 2020 similarly seeks to set aside the Settlement Deed from which the earlier mentioned consent order was derived.

Additionally, both suits bring into contention the waiver of taxes and the alleged illegal and fraudulent acts of the Applicants and the Uganda Revenue Authority which resulted in the loss of taxes estimated over USD 460,000,000 and both  
25 allude to fraud and corruption on the part of the respondents/ defendants. My finding is that HCCS No. 296 of 2020 breaches the *lis pendens* rule.



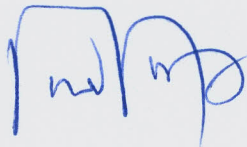
5 Having found that the Respondent does not have *locus standi* to institute HCCS No. 296 of 2020 and did not ably demonstrate and establish a cause of action, I will not delve into the remaining issues.

**d. Orders:**

Having found as above I do make the following orders;

- 10 a. This application is allowed as prayed.
- b. The Plaint in Civil Suit No. 296 of 2020 of Jackson Wabyona vs Tullow Uganda Limited, Tullow Uganda Operations Pty Limited and 3 Others is struck out and is hereby dismissed with costs.
- c. Each party will bear its own costs

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**HON. JUSTICE DR. HENRY PETER ADONYO**

**JUDGE**

*Hon. Justice Dr. H. P. Adonyo*

**14<sup>TH</sup> JULY 2020**

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