THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISC. APPLICATION NO. 502 of 2015

(Arising from Civil Appeal 13 of 2014)

N. SHAH & CO. LTD::APPLICANT

VERSUS

MK FINANCIERS LIMITED ::RESPONDENT

BEFORE HON. LADY JUSTICE ELIZABETH JANE ALIVIDZA

RULING

This is an application by way of notice of motion brought under **Section 98** of the **Civil Procedure Act CAP 71, Order 44 Rules (2) and Order 52 Rules 1 and 3 of the Civil Procedure Rules S.I 71-1**. This Application is supported by the affidavit of Hetal Parikh of the Applicant Company. N Shah & Co Ltd.

The Applicant, N. Shan & Co. Ltd wants this court to issue orders against MK Financiers, the Respondent. The Applicant wants ***Civil Appeal No.13 of 2014 MK Financer Limited Vs N. Shan & Co. Ltd*** struck out with costs. This is because no leave was granted to file the appeal from the Chief Magistrate's court where **Civil Suit No. No 849 of 2014** was being handled. The grounds for this application are clearly set out in the attached affidavit. The Respondents also filed a reply. In summary, the parties filed number of affidavits and submissions with several rejoinders and all are on record and I have taken them into consideration and I see no reason to reproduce them in this ruling.

It is important to remind myself of the history of this dispute between the Applicant and Respondent. Court records show that matter started in the Chief Magistrate's Court Mengo in **Civil Suit No.849 of 2014** as a simple

dispute between landlord and tenant. The Chief Magistrate subsequently dismissed the main suit filed by MK Financer Limited because it did not disclose a cause of action and ordered the counter claim filed by N. Shan & Co. to proceed before the Grade I Magistrate since this matter was within his jurisdiction. As a result **MA 414/2014 & MA 415 of 2014** also collapsed. Subsequently the Respondent filed **Civil Appeal No. 13 of 2014** in this court.

To date the Respondent MK Financiers Ltd has file over 10 misc applications in relations to this appeal. **MA 764/2014 and MA 900/2014** were disposed of in my court. Meanwhile MK Financiers Ltd also applied for leave to appeal against these rulings in the above applications which was granted by this court. However these court files are still in the commercial court implying Court of Appeal has not requested for them yet. This application was the remaining matter to be resolved.

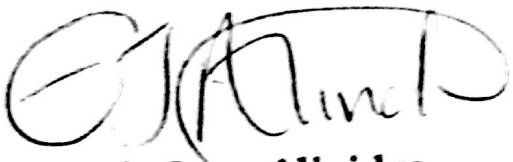
Meanwhile, the following applications remain pending before commercial court; **CA 13/2014, MA 456/2014, MA 452/2014, MA 528/2014, MA 563/2014, MA 524/2014, MA 589/204, MA 781/2014, MA 850/2014 and 502/2015.** This is the first time in my experience as a judicial officer to have such a case where the court appears powerless to control the tornado filing of multiple applications.

This application is argued on the right of appeal being automatic or whether in some instances, leave of court is required. It is my understanding that right of Appeal is constitutional and inherent for anyone seeking justice before a court of law and who is not happy with the final decision of the court. However, in order to avoid abuse of court process and bring litigation to an end, there are procedural formalities in terms of requirements needed so as not to over burden the court system. Whether the Respondent had an automatic right of appeal is a matter that can be resolved when handling the appeal and not as a separate matter.

The Civil Appeal 13 of 2014 and the numerous Miscellaneous Applications attached to it is set be heard by a visiting judge in the near future. Therefore the issue of whether appeal should be struck out should be handled by the Judge who is set to handle CA 13/2014. It would be causing an injustice to the Respondent to dispose of the appeal by way of this miscellaneous application.

Therefore, without determining the merits or lack of merits of the issues raised in this application, I dismiss the application with no order as to costs. The Applicant can raise this as a preliminary objection to the Appeal and reduce on court work by not filing separate matters.

So ordered



Elizabeth Jane Alividza

Judge

3rd May 2015

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