**THE REPUBLIC OF UGANDA,**

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

**(COMMERCIAL DIVISION)**

**MISCELLANEOUS APPLICATION NO 197 OF 2015**

**ARISING FROM HCCS NO 44 OF 2012**

**FAITH ASIIMWE T/A}**

**FAITH FASHION SOLUTION ENTERPRISES}..........................................APPLICANT**

**VS**

1. **AIR UGANDA}**
2. **AIR MALI}**
3. **AIR BURKINA (ALL TRADING AS**

**CELESTAIR)..........................................................................RESPONDENTS**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**RULING**

The Applicant filed this application pursuant to the provisions of sections 14 and 33 of the Judicature Act Cap 13; section 98 of the Civil Procedure Act Cap 71; Order 1 rule 13, Order 19 rule 2 (a) and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules for orders that Meridiana Africa Airlines (U) Ltd is joined as a Defendant to the main suit and be served through Messieurs Shonubi, Musoke and Company Advocates and for costs of the application to be provided for.

It is averred in the notice of motion that the presences of Meridiana Africa Airlines (U) Ltd as a Defendant in the suit is necessary for the court to effectually and completely adjudicate upon and settle all questions involved in the suit. Secondly that the law firm of Messieurs Shonubi, Musoke and company advocates are the duly appointed Company Secretaries of Meridiana Africa Airlines (U) Ltd. Thirdly the application is necessary to avoid a multiplicity of proceedings and lastly that it is just and equitable that the application is granted.

The Respondents objected to the application on the ground that the Defendants are non entities and have no capacity to sue or be sued and the application to join Meridian Africa Airlines (U) Ltd was an attempt to cure a defective suit which is a nullity. In the premises the Respondents/Defendants maintain that the application is a nullity because the court cannot add a party to a nullity.

At the hearing Counsel Emmanuel Baluti of Messrs Kasirye Byaruhanga and Company advocates represented the Applicant and Counsel Byarugaba Kusiima of Messrs Shonubi, Musoke and Company Advocates represented the Respondents.

After discussions with Counsel and on the basis of the Respondent’s affidavit in reply the only issue is whether the Applicant’s application is a competent application. The question of whether Meridiana Africa Airlines Ltd is a necessary party is otherwise not in dispute. Counsels were restricted in their address on the objection of the Respondent as to the competence of the application.

The Applicant’s Counsel submitted that the suit is founded on a contract a copy of which is annexed to the Plaint and Written Statement of Defence as annexure “A”. In the said contract the Defendants/Respondents represented themselves as Air Uganda, Air Burkina and Air Mali (Members of Group Celestair). The contract was signed off on the Defendant’s part by Hugh Fraser who represents himself as CEO of Group Celestair. Throughout engagement of the parties the various correspondences on the Defendant’s part represented the Defendant as Air Uganda and in other instances Air Burkina and Air Mali. The Defendants/Respondents in fact took benefits under the contract in so far as the Plaintiff delivered the contracted uniforms to the Defendants. The Defendants are barred by the doctrine of estoppels from denying their existence as such. It is these and other errors and other lapses that the Business Names Registration Act sought to remedy by protecting innocent third parties who enter dealings with entities trading as business names where it turns out that those business names in fact do not exist. Counsels relies on section 9 (b) of the Business Names Registration Act. He submitted that if it were true that there are certain questions arising as to the framing of this suit, it is his submission that those are mere errors and lapses which ought not to debar the Plaintiff from the pursuit of her rights. The Plaintiff at all times believed she was dealing with “Group Celestair” with its constituents. It would be unjust for the said entities which are in breach of their obligations to the Plaintiff to attempt and avoid liability on grounds which are largely technicalities. Finally not every suit that is brought against a business name would be a nullity as the circumstances differ. Secondly as to whether it is a nullity depends on the exercise of the courts discretion and the dictates of justice. He prayed that the objection is overruled and the court be pleased to allow the application and join Meridiana Airlines to the suit as a Defendant.

As far as the objection of the Respondents is concerned the Respondents Counsel submitted that contrary to submissions of the Applicant’s Counsel the issue is not a mere technicality but an issue of law. A suit against a nonexistent party is a nullity. She relies on annexure “A” to the Applicant’s affidavit showing that the documents are stamped by Meridiana Africa Airlines. Various annexure to the plaint though on Air Uganda Headed Paper are signed by Meridiana Africa Airlines. At all material times the Applicant/Plaintiff was aware of the difference between the trade names Air Uganda and the intended Defendant. That is why she wants to join Meridiana Africa Airlines. The assertion that she is not aware of the true character (status) of the person she is dealing with is belated and absurd.

The Companies Act bestows corporate personality upon incorporation giving a right to sue and be sued. Air Uganda, Air Burkina and Air Mali are not registered under the Companies Act and the Applicant is aware of this fact. Furthermore the Respondent’s Counsel contended that it would be a grave miscarriage of justice if the matter is left at that. The circumstances for the court to differ from the precedents have not been brought to the notice of court (as submitted by Applicants Counsel). As such it is the Respondent’s prayer for the court to deem it fit to find that the suit in its current state is a nullity and have it dismissed. Counsel relies on the cases of **Bagamuhunda Vincent vs. UEB HCCS No 400 of 2007; The Trustees of Rubaga Miracle Centre vs. Mulangira Ssimbwa and Afidra Milton vs. The Board of Trustees, Miracle Centre and Another HCMA No. 576 of 2006 and 655 of 2005**; all to the effect that it is misconceived, incompetent and bad in law for a suit to proceed against a nonexistent party. No substitution or amendment can be made to a nullity and the application ought to be dismissed with costs.

In rejoinder the Applicant’s Counsel submitted that the authorities referred to by the Respondents Counsel are distinguishable in so far as the cases did not consider the applicability of section 9 of the Business Names Registration Act and reiterated earlier submission that each case depends on its own facts.

**Ruling**

I have carefully considered the Applicant’s application as well as the opposition of the Respondents who are also the Defendants in the main suit. Their objection to the addition of Meridiana Africa Airlines (U) Ltd is based on the contention that the current Defendants/Respondents are nonentities and cannot sue or be sued. Following that assertion the Respondents maintain that the Applicant’s suit against them is a nullity and therefore the application for addition of a necessary party is incompetent. In effect the only issue for determination is whether this suit against the Respondents is a nullity. Furthermore the matter in issue is whether the suit is a nullity on the ground it is against a “Trade Name”.

This is not the first time that the issue of whether the main suit of the Applicant is incompetent has been raised by the Respondent’s Counsel. In HCMA No. 740 of 2014 the Applicant applied for a Mareva injunction against the Respondents to prevent them from further dissipating company assets until the final determination of the suit. Among other things the Respondent’s Counsel raised the issue of whether the suit was incompetent on the ground that the Respondent’s are nonentities and a suit against them cannot be maintained. The matter was considered in paragraph 2 of page 12 of the ruling delivered on 26 September 2014. I ruled that there was no evidence in the affidavit of the Respondent for the conclusion that the Respondents are nonentities incapable of being sued. Notwithstanding the lack of evidence the issue was not concluded but stayed pending the adducing of evidence since the question of capacity of the parties is a matter of law.

In this application the Respondent has raised the issue and the question is further narrowed down to whether there is evidence which has been adduced that the Respondents are nonentities and secondly whether in the circumstances of this case, the suit is a nullity.

The Applicant’s application is supported by the affidavit of Faith Asiimwe, the Applicant who deposes that it has become apparent upon the advice of her advocates that it is essential for Meridiana Africa Airlines (U) Ltd to be joined as a Defendant to the suit. She deposes that the contract between her and the Respondents were signed in the names of the Respondents and the arrangement was such that all fabrics to be used in execution of her role were consigned from the suppliers in Italy to Meridiana Africa Airlines (U) Ltd (the intended Defendant). Secondly invoices in respect of the fabrics were issued to and paid for by the intended Defendant. Thirdly the import duty, clearing agents fees were invoiced to and paid by the intended Defendant by their own clearing agent. Fourthly finished uniforms were at all times delivered by her staff to Air Uganda through the intended Defendant.

She deposes that the official record of the Directors and Secretary of the intended Defendant which copy she managed to obtain lists Shonubi Musoke and Company Advocates as the Company Secretary of the intended Defendant.

On the basis of information of her lawyers, the Applicant deposes that in addition the intended Defendant as a Defendant to the suit is necessary for the court to effectually and completely adjudicate upon all questions involved in the suit. Secondly the Company Secretary is mandated to accept service of court process on the company's behalf and thirdly the application is necessary to avoid having a multiplicity of proceedings and to further enable the timely disposal of the long-standing suit. Finally the Applicant reiterates the grounds in the notice of motion and prays that her prayers in the application are granted.

In reply Counsel Noah Edwin Mwesigwa of Messieurs Shonubi, Musoke and Company Advocates deposed the affidavit in opposition on the matters of law. He deposes that the Respondent's would at the hearing raise a preliminary objection of law that the application to add a party to the suit is illegal in so far as the Applicant by way of the application is attempting to remedy/cure pleadings of a suit that is misconceived, incompetent and bad in law. He deposes that the suit in its current state is misconceived, incompetent and bad in law in so far as it is against Respondents who are non-existent. Furthermore he deposes that the present Respondents/Defendants are sued in mere trade names and none existent entities in law and therefore the application cannot legally arise from the misconceived, incompetent, null and bad in law suit. The Applicant is aware of this incurable defect in the pleadings and is attempting to remedy it by way of the application.

Further grounds in opposition to the application are that the application to add the proposed Defendant as a party to the suit is merely an attempt to remedy incurably defective pleadings and the application ought not to be entertained by this court because it arises out of an illegality. Secondly the role of a Company Secretary at law and fact does not extend to mandatory receipt of court process and the Applicant was not properly advised by her Counsel. The application was fabricated to delay justice and to cure what is incurable. The Respondents without prejudice filed a written statement of defence to avoid any likelihood of execution arising from default judgment against the party the Applicant erroneously served. The affidavit is in support of the preliminary objection.

I have carefully considered the affidavit in support of the preliminary objection. In light of the previous ruling of the court, the assertion that the Respondents are unregistered entities is not supported by any information from the Uganda Registration Services Bureau who is responsible for registering companies and business names.

In the previous application namely HCMA 740 of 2014, the same deponent Noah Edwin Mwesigwa of Messieurs Shonubi, Musoke and Company Advocates deposed the affidavit in reply and in paragraph 3 thereof deposes that the suit has no merit and that the Respondents in paragraph 3 of their amended defence intended to raise a preliminary objection which they were confident would dispose of the entire suit. Consequently he deposed that the suit did not have a likelihood of success and was without merit. By way of contextualising the order of the court staying the issue of whether the Respondents are nonentities on the ground of want of evidence, I have considered paragraphs 3 of the amended written statement of defence of the Respondents. Paragraph 3 reads as follows:

"Paragraph 5 of the plaint is denied in toto and the Plaintiff shall be put to strict proof thereof. The Defendants shall aver that the Plaintiff is not entitled to any of the reliefs sought. Further still, the Defendants shall at the commencement of this suit raise preliminary objections, on points of law that the suit against the Defendants:

1. Is materially defective
2. Discloses no cause of action
3. Sues Defendants who are non-existent law."

No evidence had been attached to the affidavit in that application. In this application Counsel Noah Mwesigwa deposes in the affidavit in reply that the suit is misconceived, incompetent and bad in law because it is against Respondents who are non-existent. This is a repeat of the pleadings in the written statement of defence only put in an affidavit. The only additional information is contained in paragraph 5 of the affidavit in opposition to the application or in support of the preliminary objection where he deposes that:

"5. That the three present Respondents/Defendants are merely trade names and non – existent entities at law and therefore this application cannot legally arise from this misconceived, incompetent nullity and bad in law suit."

In other words the additional information is that the Respondents/Defendants as currently described by name are merely trade names. There is no letter from the Uganda Registration Services Bureau. Nonetheless the objection is of a fundamental nature. The assertion that the Respondents are sued in their trade names and that they are nonentities has not been fully addressed by counsel. What is a trade name? There is no definition of the phrase "trade name" under the Business Names Registration Act cap 109. What is defined under section 2 thereof is a business name. A "business name" means "the name or style under which any business is carried on, whether in partnership or otherwise." The use of the phrase "trade name" may be misleading or a matter of definition and in effect means “Business Name” under the laws of Uganda. Section 2 of the Business Names Registration Act provides that every firm having a place of business in Uganda and carrying on business under a business name which does not consist of the true surnames of all partners who are individuals and the corporate names of all partners who are corporations without any addition other than the true Christian names of individual partners or initials of such names shall be registered. What is crucial is that the business name has to be registered and the requirement for registration is mandatory. There is no evidence of such registration and what is asserted by Noah Mwesigwa in the affidavit in reply makes a statement of fact not supported by any documentary proof.

What is even more complicated is the fact that the Respondents filed counterclaims together with the amended written statement of defence in which they are described in the same way as in the plaint. The counterclaimants are Air Uganda, Air Mali and Air Burkina, the Respondents to the application and Defendants to the main suit. With due regard to the affidavit of Noah Edwin Mwesigwa in support of the preliminary objection and particularly paragraph 9 (d) thereof, he deposes that:

"The Respondents without prejudice filed a written statement of defence to avoid any likelihood of execution arising from default judgment against the party they erroneously served."

Nevertheless the Respondents in addition to filing a written statement of defence included a counterclaim in which they sue the Applicant using the same names. With the intention to object to the main suit of the Applicant on the ground that the Respondents were nonentities, how did the Respondents expect, if the objection was meritorious, to succeed in the counterclaim? Secondly it was not accurate to aver that the entitlement of the written statement of defence in the names of the Respondent as described by the Plaintiff was to forestall any default judgment. Had that been the case, the Respondents ought to have filed a counterclaim in their proper names and only objected to the suit. Is it the doctrine that a nonentity cannot pay costs?

In addition it is proper to contextualise the names of the Respondent. In annexure "A" to the amended written statement of defence, reference is made to a letter by the Plaintiff on the question of supplies to the Respondents who are named in the letter as in the plaint. The document is stamped by Air Uganda. In annexure "B" there is a letterhead in the names of "Air Uganda". In annexure "D" attached to the amended written statement of defence, Messieurs Shonubi, Musoke and Company Advocates in a letter addressed to the Plaintiff’s lawyers on 27 October 2011 wrote on the subject of notice of intention to sue by the Applicant/Plaintiff. They wrote that they act on the behalf of "Air Uganda" on whose instructions they were acting and addressed a letter to the Plaintiff’s lawyers.

As far as the plaint is concerned, the three Respondents are described as Defendants trading as "Group Celestair". In paragraph 2 of the plaint the first Defendant Air Uganda is described as a limited liability company trading under the collective entity called “Group Celestair”. Similarly the second and third Respondents are described as trading under the “Group Celestair”.

The attached document to the plaint namely annexure “B18” is a document described as an invoice issued by Meridiana Africa Airlines Ltd, the intended Defendant. In annexure “B19” to the plaint there is another invoice issued by Air Burkina. Annexure “B20” is also an invoice issued by Air Burkina. Annexure B21 to the plaint is issued by Campaignie Aerienne Du Mali. Furthermore there is reference in the correspondences relied on by the Plaintiff such as annexure “E3” to both “Group Celestair” as well as the fact that the Respondents were trading as such. On the documents relied on by the Applicant annexure “E3” is addressed to the Manager, Procurement and Disposal Unit Uganda Revenue Authority Headquarters on the subject of Faith Fashion Solution Enterprises and is written by Mr Antonello Deiollo, the "Cabin Crew Manager Coordinator and Quality of the Product". What is material to the question of parties is that it purports to confirm that the Applicant supplied corporate uniforms for Group Celestair ( Air Burkina, Air Mali in 2010 and Air Uganda) in 2008/2009, 2010 and the consignment involved supply of uniforms for ground staff, cabin crew, drivers, office aid and maternity uniforms etc. The letter is entitled "Quality of the Product Manager of Group Celestair (Air Burkina, Air Mali, Air Uganda)".

Several other documents make reference to the Respondents by names as in the Applicant’s application.

A trade name is defined by **Stroud's Judicial Dictionary of Words and Phrases 2000 Edition Sweet & Maxwell** in the following terms:

“A trade name may be, and often is, a trade mark, but it has a wider application than that. In its wider sense, it means the name under which a person (or company) carries on, and has habitually carried on, his business, and by which he is known in the trade or business to which his business belongs, and which accordingly distinguishes the nature, quality, and fame of his goods and dealings.”

As noted above a trade name is the same as a business name. The question is whether the use of a business name to name a party to a suit, is fatal? Before considering a judicial precedent on the matter, it must be noted that a company or a group of companies can trade under a business name in the same way as an individual or a group of individuals can. This is apparent from the definition of a firm under section 1 (d) of the Business Names Registration Act Cap 109. It defines a "firm" as:

"... an incorporated body of two or more individuals, or one or more individuals and one or more corporations, or two or more corporations, who have entered into partnership with one another with a view to carrying on business for profit;"

Secondly it is a requirement under section 2 (1) of the Business Names Registration Act Cap 109 for a Corporation having a place of business in Uganda and carrying on business under a business name which does not consist of the corporate names of all partner corporations to be registered in the manner prescribed by the Business Names Registration Act.

Without evidence, it cannot be established whether the name "Group Celestair" is a registered business name under which the Respondents traded. Such evidence is necessary to establish or to consider the issue of whether a suit can be filed against a business name and for that matter it is appropriate to adduce evidence on the issue at the trial of the suit on the merits.

The third issue is whether the Respondents are partners in the legal sense of trading together. Under the Partnership Act cap 114 the term “firm” under section 5 thereof means:

“Persons who have entered into partnership with one another are, for the purposes of this Act, called collectively a firm, and the *name under which their business is carried on is called the firm name*.” (Emphasis added).

If “Group Celestair” is a partnership and a firm name, can they be sued in such a name? I must note that the issue goes beyond the question of a registration of a partnership as partnerships can be inferred from the conduct of the parties under section 3 of the Partnership Act. Under section 2 (1) of the Partnership Act cap 114, a partnership is the relationship with subsists between persons carrying on business in common with a view of profit. A relationship between two corporations can be a partnership though the relationship between the members of the company is not.

The fourth issue is whether there was a bona fide mistake in the naming of the Respondents so that an amendment to the names can be made or whether the issue of not being names incorporated is fatal per se.

The question of whether a suit can be commenced by or against a business name was considered by the Supreme Court (High Court) of Kenya in Nairobi in the case of **Lakhman Ramji v. Shivji Jessa and Sons [1965} EA 125** byRudd J. The matter arose on appeal for consideration and the question on appeal was whether a sole proprietor of a business can sue in the name of the business. The appellant was the sole proprietor of “Orient Plumbers”, a business name. In the lower court the appellants sued in his business name and not in his names. The use of the business names were objected to in the lower court but was not rectified. The appeal was however filed in the name of the appellant “trading as oriental plumber’s” without leave of court. The Respondents Counsel intimated that he would not object to a proper amendment of the appellant’s title to the proceedings. Rudd J held at page 128:

“The legal position is quite clear. A sole proprietor of a business cannot sue in the name of that business if that name is not his own name. He should not even sue in his own name trading in the business name. He should sue in his own name simpliciter and then in the body of the plaint he can say that he carries on business in the name of whatever his business name happens to be and is the sole proprietor of that business. That is technically the correct procedure but nowadays rectification is allowed so easily that the matter is merely a technicality.

... It is not proper however for the Plaintiff suddenly to change the title of his own accord without the concurrence of the court during the pendency of a suit except perhaps where he is entitled to amend his plaint without leave under the rules.

The whole matter is one of relatively minor importance since it can easily be rectified at any stage.”

In the above case the use of a business name by a Plaintiff who is a sole proprietor was held to be a curable defect and a technicality. In the case of **A.N. Phakey vs. World Wide Agencies Limited [1948] Vol XV EACA** 1 the East African Court of Appeal considered a suit where the Plaintiff’s Advocate made an error by describing the Plaintiff’s name as “Traders Limited”. The court held that the Defendant was not misguided at all but answered all the allegations in the plaint in its written statement of defence. It was later established that no company by the name “Traders Limited” existed. What existed in the company register was the company “World Wide Agencies ltd”. An amendment to the name of the Plaintiff was held to be proper and the contention that the suit was a nullity was overruled. The Court observed that the Defendant was no prejudiced and knew who was suing him and the appeal on the ground that the plaint was a nullity was dismissed. In **Rodriguez v Parker [1966] 2 All ER 349** the Plaintiff sued R J Parker instead of R S Parker and they were distinct persons. NIELD J held at 365 that:

“In my judgment before the court will grant leave to amend as proposed here the court must be satisfied of three things: first, that the mistake sought to be corrected was a genuine mistake; secondly, that the mistake was not misleading nor such as to cause any reasonable doubt as to the identity of the person intended to be sued; thirdly, that it is just to make the amendment.”

In the case of **Mitchell v Harris Engineering Co Ltd [1967] 2 All ER 682**, the Plaintiff sued Harris Engineering Co (Leeds), Ltd instead of Harris Engineering Co Ltd. Both were distinct companies. An application to amend the names of the Defendant was allowed but appealed and on appeal Lord Denning dismissed the appeal when he held that the suit was filed against the wrong Defendant under a genuine mistake which had not misled the Defendants and the amendment was rightly allowed. He held at page 686 that:

“In my opinion, whenever a writ has been issued within the permitted time, but is found to be defective, the Defendant has no right to have it remain defective. The court can permit the defect to be cured by amendment: and whether it should do so depends on the practice of the court.”

**In Alexander Mountain & Co v Rumere Ltd [1948] 2 All ER** 144, an application to amend the writ by substituting the executrix as Plaintiff was refused by Lord Goddard C.J when he defined what a mistake under the rules for substitution meant. The rule he interpreted is RSC, Ord 16, r 2, which is similar to Order 1 rule 10 (1) of the Ugandan Civil Procedure Rules in so far as the rule provides that:

Where an action has been commenced in the name of the wrong person as Plaintiff, or where it is doubtful whether it has been commenced in the name of the right Plaintiff, the court or a judge may, if satisfied that it has been so commenced through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as Plaintiff upon such terms as may be just.

The decision of Goddard C.J was overturned on appeal in **Alexander Mountain & Co v Rumere Ltd [1948] 2 All ER 482.** The Court of Appeal agreed held that the action did not fall within RSC, Ord 16, r 2, as having been “commenced in the name of the wrong person as Plaintiff,” the case might properly be treated as one of misnomer and the writ amended by substituting the executrix as Plaintiff.

A misnomer is defined by **Osborn's Concise Law Dictionary 11th edition page 273** as:

“A misnaming. An amendment in consequence can be made in either civil or criminal causes.”

A misnomer is defined in Black’s Law Dictionary 7th Ed, page 1015 as:

“A mistake in naming a person, place or thing especially in a legal instrument.

The question as to whether the Plaintiff misnamed the Defendants/Respondents is clouded by the fact that the Respondents filed a counterclaim using the same names from which it can be inferred that it is the right name. That notwithstanding the Respondents used the same names in the alleged business with the Plaintiff and correspondence on matters in the business as attached to the Plaint and WSD. The alleged business relationship remains to be determined through evidence. Secondly suits by or against firms or persons carrying on business a name other than their own name is governed by Order 30 of the Civil Procedure Rules. Order 30 rule 1 governs suits by partnerships and provides:

1. “Suing of partners in name of firm.

*Any two or more persons claiming or being liable as partners and carrying on business in Uganda may sue or be sued in the name of the firm*, if any, of which those persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in the firm, to be furnished and verified in such manner as the court may direct.” (Emphasis added)

If one maintains that the names Air Uganda, Air Burkina and Air Mali are trade names, Order 30 rule 10 of the Civil Procedure Rules permits a Plaintiff to sue the person or persons trading under a business name or style to sue them in that business name or style. 30 rules 10 of the Civil Procedure Rules provides as follows:

10. Suits against person carrying on business in name other than his or her own.

*Any person carrying on business in a name or style other than his or her own name may be sued in that name or style as if it were a firm name*; and, so far as the nature of the case will permit, all rules under this Order shall apply. (Emphasis added)

Rule 10 quoted above expressly permits a Plaintiff to sue a Defendant in a business name of the Defendant which name is not the Defendant’s own name. As noted above a corporation can also trade in a business name. In case there is a need to amend and substitute the corporate names of the defendants there would be no prejudice and the matter as held in the case of **Lakhman Ramji v. Shivji Jessa and Sons [1965} EA 125 by** Rudd J is a simple matter and objections to the names a mere technicality that can be cured if the Plaintiff so wishes.

Last but not least the cases of **Bagamuhunda Vincent vs. UEB HCCS No 400 of 2007;** and **The Trustees of Rubaga Miracle Centre vs. Mulangira Ssimbwa and Afidra Milton vs. The Board of Trustees, Miracle Centre and Another HCMA No. 576 of 2006 and 655 of 2005** are clearly distinguishable. In **Bagamuhunda Vincent vs UEB**, (supra), the question of nullity of the suit depended on the fact that UEB had been dissolved. In other words it had ceased to exist and therefore could not be sued.

In the case of the **Trustees of Rubaga Miracle Centre versus Mulangira Ssimbwa** (supra), there was an application for rejection of the plaint on the ground that the defendant as described is none existent. The court held that a suit in the names of the wrong plaintiff or a non-existent defendant cannot be cured by amendment according the case of **Fort Hall Bakery Supply Company versus Frederick Muigai Wangoe [1959] EA 474.** In that case Counsel for the Defendant objected to the suit on the ground that it was not properly before the court because the Plaintiff association was illegal under section 338 of the Companies Ordinance which prohibited an association or partnership consisting of more than twenty persons formed for the purpose of business (other than banking) that has for its object the acquisition of gain unless it is registered as a company under the Ordinance. Section 338 of the Companies Ordinance which quoted in the judgment read as follows:

“No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business (other than the business of banking) that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Ordinance, or is formed in pursuance of some other Ordinance or of an Act of Parliament, or of letters patent.”

The plaintiff Association consisted of 45 persons and the Plaintiff was also not incorporated. Templeton J held that a non-existent person cannot sue, and once the court is made aware that the Plaintiff is non-existent, and therefore incapable of maintaining the action, it cannot allow the action to proceed.

Firstly the association was prohibited by statute and therefore an illegality which could not be recognised by court. Secondly it was a Plaintiff. The Applicant’s case on the other hand was brought against a business name and is distinguishable from the circumstances in the authorities relied upon by the Respondent’s Counsel.

In conclusion, the Respondent’s point of law is a preliminary point of law some aspects of which require the adducing of evidence at the trial of the suit. The requirement for evidence includes whether the name "Group Celestair" is the name under which the respondents were trading as pleaded. Some documentary evidence of the description of the respondents under "Group Celestair" has been attached to the plaint. Secondly the Applicant’s plaint clearly indicates that the Respondents were trading as "Group Celestair" and therefore the objection on the ground that the Respondents are trade names cannot per se determine the suit. One aspect can be resolved by determining whether "Group Celestair" can be sued and this requires evidence. Thirdly the naming of the Respondent is supported by the Respondent’s own documents by way of invoices if the documents are proved in evidence. Having described themselves as Air Uganda, Air Mali and Air Burkina in the documents attached to the pleadings, the final resolution of the issue requires evidence that contradicts or disproves this. Notwithstanding the issue remains as to whether the Respondents are barred by the doctrine of estoppels from objecting to their names on the ground that they represented themselves as such. In my opinion even this issue requires the adducing of evidence at the trial before it can be concluded.

That notwithstanding, an amendment can be permitted if at all the names of the respondents are not trade names (as asserted by the Respondent’s own Noah Mwesigwa) on the ground of bona fide use of name. It is apparent from the documents attached to the plaint that the Respondents had been represented under the names in which they were sued which documents are yet to be proved in evidence. Secondly the Respondents sued the plaintiff using the very names to which they are now objecting on the ground that they are not incorporated names and are nonentities. This is contradicted by the affidavit in reply which deposes that the Respondents have been sued in their trade names. Thirdly the court would have to consider whether it would be just to make an amendment and in that sense the preliminary objection is premature.

Last but not least a suit in the names represented by the Defendants and by which they had traded or carried on business with the Applicant (in the trade names or business names of the Respondents) is saved by Order 30 rule 10 of the Civil Procedure Rules.

In the premises the Respondent’s objection is without merit and is overruled with costs. Secondly the Applicant’s Application is allowed and Meridiana Africa Airlines Ltd (who must be described as written in the certificate of incorporation) is added as a Defendant to HCCS No. 44 of 2012. The question of whom to serve for purposes of this suit ought not to be determined in this application. Notwithstanding, Companies are served at their registered office which can be established from the National Bureau of Registration Services.

The costs of the application are awarded to the Applicant.

Ruling delivered this 1st day of April 2015

**Christopher Madrama Izama**

**Judge**

Ruling delivered in the presence of:

Byarugaba Kusiima for the Respondents

Respondents not in court

Emmanuel Baluti for the Applicant

Applicant present in court

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

**1st of April 2015**