### THE REPUBLIC OF UGANDA

# IN THE HIGH COURT OF UGANDA AT KAMPALA

## (CIVIL DIVISION)

### **CIVIL SUIT NO. 93 OF 2018**

#### **VERSUS**

- 1. PATIENCE MUGWENZI
- 2. CHENAI JACKSON
- 3. MUDZI BUSINESS CONSULTING LIMITED

# **BEFORE: LADY JUSTICE LYDIA MUGAMBE**

#### **JUDGMENT**

- 1. I have looked at the formal proof evidence of the Plaintiff who testified as PW1 in respect of the first, second and third Defendants. I am satisfied that she together with the first and second Defendants opened the third Defendant to carry out the business of consultancy in business development and training. PW1 Exhibits 1, 2 and 4 demonstrate this. PWI Exhibit 4 demonstrates that by company resolution, the Plaintiff and the first and second Defendants were appointed joint signatories of the third Defendant in their account No.0218/0130819/001/5111/000 in Guaranty Trust bank (U) Ltd.
- 2. PW1 Exhibit 3 the bank statement demonstrates that an initial credit to this account of 143,981,985/= was made by Centenary bank. According to PW1, this was the first payment for the business. Contrary to the resolution Exhibit 4, the first and second Defendants withdrew this money from the bank account without the Plaintiff's authorization. This was confirmed to the Plaintiff by their relationship manager at the

bank who called her alerting her of a cheque withdrawal by the 1st and second Defendants

on the first occasion. PW1 objected saying she did not authorize the payment but the

bank paid the cheque. Later, on a second occasion when the two went back for another

payment, again PW1 was alerted and she objected. It is on this occasion that the bank

stopped paying their cheques on the advice of its legal department. By the time PW1 got

a bank statement for the account in August 2017, there was only Shs: 3,232,719/=. The

bank had continued paying out money to the first and second Defendants.

3. The first and second Defendant's conduct of being hostile, abusive and evasive on the

phone and failure to meet with the Plaintiff to discuss the matter is not conduct of an

innocent person in the circumstances of this case.

4. The first and second Defendants are liable for the loss incurred by the Plaintiff. It is

meaningless to make the third Defendant liable when the actions are of individual share

holders. Moreover, if the third Defendant were made liable, it would have the effect of

unfairly implicating the Plaintiff in the fraud of the first and second Defendants. I will

therefore not find any liability of the third Defendant in the circumstances of this case.

When I lift the veil, liability is for the first and second Defendants. I therefore find them

liable for the loss the Plaintiff incurred. However, my determination of actual liability,

including for costs will be made after hearing the defence case of the fourth Defendant.

I so order.

Lydia Mugambe.

Judge.

25<sup>th</sup> February 2019.

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