

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
MISCELLANEOUS CAUSE NO.423 OF 2017

PALMFOX INTERNATIONAL (U) LTD:..... APPLICANTS

VERSUS

- 1. DFCU BANK (U) LTD**
- 2. BANK OF UGANDA**
- 3. FINANCIAL INTELLIGENCE AUTHORITY:.....RESPONDENTS**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant filed an application under Article 50 of the Constitution, Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act and Order 52 rule 1 of the Civil Procedure Rules for the following reliefs;

- a. That this Honourable court orders the Respondents to activate the Applicant's corporate Bank accounts held with the 1st respondent under Account numbers 01203552824015 and 02203552823982.
- b. That this Honourable court makes a declaratory order that the actions of the 1st respondent to suspend or deactivate the applicant's bank accounts 01203552824015 and 02203552823982 held with the 1st respondent was unlawful and a violation of the applicant's rights.
- c. That this Honourable court makes declaratory orders that the actions of the 2nd & 3rd respondents condone and demand the continuous freezing and/ or deactivation of the applicant's bank accounts 01203552824015 and 02203552823982 held with the 2nd respondent is unlawful and a violation of the applicant's rights.
- d. That this Honourable Court makes an Order of Certiorari quashing the 2nd and 3rd respondent's decision not to unfreeze and or unblock the applicant's accounts held with the 1st respondent.

- e. That this Honourable court makes an order of Mandamus and Prohibition against the respondents compelling them to release/unfreeze the applicant's bank accounts and prohibiting them from further illegally holding onto the applicant's funds held in the bank accounts.
- f. That this honourable court awards the applicant compensation for the financial loss suffered as a result of the respondents unlawful acts of deactivating, suspending and or freezing the applicant's accounts held with the 1st respondent.
- g. That this Honourable court awards the applicant general damages for the loss incurred as a result of the respondents' actions.
- h. That this Honourable court awards the applicant interest of 30% on (f) and (g) here above from the date of the judgment till payment in full.
- i. The costs of this application be provided for.

The grounds in support of this application were stated briefly in the Notice of Motion and in the affidavit in support of the applicant of *Seruwagi Tadeo* but generally and briefly state that;

- 1) The applicant opened and has been operating two accounts in Uganda shillings and United States Dollar Corporate bank accounts with the 1st respondent since 2015 under the account name of Palmfox International Limited and under account numbers 01203552824015 and 02203552823982.
- 2) That sometime in June 2017, the applicant attempted to transact against its Uganda shilling bank account which was used for the daily business operations and was shocked to discover that the said Account had been frozen/suspended by the 1st respondent.
- 3) That sometime in 2018, the applicant came to learn through the 1st respondent that its accounts were frozen following the directives of the 2nd and 3rd respondent and more specifically in respect of a directive that was issued by the 2nd respondent sometime in 2017.
- 4) The applicant was informed by the 1st respondent that the account was frozen because it was suspected of dealing in crimes relating to money laundering, obtaining money by false pretences.
- 5) That the application has never been a member of the above mentioned business and to date has never summoned and/ or investigated for the above mentioned crimes by CID or

any other person or authority and yet the said directive was wrongfully extended against it by the 1st respondent.

- 6) That the applicant has come to learn that despite the conclusion of the investigations by the appropriate authorities and closure of the file, the 2nd and 3rd respondent have continued to direct the 1st respondent to maintain a freeze order against the applicant's bank for unknown to the applicant.

The 1st respondent in reply and opposition to the application filed an affidavit in reply by Abdul Victor Nabongho a Compliance Manager;

1. That by the letter dated 26th June 2017, Bank of Uganda issued a circular to all commercial banks directing them to freeze operations on the accounts of a one Magara Protus Smart and any accounts belonging to D9 Club and to provide Bank of Uganda with accounts opening documents and the Statements of the respective accounts.
2. That in compliance with the BOU directive, the 1st respondent conducted a data search which revealed that account Nos. 02201022393463, 03201022805117 and 01201010901635 all in the names of Seruwagi Tadeo were associated with activities of D9 Club.
3. That the data base search showed that the same Seruwagi Tadeo also operated the Accounts which were held by the bank in the name of the applicant.
4. That the bank acting reasonably took the view that the accounts were affected by the BOU directive given that they were operated by a person, who was an affiliate of D9 Club an organisation an organisation targeted by the BoU Directive.
5. That the banks decision was based on information derived from a Memorandum of Understanding availed to the bank by the applicant acting through its official.
6. That upon confirming the relationship between the applicant and Seruwagi Tadeo, an affiliate of D9 Club and in further compliance with the BoU directive, Bank informed BoU that it had implemented the BoU directive and conducted a search on accounts by reason of having a connection with D9 Club.
7. That all information related to the freezing of the accounts of Seruwagi Tadeo and any other accounts operated and /or related to him as an affiliate of the D9 Club were brought to his attention verbally when he attended to the premises of the bank. He was also advised to see the Bank's compliance team but unfortunately he did not oblige.

8. That the said Seruwagi Tadeo, who is an affiliate of Club D9 is directly connected with the applicant as he is an employee, the majority shareholder and the managing director of the applicant and also a signatory of the applicant. The relationship referred to caused the bank to form the view that the accounts were affected by BoU directive.
9. That indeed, it is true that the said Seruwagi Tadeo was under investigation and the bank was served with a Court order to inspect and take the documents and entries in a bankers book.
10. That the bank received a letter from Criminal Investigation Department on 24th March 2018, indicating that criminal matters in respect of the leaders and members of D9 Club of Entrepreneurs were still ongoing.

The 2nd respondent in her affidavit in reply opposed the application and contended that;

1. That as a regulator of Financial Institutions, the 2nd respondent is empowered under section 118(1) of the Financial Institutions Act of 2004 to direct any financial institutions Act to freeze an account if the Bank has reason to believe that such account has funds which are proceeds of crime.
2. That during or about May and June 2017, there was information circulating on social media relating to pyramid scheme activities of an entity called the D9 Club both in Rwanda and Uganda.
3. That upon investigations, the 2nd respondent on 26th June directed all commercial banks, credit taking institutions and Microfinance deposit taking institutions to freeze accounts in the names Magara Protus Smart and those belonging to an organisation known as D9 Club.
4. That the 1st respondent by letter dated 29th June 2017, informed the 2nd respondent as the regulator that an individual by the name of Seruwagi Tadeo who was an affiliate of the D9 Club operating an entity Palmfox International Ltd.
5. That the 1st respondent provided the 2nd respondent a copy of a memorandum of understanding presented by Seruwagi Tadeo for purposes of accounting opening which clearly indicated his affiliation with the D9 Club, the primary target of the freeze Orders issued on 26th June 2017.

6. That due to the affiliation of one of its proprietor's (Seruwagi Tadeo) to D9 Club, the applicant's accounts became the subject of suspicion and had to be subjected to the freeze order.
7. That a number of credits were being paid into the applicant's accounts without an obvious source and Seruwagi tadeo, the key signatory to the account and the majority shareholder in the applicant did not engage the 1st respondent's compliance team to provide an explanation as required under the Anti-Money Laundering Act.
8. That in the opinion of the 2nd respondent the conduct of the D9 Club and its affiliates is akin to unlawful deposit taking and some of the members of the public have already written to the 2nd respondent requesting for refund of monies paid to the D9 Club.
9. That the law imposes an obligation on the 2nd respondent to cause a refund of any monies illegal obtained to the respective persons from whom such monies have been obtained.

The 3rd respondents opposed this application and the respondent filed an affidavit in reply through the Executive Director of the Respondent-Sydney Asubo.

1. The 3rd respondent denies ever issuing an direction to the 1st respondent to freeze the applicant's account.
2. The applicants in their letter listed 13 accounts belonging to their clients held in different banks, which they allege were frozen pursuant to directions from 2nd and 3rd respondent.
3. The 3rd respondent has never been involved in the freezing of accounts belonging to the applicant.
4. That the bank accounts were frozen on directions of the 2nd respondent in accordance with their statutory mandate as a regulator.

At the hearing of this application the parties were advised to file written submissions which I have had the occasion of reading and consider in the determination of this application.

The main issues were framed by this court for determination;

1. *Whether the there is a nexus between the Applicant and Smart Protus Magara and D9 Club.*
2. *Whether the actions of the 1st respondent were ultra vires, unlawful and a violation of the applicant's rights as envisaged under the 1995 Constitution.*

3. *Whether the 2nd and 3rd respondent's actions were illegal, improper and irrational to warrant judicial review?*

4. *Whether the applicant is entitled to the remedies sought?*

The applicant was represented by *Ms Jamina Apio* whereas the 1st respondent was represented by *Mr. Mpanga Fredrick, Ms Jackline Lule, Ms Sophie Nyombi*, the 2nd respondent was represented by *Mr. Albert Byamugisha* and the 3rd respondent was represented by *Ms Nabukeera Margaret* and *Ms Cynthis Mpairwe*.

Whether there is a nexus between the applicant's Director Tadeo Seruwagi and Smart Protus Magara and D9 Club.

The applicant's counsel submitted that there is no nexus since the applicant since it is incorporated with the initial subscribers as Tadeo Seruwagi with 50% shareholding and Gloria Seruwagi with 10% shareholding.

That the company continued in existence with its operations and all the funds on its banks are traceable from the different sources for various engineering works such as underground molling, drilling, thrust boring, excavations among others.

That the said deposits on the said bank accounts were cash deposits made not within the timeframe of the impugned relationship between the Applicant's director Tadeo and D9 Club. According counsel D9 Club Company commenced sometime in June/July 2016.

According to the Applicant's bank statement, it is confirmed that the applicant never received any electronic or cash payment from Smart Protus Magara or D9 Club organisation. That the only cash deposits after the period June/July 2016 are payments made on the 28th July 2016, 16th December 2016 and 18th May 2017. All other payments were electronic forms of payment whose sources are easily traceable by the 1st respondent.

The 1st respondent's counsel submitted that there is nexus between Tadeo Seruwagi and the applicant in a way that he is an affiliate of D9 Club and was an employee, majority shareholder holding 70% of the shares, Managing Director and also signatory to the Applicant's bank account.

They further contended that the applicant attempted to account for some transactions/deposits on the applicant's account but failed to account for the deposits made on 28th July 2016, 16th December 2016 and 18th May 2017 and this shows there were some suspicious transactions.

They argued that the nexus between the applicant, Tadeo Seruwagi and D9 Club is not determined by the facts of the case only, but also applicable laws that govern Financial Institutions i.e Financial Institutions Act and Anti-Money Laundering Act 2013.

Section 9(1)(c)(i) of the Anti-Money Laundering Act provides that;

An Accountable officer shall-

“Examine as far as possible and seek information as to the origin and destination of the money, background and purpose of the transaction or business relationship, and the identity of the transacting parties, including any ultimate beneficiary.”

The 1st respondent’s counsel further submitted that the Anti-Money Laundering Act requires them to undertake further due diligence measures. It states;

“ An accountable person shall undertake further due diligence measures to verify the identity of the beneficial owner of the account, in case of legal persons and other arrangements, including taking reasonable measures to understand the ownership, control and structure of the customer....”

The applicant’s counsel contended that the 1st respondent has never queried the applicant’s transactions and has never made any indication of any kind that the applicant’s transactions were in fact suspicious. In response counsel for the applicant contended that section 117 of the Anti-Money Laundering Act creates an offence for any person who notifies any person other than a court, competent authority or other person authorised by law.

That in order to comply with section 117 of the Anti-Money Laundering Act, there was no way the 1st respondent would accord the applicant an opportunity to be heard otherwise the 1st respondent would be committing an offence under the law.

In addition, section 125 of the Anti-Money Laundering Act also makes it an offence for a person who intentionally fails within a prescribed period, report to the authority the prescribed information in respect of a suspicious or unusual transaction or series of transaction in accordance with section 9.

The rest of the respondents equally submitted that there is a nexus between the applicant and the said Tadeo Seruwagi as the majority shareholder in Palmfox International and he solely operated the applicant company without the much involvement of the other shareholder Gloria Seruwagi.

They further submitted that applicant’s managing director-Tadeo Seruwagi repeatedly as recipient of the said deposits from D9 Club members and the freeze of the applicant’s accounts only affected Tadeo Seruwagi.

The relationship between the between the applicant and the said Managing Director-Tadeo Seruwagi and D9 Club is that he is the owner of the applicant’s company where he is the majority of shareholder of 70% in a company he co-owns with his wife-Gloria Seruwagi.

The said Seruwagi Tadeo received money from the different customers as an affiliate of the D9 Club and the transactions on the accounts of the applicant would invite any suspicion since it was the same time other persons were depositing money with him for purposes of the Ponzi scheme.

The Financial Institutions Act provides under section **118. Freezing of accounts;**

(1) The Central Bank shall if it has reason to believe that any account held in any financial institution has funds on the account which are the proceeds of crime, direct in writing the financial institution at which the account is maintained to freeze the account in accordance with the direction.

(2) A financial institution acting in compliance with a direction under

Sub section (1) of this section shall incur no liability solely as a result of that action.

The 2nd respondent as a regulator is empowered to cause the freezing of accounts and it was on such basis that indeed the applicant's accounts were frozen.

The relationship between the applicant and its majority shareholder (70%) and Managing director and his affiliation to a Ponzi scheme/Pyramid Scheme-D9 Club was the main reason for the justification of the freezing of the applicant's accounts.

That relationship cannot be wished away by legalese of a corporate veil, that the applicant is separate from its shareholders, who are husband and wife. The High Court under section 20 of the Companies Act is empowered to lift the veil of incorporation. In the case of *Salim Jamal & 2 others vs Uganda Oxygen Ltd & 2 others [1997] 11 KALR 38*; the Supreme Court held *that corporate personality cannot be used as cloak or mask for fraud. Where this is shown to be the case, the veil of incorporation may be lifted to ensure that justice is done and the court does not look helplessly in the face of such fraud.*

This court agrees with the 1st respondent's argument that the Anti-Money Laundering Act also enjoins the bank to detect any suspicious transactions based on the business relationship the applicant as a company had with the Ponzi scheme-D9 Club for which the said Tadeo Seruwagi was an affiliate.

Section 9(1)(c)(i) of the Anti-Money Laundering Act provides that;

An Accountable officer shall-

“Examine as far as possible and seek information as to the origin and destination of the money, background and purpose of the transaction or business relationship, and the identity of the transacting parties, including any ultimate beneficiary.”

The Anti-Money Laundering Act requires them to undertake further due diligence measures. It provides;

“An accountable person shall undertake further due diligence measures to verify the identity of the beneficial owner of the account, in case of legal persons and other arrangements, including

taking reasonable measures to understand the ownership, control and structure of the customer....”

There is a nexus between the applicant and D9 Club since the Majority Shareholder-Tadeo Seruwagi was an affiliate of Ponzi scheme and it is the duty of the 2nd and 3rd respondents to investigate the transactions of the applicant to determine whether they had any direct link to the prohibited Ponzi Scheme.

The findings of the 2nd and 3rd respondent should form the basis of continuing the freeze of the 2 bank accounts and later transfer of the money on the said account to the victims of the Ponzi scheme.

The actions of the respondents’ were all justified and were in accordance with the law since they had to establish the relationship between the applicants’ managing director-Tadeo Seruwagi and Ponzi Scheme.

The nature of the work and mandate of the 2nd and 3rd respondents is to detect financial crimes including money laundering and financing of terrorism, requires swift and expeditious detection of crimes which may affect the public at large.

ISSUE TWO

What remedies are available to the applicant?

The applicant has failed to prove to court that the respondents acted illegally or unfairly when they froze the bank accounts.

The 2nd and 3rd respondent should investigate the transactions on the applicant’s bank statement in order to establish whether they were related to the D9 Club transactions within sixty days from the date of this ruling.

The applicant is not entitled to the remedies sought. This application fails and dismissed with no order as to costs.

I so Order

SSEKAANA MUSA
JUDGE
7th /03/2019