

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

CIVIL APPEAL NO. 30 OF 1995

CORAM: (MANYINDO, DCJ, ODER, JSC, & TSEKOKO, JSC)

BETWEEN

TRANSROAD LTD. : : : : : APPELLANT

AND

BANK OF UGANDA : : : : : RESPONDENT

(Appeal from a Ruling of the H/C of Uganda at Kampala by Mr. Justice J.B.A. Katutsi dated 16th March, 1995, In the H/C Misc. Appl. No. 238/94).

JUDGMENT OF MANYINDO DCJ:

This is an appeal against the Ruling of Katutsi J. in High Court Miscellaneous Application No. 238 of 1994, the application was taken to the High Court under section 3 (1) of the Reciprocal Enforcement of Judgment Act (Cap. 47), sections 99 and 101 of the Civil procedure Act and Order 48 rule 1 of the Civil Procedure Rules. It was brought by Originating Summons.

By that application the appellant sought leave of the High Court to extend the time within which to file an application to register a judgment of an English Court in the High Court of Uganda. It was an exparte judgment, passed by the High Court of Justice (Queens Bench Division) on 8.6.90 in Civil Suit Reference 1990 T 1454. When the application came up for hearing Katutsi J. directed the Counsel in the case to address him on the question of jurisdiction-whether the judgment sought to be registered was in fact registerable in Uganda courts. The learned Judge wanted the Counsel to address him specifically on the question whether the respondent had submitted to the jurisdiction of the courts of England. The learned Judge must have been acting under section 3 (2) (b) of The Reciprocal Enforcement of Judgments which states:-

"3. (1)-----

(2) No judgment shall be ordered to be registered under this section if----

(a) -----

(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;"

After hearing arguments of both sides the learned Judge held that the exparte judgment was not registereable in Uganda because it had not been proved that the respondent had submitted to the jurisdiction of the High Court of Justice of England. He also held that as the judgment which was passed on 8.6.90 should have been registered by 8.6.91 (the time allowed under section 3 (1) of Cap. 47) and as the appellant had not shown good cause why the extension should be allowed after a lapse of 4 years, the application to extend time would not be allowed.

This is what he said on the point:-

"I believe the object of the discretion to override the time limit in section 3 (1) was to provide for the occasional hard core cases. I cannot believe that it was the intention of parliament that section 3 (1) should be applied to cases such as this where a judgment creditor sits on his judgment for a period of over four years. If the court were to exercise its powers in an application such as this, the value to the defendant of a twelve months time limit in registering judgments passed by superior courts in England and the Republic of Ireland would be swept aside.

Furthermore the court would be flooded with applications pleading this or that for the delay. In my view the court should be circumspect in its approach to the discretion in section 3 (1) and it should be reserved for cases of unusual nature. It was a straight forward case in which time should never have been allowed to expire. I can see no good reason to extend it and would not have extended it".

He then dismissed the application with costs to the respondent. There are two grounds of appeal. The first one is that the learned Judge erred in law and in fact to hold that the respondent did not submit to this jurisdiction of the English Court so that the Judgment could not be registered here. The second ground is that the holding by the Judge that there was no good reason to extend time was erroneous in law and fact.

The appellant's application in the High Court was for extension of time only. With respect it was therefore wrong for the learned Judge to probe the question whether the Judgment of the foreign court was registerable here. The point fell to be considered on an application for registration of the judgment. Such application was not before the court then. The learned Judge confused the issues. Learned Counsel in the case missed this point on appeal. Mr. Rukutana-Mwesigwa who represented the appellant only sought an order that the judgment be registered and enforced in Uganda. On the other hand, Mr. Buyondo for the respondent submitted that the learned Judge ruled correctly on the matter, although the matter did not fall for decision at that stage.

I do not think that it was open to the learned Judge to decide the question of jurisdiction as the question of registration of the judgment did not arise. His ruling on the matter can not be allowed to stand. I would uphold the first ground of appeal although for this reason and not that advanced by counsel for the appellant.

I now turn to the second ground of appeal. In order to put the matter in its proper perspective I have to broadly delve into the somewhat chequered history of the case. On 17.1.85 a contact was made between the appellant and the Government of Uganda whereby the appellant was to arrange for the shipment of Uganda-Government railway wagons and spares from India to Mombasa. It was agreed that upon the appellant fulfilling their part of the contact, the Government of Uganda would pay them the agreed contract price of United States Dollars 5,942,400 in 8 quartely instalments. The Government was to pay the money through the respondent.

The respondent paid the first three instalments but failed to honour the rest due to foreign exchange constraints at the time. The appellant then sued the respondent for the balance plus interest. As noted above, judgment was entered *ex parte* for the appellant on 8.6.90. It was subsequently served on the respondent who on 23.6.90 wrote to the appellant offering proposals for liquidating the debt without the use of foreign currency. Negotiations then proceeded on that basis between the Appellant and the respondent.

In the meantime the parties obtained a consent order from the trial court in England staying execution which had been issued by the court on 14.8.90. The respondent also consented to their application challenging the court's jurisdiction to hear the suit being dismissed. The negotiations over the alternative methods of settling the debt went on from 1990 to 1993, when a mode and rate of payment was agreed between the appellant and the respondent following arbitration. The agreement was referred to as the "WARBURG ARRANGEMENTS". It was not until August 1994 that the Secretary to the Uganda Treasury informed the appellant of a change in the mode and rate of payment. The appellant were surprised at that as the Secretary to the Treasury was not a party to the WARBURG ARRANGEMENTS.

On 24.11.94 the appellant who had lost all hope of payment filed the application for leave to register the judgment here out of time, for execution purposes. It is clear from the affidavit evidence and documentary exhibits on the record that the appellant was put off by the respondent who kept on promising to pay the judgment sum. It is note worthy that on 12.8.92 the Minister of Finance and Economic Planning wrote to the appellant promising to settle the judgment debt. Again on 16.21.92 the same Minister and the Governor of the respondent Bank wrote a joint letter to the appellant promising to pay the money in due course.

In those cirmstances I am of the view that the learned Judge was not correct in holding that the appellant should have registered the judgment by 8th June 1991. The learned Judge did not give an example of what he called cases of "unusual nature". Had the Judge directed himself properly on the evidence he would have found as a fact that the appellant was justified in not registering the judgment within the prescribed time of 12 months as all the indications were that the respondent would comply with the decree of the court. He would also have found that the same situation prevailed between June 1991 and August 1994 when the respondent reneged on its promise to settle the matter out of court.

Thus the real delay was of three months from August 1994 to December 1994 when the appellant applied for the extension of time. In my opinion that delay was inevitable as the appellant is a foreign company, based in England, with all its Directors residing abroad; their Ugandan based Lawyers needed time to consult them in the process of bringing the matter to court. That was a good reason for the delay. The application should have been allowed in my view. The second ground was therefore well taken.

In the result I would set aside the Ruling and orders of Katutsi J. I would substitute an order allowing the application and granting the applicant 14 days from today within which to file the application for registration of the judgment in the High Court. The application, when filed, should be heard by a different Judge. I would grant the appellants costs of this appeal and in the lower court. *As odoki OSC and Oder OSC agree it is ordered.*

Dated at Mengo this *4th* day of *Janh* 1996.

S.T. Manyindo

S.T. MANYINDO

DEPUTY CHIEF JUSTICE

*4.3.96. Mr. Muesigwa for the App.
no body
~~Mr. Lwajobit for the Resp.~~*

Manana court clerk present

Judge read.

[Signature]

By des.

4.3.96

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(CORAM: MANYINDO, D.C.J., ODOKI, J.D.C., & ODER, J.S.C.)

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(Appeal from a Ruling of the High Court at Kampala (Katutsi, J) dated 16.3.1995 in H/C Misc. Application No. 238/94)

JUDGMENT OF ODER, J.S.C.

I have had the benefit of reading in draft the judgment of Manyindo, D.C.J.

I agree with his conclusions and the reasons. I have nothing to add.

Dated at Mengo this 4th March, 1996.



A.H.O. ODER,

JUSTICE OF THE SUPREME COURT.

IN THE SUPREME COURT OF UGANDA

AT MENGGO

(CORAM: MANYINDO DCJ, ODOKI JSC & ODER JSC)

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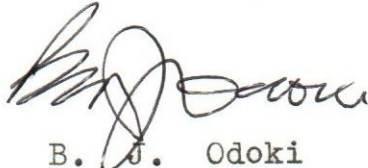
in

Miscellaneous Application No. 238 of 1994)

JUDGMENT OF ODOKI JSC

I agree with the Judgment of Manyindo DCJ which I had the benefit of reading in draft. I concur in the orders proposed by him.

Delivered at Menggo this day of 1996.



B. J. Odoki

JUSTICE OF SUPREME COURT.