THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLEANOUS APPLICATION NO. 99 OF 2022

(ARISING FROM CIVIL SUIT NO. 275 OF 2019)

1. JOHN W. KATENDE

2. SIM KATENDE :: APPLICANTS

VERSUS

UGANDA COMMUNICATIONS COMMISSION :::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The application was brought by Notice of Motion under Section 98 of the Civil Procedure Act (CPA), Section 33 of the Judicature Act, Order 13 rule 6 and Order 52 rule 1 of the Civil Procedure Rules (CPR) for orders that;

a) Judgement on admission be entered against the Respondent/Plaintiff and the suit against the 4th & 6th Defendants (Applicants) be dismissed.
b) Costs of the application be provided for.

[2] The application is supported by an affidavit sworn by **Mr. Sim Katende**, the 2nd Applicant. Briefly, the grounds of the application are that between September 2008 and 2016, One Solutions Ltd, the 1st defendant in C.S No. 275 of 2019, was licensed by the Respondent (plaintiff in the said suit) to provide telecommunication services in Uganda. Under the license agreements and the Uganda Communications Act 2013, the said 1st defendant was required to continually pay its license and regulatory fees to the Plaintiff/Respondent. Sometime in 2016, the Respondent revoked the 1st defendant's license. The 1st

and 2nd Applicants (who are 4th and 6th defendants in the suit) were directors of the 1st defendant from 1st March 2011 to 6th December 2016. The Applicants never signed any post-dated cheques in favour of the Respondent nor signed any memorandum of understanding (MOU) nor any of the documents the Respondent is seeking to rely on in the suit. The Applicants also never personally made any oral representations or promises of any kind to the Respondent in respect of any matter involving the 1st defendant. The Applicants further averred that the Respondent never wrote or addressed any letter, invoice or communication of any kind in respect of the 1st defendant directly to either Applicant. The Applicants resigned as directors of the 1st defendant in late 2016 prior to the filing of the suit and are no longer directors of the 1st defendant. The Applicants averred that by the Respondent's own admission, the Respondent/Plaintiff has not adduced any evidence of misrepresentation or fraud as against the Applicants. The Applicants concluded that it is in the best interests of justice, equity and fairness that this application is granted.

[3] The application was opposed by the Respondent through an affidavit in reply deposed by Ms. Victoria Ssekandi, the Manager Legal Compliance and Enforcement of the Respondent, who stated that the application is misconceived, frivolous, vexatious and an abuse of court process and ought to be struck out and/or dismissed with costs on account of the fact that it seeks to pre-empt and dispose of the main suit against the Applicants, based on matters of fact that are pending full hearing of the suit and it is founded on a wrong interpretation of the facts as stated in the Respondent's witness statements, which do not, in law and fact amount to an admission that the Applicants are not liable for the orders sought against them in the main suit. The deponent stated that, from the outset, the Respondent denies the allegations that the statements which were made by the Respondent's witnesses in their witness statements are admissions of fact that the

Applicants are not liable for the remedies sought by the Respondent in the main suit.

[4] It is further stated for the Respondent that whereas it is true that the Applicants may not have signed on all the documents sought to be relied upon by the Respondent in the main suit, the Respondent's trial bundle contains several other pieces of evidence which the Respondent intends to use to prove its case against the Applicants. Further, whereas it is true that the Respondent's witnesses stated in some paragraphs of their witness statements that the Applicants resigned from being directors in One Solutions Ltd and they did not sign on all the documents, the Respondent clearly stated in several other paragraphs in the plaint and the witness statements that the Applicants acted jointly with the other directors of One Solutions Ltd and caused loss to the Respondent. The deponent stated that there is sufficient evidence in the trial bundle that was already filed in court to prove that the Respondent/ Plaintiff is entitled to the orders sought in the main suit. She concluded that no admission was made by the Respondent in the pleadings, witness statements or at all, from which the orders sought in this application can be made and it is in the interest of justice and equity that this honorable court should dismiss the application with costs and instead fix the main suit for hearing.

[5] The Applicants filed an affidavit in rejoinder whose contents I have also taken into consideration.

Representation and Hearing

[6] At the hearing, the Applicants were represented by **Mr. Businge Fred** from M/S Katende, Ssempebwa & Co. Advocates while the Respondent was represented by **Mr. Waiswa Abdu Salam** and **Ms. Zaramba Ritah Sekadde** from the Legal Department of the Respondent. It was agreed that the matter proceeds by way of written submissions, which were duly filed by both

Counsel. I have considered the submissions in the course of resolution of the matter before the Court.

Issue for Determination by the Court

[7] One issue is up for determination by the Court, namely; **Whether there are sufficient grounds to entitle the Applicants to judgement on admission and dismissal of Civil Suit No. 275 of 2019 as against the Applicants?**

Applicants' Submissions

[8] Counsel for the Applicants relied on *Section 20 of the Companies Act* to the effect that the High Court may lift the corporate veil where a company or its directors are involved in acts of tax evasion or fraud. Counsel submitted that no ground for lifting the corporate veil has been pleaded and is capable of being established by the Respondent upon the evidence intended to be adduced by them. Counsel further cited the case of *Future Stars Investments (U) Ltd v Nasuru Yusuf HCCS No. 0012 of 2017* to the effect that court is empowered to enter judgement on admission at any stage of the suit where an admission of facts has been made. Counsel submitted that the Respondent has effectively admitted in the agreed facts in the joint scheduling memorandum, witness statements and the documents relied on that the plaint does not disclose any evidence of misrepresentation or fraud against the Applicants in their individual capacities for any alleged breach of the license terms and conditions.

[9] Counsel submitted that the witness statement of Josephine Akong shows that all tax invoices, Annexures D, E and H were addressed to the 1st defendant; that Annexure F was signed by the 2nd defendant; the MOU was signed by the 1st defendant; and the cheques were issued by the 1st defendant. Counsel further submitted that paragraphs 16 and 17 of Kenneth Sseguya's witness statement states that he is not providing any evidence against the Applicants. Counsel further submitted that according to the affidavit in

rejoinder, the representations relied upon in the main suit were never made or authored by the Applicants; the agreed facts confirm that there is no evidence of any fraud or misrepresentation on the part of the Applicants; that the resolution attached to the affidavit in reply shows that the 1st Applicant was a signatory to a Crane Bank account yet the postdated cheques relied on by the Respondent were drawn on Standard Chartered Bank and were not signed by the Applicants. Counsel prayed that judgement on admission be entered against the Respondent and the suit against the Applicants (4th and 6th defendants) be dismissed.

Respondent's Submissions

[10] In reply, Counsel for the Respondent relied on the case of *Central Electricals International v Eastern Builders and Engineers HCMA No. 0176 of 2008* to the effect that a judgement on admission is not a matter of right but at the discretion of court and that court may refuse the motion if a case involves questions that cannot be conveniently disposed of on motion; and the cases of *Connie Watuwa v AG HCMA No. 544 of 2020* and *Dembe Trading Enterprises Limited v Global Electricals HCMA No. 202* of 2021 to the effect that an admission should be unambiguous, clear, unequivocal and positive. Counsel submitted that the Respondent has not made any admission on any fact to necessitate entering of a judgement on admission and dismissal of Civil Suit No. 275 of 2019. Counsel argued that the removal of the Applicants from the main suit will prejudice the matter and affect their ability to achieve the remedies sought.

[11] Counsel submitted that the pleadings contain several pieces of evidence and averments that point to the fact that the Applicants should be part of the suit and the prayers in the plaint were sought against all the defendants jointly and severally, and that particular paragraphs in the witness statements show that the Respondent directed her case against all the defendants including the

Applicants. Counsel further submitted that there was documentary evidence showing that the Applicants were directors in the 1st defendant at the time of issuance of the license, that meetings concerning financial matters of the company were held at their offices and were signatories to the 1st defendant bank accounts at the time of issuance of the license. Counsel further disputed the admissions alleged by the Applicants and stated that they cannot be said to be positive, clear, unambiguous, without contest, obvious, plain and unequivocal, as to satisfy the court in order to exercise its discretion under Order 13 rule 6 of the CPR. Counsel prayed that the Court finds that the application is without merit and should be dismissed.

Determination by the Court

[12] Under *Order 13 rule 6 of the CPR*, where an admission of facts has been made, either on the pleadings or otherwise, a party to such a suit may apply to the court for judgment or order as he/she may be entitled to upon that admission, without waiting for the determination of any other question between the parties; and the court may grant such judgment or order, as it may think just. In law, therefore, the court may rely on documents accompanying pleadings to infer an admission by the opposite party provided the alleged admission satisfies the tenets of a proper admission. It is settled that a judgment on admission is not a matter of right but rather one of discretion of the court. The admission must be unambiguous, clear, unequivocal and positive. Where an alleged admission is not clear and specific, it may not be appropriate to take recourse under the legal provision. See: *Future Stars Investment (U) Ltd v Nasuru Yusuf, HCCS No. 0012 of 2017*.

[13] Accordingly, the judge's discretion to grant judgment on admission of facts under the law is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the plaintiff to judgment. See: *Cassam v Sachania [1982] KLR 191*. It

has also been stated that the purpose of a judgment on admission is to enable a plaintiff to obtain a quick judgement where there is plainly no defence to the claims. To justify such a judgment, the matter must be plain and obvious and where it is not plain and obvious, a party to a civil litigation is not to be deprived of his right to have his case tried by a proper trial where, if necessary, there will be discovery and production of oral evidence subject to cross-examination. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion of the court should not be exercised to deny the valuable right of a defendant to contest the claim. See: *Industrial and Commercial Development Corporation v Daber Enterprises Ltd, [2000] 1 EA 75* and *Continental Butchery Ltd v Ndhiwa [1989] KLR 573* (from the Court of Appeal of Kenya).

[14] On the matter before me, the facts identified by the Applicants as entitling them to a judgment on admission are allegedly contained in the joint scheduling memorandum, namely; that the Applicants never signed any post-dated cheques in favour of the Plaintiff, any Memorandum of Understanding (MOU) nor any of the documents sought to be relied upon by the Respondent; that the Applicants never personally made any oral representations or promises of any kind to the Respondent in respect of any matter involving the 1st defendant; and that the Respondent never wrote or addressed any letter, invoice or communication of any kind in respect of the 1st defendant directly to the Applicants. The Applicants also rely on the averments in the witness statements of two witnesses, namely, Josephine Akong and Kenneth Lennox Sseguya. According to the Applicants, Josephine Akong showed that all tax invoices to the Respondent were addressed to the 1st defendant, the document Annexure F was signed by the 2nd defendant, the Memorandum of Understanding (PE ID1) was signed by the 7th defendant, and the cheques were issued by the 1st defendant. It is further stated that in his statement, Kenneth

Lennox Sseguya stated that the evidence he was giving would not apply to the Applicants.

[15] It ought to be noted that in paragraph 5(j) of the plaint, the Respondent/Plaintiff pleaded that during the period relevant to the dispute, the 1st defendant generated sufficient revenues from its operations in Uganda but the 2nd to 7th defendants (who include the present Applicants) decided to unjustly enrich themselves using the said revenues and it is only just and equitable that the veil of incorporation be lifted to hold the 2nd to 7th defendants jointly and severally liable with the 1st defendant for the outstanding liability. In paragraph 6 of the plaint, it is pleaded that the 2nd to 7th defendants materially misrepresented and/or concealed the financial status of the 1st defendant and were fraudulent in the manner in which they dealt with the plaintiff. The plaintiff went ahead to set out the particulars of fraud and misrepresentation.

[16] In view of the above pleading, I find it quite incorrect for the Applicants to argue that the admission of the facts pointed out first above could amount to an unambiguous, clear, unequivocal and positive admission of absence of liability on the part of the Applicants as 4th and 6th defendants in the suit. I do not believe that the Applicants' genuine view is that by this application and proceeding, the Respondent is expected to prove whether fraud or misrepresentation has been established against the 4th and 6th defendants and that the Court should determine that question at this stage. Clearly, to my mind, once fraud is specifically pleaded, as it was in the main suit, the burden upon the plaintiff to prove the same lies within the domain of trial of the suit and not that of pre-trial filing. In other words, it must be only after evidence has been produced and tested during cross-examination that the Court can reach a finding as to whether fraud as alleged in the pleadings has been proved or not. I am therefore in total agreement with the Respondent's Counsel that

this application seeks to pre-empt and dispose of the main suit against the Applicants, based on matters of fact that are pending full hearing of the suit. For that reason, I would agree that the application is misconceived.

[17] On the basis of the law as set out above and the facts as evaluated, none of the allegedly admitted facts satisfy the requisite criterion as to lead to the exercise by the Court of discretion to enter any judgment or order on admission. The application is, therefore, without merit and is dismissed with costs to the Respondent. The main suit shall be set down for hearing against all the defendants on its merit.

It is so ordered.

Dated, signed and delivered by email this 5th day of January, 2024.

Boniface Wamala
JUDGE