

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Moses Kazibwe Kawumi, Florence Nakachwa, Musa Ssekaana JJA)

CIVIL APPEAL NO. 297 OF 2021

MOTV AFRICA LTD:..... APPELLANT

VERSUS

UGANDA COMMUNICATIONS COMMISSION:..... RESPONDENT

(Appeal against the Judgement and Decree of Hon. Justice David Wangutusi delivered on 20th May 2021, in HCCS No.83 of 2014 at High Court of Uganda at Kampala –Commercial Division)

JUDGMENT OF MUSA SSEKAANA, JA

Introduction

The appellant brought the main suit in the High Court seeking the following remedies; special damages, interest on special damages at a rate of 25% per annum until payment, punitive damages, aggravated or exemplary damages with interest of 25% per annum till payment in full and costs of the suit.

Background

The appellant is a limited liability company incorporated and operating digital satellite television business. The appellant operated digital terrestrial broadcasting services in Uganda as a pioneer investor. The appellant applied to the broadcasting council for digital broadcasting TV license. On 12th August 2009, the broadcasting council granted permission to the appellant to open and operate a TV station. The appellant applied to the then UCC to be awarded two frequencies for DVB-frequencies.

On the 28th August 2009, UCC responded to the appellant and informed it that the policy on analog-digital television migration had not yet been approved by the Government. As such, the appellant was differed to when the policy would be

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5 approved. The then UCC then wrote to the appellant in a letter dated 26th February 2010 and granted the appellant permission to set up a digital pilot project in Kampala.

10 The appellant was informed that the digital territorial broadcasting project was a pilot project that was stated to end by the 1st July 2010. On 23rd May 2012, the respondent issued a public notice on behalf of the Government informing the public that the Government had adopted DVB-T2 as standard to be used in the provision of digital terrestrial television broadcasting services.

From the above events, the appellant filed a suit in the High Court for recovery of special damages and general damages against the respondent.

15 *The particulars of the damage are as follows;*

1. Loss of capital and equipment..... 787,538,460/=
2. Pre operating expenses.....92,300,100/=
3. Operation expenses.....622,730,730/=
4. Projected loss profits.....13,140,000,000/=
- 20 **Total.....14,642,569,290/=**

At the trial, the respondent raised a preliminary objection that the suit was prematurely filed before the High Court as the appellant had not exhausted all statutory remedies and the suit was dismissed with costs to the respondent.

25 Dissatisfied with the said ruling, the appellant lodged the present appeal on one sole ground;

That the learned trial judge erred in law and fact in holding that the High Court lacked jurisdiction to entertain Civil Suit No.83 of 2014, resulting in the wrongful dismissal of the suit.

Representation

30 At the hearing, the appellant was represented by *Counsel Ebert Byenkya* and *Counsel Anthony Bazira* while the respondent was represented by *Counsel Musinguzi Bruce*.

The Appellant's submissions

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5 Counsel submitted that the learned trial judge erred to hold that the establishment of the UCC TRIBUNAL under Uganda Communications Commission Act 2013 deprived the High Court of jurisdiction to consider whether the omission and commissions by the respondent resulted into economic loss to the appellant.

10 That the respondent/defendant in their written statement of defense submitted that this suit was improperly before the High Court and that the appellant/plaintiff ought to have lodged its complaint to the Uganda Communications Commission Tribunal first.

15 That the *Supreme Court in URA vs Rabbo Enterprises (U) LTD and Another Civil Appeal 12 of 2004* defined jurisdiction as authority which a court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision.

The unlimited original jurisdiction of the High Court is enshrined in article 139 of the Constitution of the Republic of Uganda as well as section 14(1) of the Judicature Act.

20 That in his judgement, the trial judge stated that the Uganda Communications Act established a tribunal known as the Uganda Communications Tribunal which has all the powers of the High Court and whose judgment would be enforced like judgements and orders of the High Court and its appeals would lie in the Court of Appeal. That the trial judge went on to state that what the legislature did was to
25 lock out the High Court from proceedings of this nature because the appeals from the tribunal go to the Court of Appeal.

Counsel for the appellant submitted that he respectfully disagrees with the holding of the learned trial judge herein above because there is no constitutional provision ousting the unlimited jurisdiction of the High Court to the Uganda Communication
30 Tribunal and neither is there a provision in the UCC Act that expressly ousts the jurisdiction of High Court.

Counsel cited the case of *David Kayondo vs The Cooperative Bank (U) Ltd Civil Appeal No.1091 of 1992* for the position that the High Court has unlimited original jurisdiction over all civil and criminal matters and that for a statute to oust the
35 jurisdiction of the High Court, it must expressly state so. That the above was also

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5 the position in *Kameke Growers Cooperative Society Limited versus North Bukedi Cooperative Union SCCA No.8 of 1994*.

10 That the jurisdiction of the tribunal under section 60 and 65 of Uganda Communication Commission is derived from the statute and not the Constitution as there is no constitutional provision ousting the jurisdiction of the High Court to the Tribunal.

That it is a known fact that the President has not appointed any member to the communication tribunal. The trial judge ought to have taken judicial notice of that fact under sections 55 and 56 of the Evidence Act.

15 That according to the case of *Arim vs Stanbic Bank (U) LTD Civil Appeal No. 3 of 2015*, court held that where a fact is so notorious that judges are by their regular interaction aware of its existence, it's not necessary that such a practice or fact is formally proved in order for the court to take judicial notice of it. That matters relating to the constitution of UCC Tribunal are matters of general or local notoriety and High Court ought to have taken judicial notice of the same.

20 Counsel concluded by praying that this appeal be allowed, judgement of the lower court be set aside and this honorable court be pleased to hear the case on merit or alternatively send the file back to High Court for retrial.

Respondent's submissions

25 Counsel for the respondent submitted that under section 60 of the UCC Act, the tribunal established there under shall be comprised of a judge and two persons appointed by the President on the recommendation of the Judicial Service Commission. That section 65 (1) of the UCC Act gives the tribunal all the powers of the High Court in exercise of its jurisdiction. That section 65(4), any person aggrieved by the decision of the tribunal may appeal to the court of appeal.

30 That the case of *Uganda Revenue Authority versus Rabbo Enterprises LTD and another Civil Appeal No. 12 of 2004*, is instructive on the jurisdiction of specialized tribunals to handle matters which would otherwise be handled by the High Court. That in that case, the Supreme Court recognized the original jurisdiction of the High Court however, it also recognized the provisions of the Tax appeals tribunal which
35 gave the tribunal power of the High Court in handling matters arising from tax assessment.

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5 That in the same way, the UCC Act gives the UCC Tribunal powers of the High Court to adjudicate matters relating to communication services. That is held by the Supreme Court in the above case, it would be bizarre for the legal regime to give individuals the choice of what forum to lodge their complaint. The learned trial judge was therefore right in dismissing the suit.

10 It is settled law that where a specific procedure has been provided for, the parties should exhaust that procedure before filing an action in High Court.

That the cases of *David KAYONDO vs The Cooperative Bank Civil Appeal No.1091 of 1992* and *Kameke Growers vs North Bukedi Cooperative Union SCCA No.8 of 1994* cited by the appellant are distinguishable from the facts at hand. These cases were
15 decided before the promulgation of the 1995 Constitution and do not apply to the 1995 constitution.

The appellant ought to have followed the law and lodged a complaint before the tribunal first in accordance with the law and several decided cases. That the trial judge was right when he dismissed the appellant's suit.

20 Regarding the appellant's issue that at the time of filing the suit, the tribunal did not exist and the trial judge ought to have taken judicial notice of that fact, counsel submitted that matters of the constitution of the tribunal do not automatically amount to matters which the court should take judicial notice of.

Section 55 of the Evidence Act provides that no fact of which the court will take
25 judicial notice need to be proved. Section 56 of the Evidence Act lists matters court may take judicial notice of. That particularly section 56 (3), states that if the court is called upon by any person to take judicial notice of any fact, it may refuse to do so until that person produces any kind of book or document as it may consider necessary to enable it do so.

30 That in *Arim vs Stanbic Bank (UO Ltd, Civil Appeal No.03 of 2015, the supreme court*, while quoting the Nigerian supreme court case of *Gbaniyi Osafire and John Emeri vs Paul Odi and Okwumaso Nwaje SC 149/1987*, the court held that matters that can be judicially noticed fall in two broad classes. First are those which are so notorious that court can automatically take notice of them and secondly those
35 although judicially noticeable, he court will not do so until something is produced, though not formally tendered as evidence, in order to inform court or refresh its

5 memory on the matter before it notices it. That on this second category, courts have often refused to take notice of matters falling here when the material from which it can inform itself or refresh its memory is not produced by the party inviting it to take notice of the particular r matter.

10 That in the Arim case, court declined to take judicial notice of the fact that in banking practice, a customer is identified by both the account number and account name on ground that the appellant did not avail the court with any literature to support their assertion.

That in summary, the main point is that while formal evidence is not necessary, for a fact to be taken as judicial notice, it ought to have been presented at court first.

15 The appellant ought to have brought the alleged fact of the tribunal nonexistence to the attention of the High Court and invited court to take judicial notice of the same.

The appellant had a duty to plead that the tribunal was nonexistent in support of their suit but they did not and the trial judge rightfully dismissed the suit.

20 Counsel concluded by inviting court to dismiss the appeal with costs to the respondent in the High Court and in his honorable court.

Submissions in Rejoinder

25 In rejoinder, counsel for the appellant submitted that at the time of filing the suit, the UCC Tribunal was not constituted nor started its operations as stated under sections 60, 64 and 65 of the Uganda Communications Commission Act.

30 That in the case of *Leads Insurance Ltd vs Insurance Regulatory Authority of Uganda C.A No.91 Of 2013*, it was the respondent's objection that the appellant had not exhausted the procedure under the Insurance Act before applying for judicial review. The Insurance (Amendment) Act No.13 of 2011 provided that a person aggrieved by the decision of the authority may within one month of the decision being communicated to him appeal to the tribunal.

35 By the time of filing the suit, the tribunal was non-existent. The court while rejecting the objection stated that where a statute provides for an alternative remedy, the court could only allow collateral remedy of judicial review in rare cases. That nonexistence of the tribunal was a rare and exceptional case.

5 Counsel submitted that the above position is still good law.

The trial judge ought to have taken judicial notice of the non-existence of the tribunal because even the names of the prospective judge on the tribunal has never been gazette.

10 He further submitted that the High court had jurisdiction to entertain the matter under article 139 of the constitution. For a provision in the statute to oust the jurisdiction of the High Court, it must expressly state so.

15 The case of *David Kayondo vs The Cooperative Bank(U) Ltd Civil Appeal No.1091 of 1992* that a statute can only oust the jurisdiction of High Court when it expressly state so has not been overruled or over turned in the supreme court cases of *URA vs Rabbo Enterprises Ltd and another*. It is only distinguishable in that there was a specific constitutional provision under Article 152 (3) in the latter creating jurisdiction of Tax Appeals Tribunal unlike in the *Kayondo case* where jurisdiction was solely derived from a statute.

20 Counsel further prayed in the alternative that this honorable court be pleased to exercise its jurisdiction under section 11 of the Judicature Act and send back the file to the trial court for re trial.

Court's Consideration and Analysis

25 The facts of this case have been articulately stated by both parties in their respective submissions. The appellant filed Civil Suit No. 83 of 2014 in the High Court Commercial Division. During the hearing of the said matter, the respondent raised a preliminary objection that the appellant's suit was improperly before High Court because the appellant should have presented the complaint to the Uganda Communications Tribunal as mandated by law. The learned trial judge upheld the said objection and dismissed the suit against the respondent.

30 Dissatisfied with the said judgement, the appellant lodged the present appeal on ground that *the learned trial judge erred in law and fact in holding that High Court lacked jurisdiction to entertain Civil Suit No.83 of 2014, resulting in the wrongful dismissal of the same.*

35 **Article 139 of the Constitution** of the Republic of Uganda, 1995 provides for the jurisdiction of the High Court. It provides that the High Court shall, subject to the

5 provisions of this constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdictions as may be conferred by this constitution or other law.

Section 14(1) of the Judicature Act is also clear on the unlimited original jurisdiction of the High Court.

10 *Section 60 of the Uganda Communication Commission Act established the tribunal and provides that the same shall be comprised of a judge and two other persons appointed by the President on the recommendation of the Judicial Service Commission.*

The tribunal under *section 65 (1) of the Uganda Communication Commission Act*
15 *is given all the powers of the High Court in the exercise of its jurisdiction. In fact, section 65(3) states that the judgement and orders of the tribunal shall be executed and enforced in the same manner as orders and judgments of High Court.*

Section 65 (4) of the Uganda Communications Act provides that any person aggrieved by the decision of the tribunal may within 30 days from the date of the
20 *decision or order appeal to the Court of Appeal.*

Jurisdiction is central and indeed at the core of every court's power to adjudicate. The High Court indeed has unlimited jurisdiction on all such matters which have not been regulated by any legislation. It would be an absurdity to allow litigants to file all manner of matters which Parliament in its wisdom has enacted legislation and
25 limited jurisdiction in the High Court in such matter. It is trite law that where a specific procedure has been provided for, parties should exhaust that procedure before filing an action in the High Court. Every court must be confined to a certain type of jurisdiction to ensure sanity or orderliness in the legal order and the hierarchy of courts.

30 Public policy requires that where special jurisdiction is conferred on a tribunal or court, the same should not be taken away by general jurisdiction conferred on the High Court. Every matter should be heard and determined by a court which has competent jurisdiction in order to ensure there is an end to litigation. The case of *Uganda Revenue Authority versus Rabbo Enterprises Ltd and Anor Civil Appeal*
35 *No. 12 of 2004*, is instructive on the jurisdiction of specialized tribunals to handle matters which would otherwise be handled by the High Court.

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5 The legislature's powers on establishing specialized jurisdiction is not taken away
or limited by the general provision on unlimited jurisdiction of the High Court. The
implication is that once the legislature has delimited jurisdiction or removed the
jurisdiction to a specialized court, it ought to be respected. It would be wreaking
havoc on express powers of the legislature on enactment and intendment not to
10 set up such specialized tribunals like the Communications tribunal and Electricity
tribunal. The Supreme Court in **URA vs Rabbo** case (supra) also held that there is
no provision of the Constitution which restricts Parliament from vesting in a
subordinate court, jurisdiction over some matter, which is also within the
jurisdiction of the High Court.

15 Where an enactment or rules have expressly prescribed a particular procedure for
initiating a court process, a party seeking to invoke the powers and jurisdiction of
the court for that particular cause or matter must comply with the prescribed
procedure and cannot ignore that procedure and jurisdiction by premising their
process on inherent and unlimited jurisdiction. See **National Health Insurance**
20 **Authority v George M Osei b& 4 Ors [2011] 36 GMJ 117 C.A**

The effect of the circumscription of the jurisdiction of the court to those matters
set out in the Uganda Communications Act is that such matters are heard by
specialized personnel due to the peculiarity of the sector. Therefore, the *carte*
blanche power conferred on the High Court to deal with every conceivable matter
25 is restricted and the forum for ventilation of the action is the communication
tribunal.

The learned trial judge was right in holding that the tribunal has the same powers
as the High Court especially because the decisions of the tribunal are appealable to
the Court of Appeal. The appellant ought to have followed the procedure set out in
30 the statute by lodging a complaint with the tribunal first instead of rushing to
institute a suit in the High Court.

The learned trial judge dismissed the suit with costs, which in my view was
erroneous since the court was deprived of jurisdiction to consider whether the
omissions and commissions of the defendant/respondent resulted in economic
35 loss. Where the court holds that it has no jurisdiction to hear and determine the
matter before it, the proper order to make is that of striking out the action and not



- 5 dismissing the same. See ***Kamuti Masai v James Muida Nganga CACA No. 28 of 1987 (K)***

Where the court the court finds it has no jurisdiction it would strike out the action, not dismiss it. A dismissal of an action is an adjudication on the merits and there can be no adjudication on the merits when there is no jurisdiction or competence
10 to adjudicate. See ***Okolo v Union Bank of Nigeria Ltd (2004) 3 NWLR (Pt 859) 87 at 110; Din v A/G Federation (1986) 1 NWLR (Pt. 17) page 471 at 508***

The appellant's counsel faulted the trial court, for not taking judicial notice of the fact that the tribunal did not exist or that the President had not appointed any Judge to head the Communications Tribunal.

- 15 In ***Halsbury's Laws of England, 3rd Edition, Vol 15***, it is stated:

*Judicial notice is taken of facts which are familiar to any judicial tribunal by virtue of their universal notoriety or regular occurrence in the ordinary course of nature or business. As judges must bring to the consideration of the questions they have to decide their knowledge of the common affairs of life, it is not necessary on the trial
20 of any action to give formal evidence of matters with which men of ordinary intelligence are acquainted whether in general or natural phenomenon.*

Judicial notice is the recognizance taken by the court itself of certain matters which are so notorious or clearly established that evidence of their existence is unnecessary. It is taken of various facts which are familiar to any judicial tribunal
25 by their universal notoriety or regular recurrence in the ordinary course of nature or business. When a court takes judicial notice of a fact, it simply means that the court declares that it will find that the fact exists. See ***Bank Bumiputra (M) Bhd v Mohd Ibrahim bin Salleh [2000] 5 MLJ 778 at 797***

In the case of ***Arim Felix Clive vs Stanbic Bank (U) Ltd Supreme Court Civil Appeal No. 3 of 2015***, court held that where a fact is so notorious that judges are by their
30 regular interaction aware of its existence, it's not necessary that such a practice or fact is formally proved in order for the court to take judicial notice of it. Therefore, judicial notice is a doctrine or the process by which courts take cognizance of a matter which is so notorious or clearly established that there is no need for a party
35 seeking for its recognition by court, to adduce formal evidence for its proof. See

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5 ***Mifumi (U) Ltd & 12 Ors v Attorney General & Kenneth Kakuru Supreme Court Constitutional Appeal No. 2 of 2014***

Counsel for the appellant submitted that the tribunal did not exist at the time of filing the suit cannot also help him salvage his appeal. The appellant did not adduce any evidence at the High Court to prove that the said tribunal was not existing at
10 the time. His attempt in the submission to quote the parliament website to show that the president has not appointed any judge or member to the tribunal amounts to giving evidence from the bar and is inadmissible.

Further, the High Court cannot be faulted for not taking judicial notice of the non-existence of the tribunal at the time because these facts do not fall within the ambit
15 of section 56 of the Evidence Act for which court must take judicial notice of.

If counsel did not move the High Court to take judicial notice of the non-existence of the tribunal, he cannot now do the same on appeal.

The appellant did not even plead the non-existence of the tribunal in his pleadings. It is a known fact that parties are bound by their pleadings and in absence of any
20 mention of absence of the tribunal, the trial judge was right when he held that the appellant could only enter the High Court by pleading inadequacy of the tribunal or that there was a road block in not following procedure under section 60 of the Act. This they did not do.

If the court is called upon by any person to take judicial notice of any fact, it may
25 refuse to do so unless and until the person produces any such book or document as it considers necessary to enable it to do so.

The appellant should have pleaded non-existence of the Communications Tribunal in order to be allowed to lead argument for judicial notice in the High Court and in absence of that, the trial judge was right in dismissing the appellant's suit.

30 This appeal is dismissed with costs to the respondents.

Dated and delivered this.....23rd.....day of.....July.....2026


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MUSA SSEKAANA

35 **JUSTICE OF APPEAL**

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Moses Kazibwe Kawumi, Florence Nakachwa, Musa Ssekaana JJA)

CIVIL APPEAL NO. 297 OF 2021

MOTV AFRICA LTD

..... **APPELLANT**

VERSUS

UGANDA COMMUNICATIONS COMMISSION
RESPONDENT

(Appeal against the Judgement and Decree of Hon. Justice David Wangutusi delivered on 20th May 2021 in HCCS No.83 of 2014 at the High Court of Uganda at Kampala – Commercial Division)

JUDGMENT OF FLORENCE NAKACHWA, JA.

I have read the draft judgment of my brother Justice Musa Ssekaana, JA. in this appeal. I agree with his analysis and conclusion that the appeal be dismissed with costs to the Respondent.

Dated this 28rd day of July 2026.



FLORENCE NAKACHWA

JUSTICE OF THE COURT OF APPEAL.

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Moses Kazibwe Kawumi, Nakachwa, Ssekaana, JJA.)

CIVIL APPEAL NO. 297 OF 2021

BETWEEN

10 **MOTV AFRICA LTD**

APPELLANT

AND

UGANDA COMMUNICATIONS COMMISSION

RESPONDENT

*(An appeal against the Judgement of (Wangutusi, J.) in HCCS No.83 of
2014 delivered on 20th May 2021 at the Commercial Division of the
High Court)*

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JUDGMENT OF MOSES KAZIBWE KAWUMI, JA.

20 I have had the benefit of reading in draft, the judgment of my learned
brother Musa Ssekaana, JA. I agree with the decision that the appeal
fails for the reasons he has given.

Since my learned sister Nakachwa, JA. also agrees, the appeal is
dismissed and the costs are awarded to the Respondent.

25 Signed, dated and delivered at Kampala this.....day of2026

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Moses Kazibwe Kawumi
Justice of Appeal