

UGANDA / JUDGMENT

Al Shafi Investment Group LLC v Hamder (Miscellaneous Application 1337 of 2022) [2024] UGCommC 90 (28 March 2024)

[2024] UGCommC 90

COURT

Commercial Court of Uganda

BEFORE

Mutesi, J

CASE / FILE NUMBER

Miscellaneous Application 1337 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (COMMERCIAL DIVISION) MISCELLANEOUS APPLICATION NO. 1337 OF 2022 ARISING FROM CIVIL SUIT NO. 0732 OF 2022 AL SHAFI INVESTMENT GROUP LLC : VERSUS HAMDER JABER RASHIED ALHAMELI (Before: Hon. Justice Patricia Mutesi) **RULING**

Background

This application is brought under Section 98 of the Civil Procedure Act Cap 71, and Order 6 rules 28, 29 and 30, Order 7 rule 11(a) and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules S. I. 71-1 seeking orders that:

- 1. The plaint in Civil Suit No. 0732 of 2022 (Hamder Jaber Rasheid Alhameli v Ahmed Almarar Darwish Dagher & 4 Ors) be struck off the Court record for not disclosing a cause of action as against the Applicant.
- 2. Civil Suit No. 732 of 2022 is frivolous, vexatious and an abuse of the Court process.
- 3. Costs of the Application be η the cause.

Briefly, the grounds of this application are that:

- 1. The Respondent filed Civil Suit No. 0732 of 2022 ("the main suit") in this Court against the Applicant seeking various orders. The main suit is still pending hearing before this Court.
- 2. The Applicant filed a written statement of defence in the main suit.
- 3. The plaint in the main suit does not disclose a cause of action against the Applicant.
- 4. It is in the interest of justice that this application is allowed.

The application is supported by 2 affidavits sworn by Nsubuga E. Ssempebwa, the Applicant's lawful Attorney. In the affidavits, he told the Court that, in the

year 2013, the Applicant filed Civil Suit No. 292 of 2013 in the High Court of Uganda at Nakawa against Ahmed Darwish Dagher Almarar for recovery of AED 149,302,152. The Applicant later obtained an order in Miscellaneous Application No. 555 of 2013 attaching the shares of Ahmed Darwish in Aberdeen Real Estates Ltd, Emirates Africa Link Estates Ltd, International House of Real Estates Limited and Magma International Limited pending the determination of the suit. Civil Suit No. 292 of 2013 was eventually decided in the Applicant's favour and, in the subsequent execution proceedings, the Court allowed the Applicant to bid for and buy the suit shares. He contended that, since the Applicant purchased the shares under a court order, the main suit is unmaintainable.

In reply, the Respondent also filed 2 affidavits sworn by Mwesiga Apollo, the Respondent's lawful Attorney. In his affidavits, Mr. Mwesiga explained that the plaint clearly sets out how the Applicant got fraudulently and illegally registered as owner of the shares in Emirates Africa Link and Aberdeen Real Estates. He averred that the Applicant severally breached the proper procedures in the execution process leading up to the registration of the shares in the Applicant's name. He clarified that the debt which gave rise to the judgment in whose execution the shares were transferred to the Applicant has since been declared to be non-existent by the highest court in Abu Dhabi where the debt had been procured. He maintained that the objections to the main suit raised in this application can only be resolved after the hearing in the main suit.

In his affidavit in rejoinder, Mr. Nsubuga E. Ssempebwa reiterated the contents of his earlier affidavits.

Issues arising

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- 1. Whether the main suit is frivolous, vexatious and an abuse of the Court process.
- 2. Whether the plaint in the main suit discloses a cause of action against the Applicant.

Representation and hearing

At the hearing of the application, the Applicant was jointly represented by M/S Katende, Ssempebwa & Co. Advocates and M/S Kabayiza, Kavuma, Mugerwa & Ali Advocates. The respondent was represented by M/S CR Amanywa Advocates & Solicitors. Counsel filed written submissions to argue the application. I have

fully considered those submissions, the laws and authorities cited therein and all the other materials on the record.

Determination of the issues

1. Whether the main suit is frivolous, vexatious and an abuse of the Court

Issue 1: Whether the main suit is frivolous, vexatious and an abuse of the Court

The word "frivolous" connotes the absence of seriousness or the lack of validity or legitimacy. A frivolous suit would also be vexatious in that its effect would be counterproductive. On the other hand, "vexatious" denotes oppression to the opposite party which obstructs the court from gaining a full understanding of the issues. A party who presents a vexatious suit often acts with an ulterior motive. An action is vexatious if the party bringing it is not acting bona fide and merely wishes to annoy or embarrass the opponent or when it is not calculated to lead any practical result. See *Ndungo Seti & 2 Ors v Sekiziyivu Sammy Jones & Anor*, HCCS No. 286 of 2011.

Furthermore, in *Attorney General v James Mark Kamoga & Anor*, SCCA No. 8 of 2004, it was held that "abuse of court process" involves the use of the process of court for an improper purpose or a purpose for which the process was not established. One such abuse of court process lies in maliciously raising questions for court's determination, well aware that such issues have previously been directly or substantially determined by the Court. See *Ladha Kassam & Co. Ltd & 2 Ors v Zalwango Margaret Nalongo & 2 Ors*, HCMA No. 1727 of 2022.

Having reviewed all the materials ϕ record in this application and in the main suit, I have no doubt in my mind that the main suit is frivolous, vexatious and an abuse of the Court process and I cannot find any good faith basis for it. The main suit seems to, merely, be an insincere attempt to re-litigate *de novo* the question of ownership of the suit shares.

The Applicant first came to this Court in 2013 vide Civil Suit No. 292 of 2013 seeking to recover a debt from one Ahmed Darwish Almarar Dagher. The debt was said to have arisen from a dishonoured cheque issued to the Applicant by Ahmed Darwish in Abu Dhabi. In November 2013, the Applicant successfully applied for an order attaching Ahmed Darwish's assets in Uganda pending the disposal of the suit vide Misc. Application No. 555 of 2013. These assets included the shares he owned in Aberdeen Real Estates Ltd and Emirates Africa Link Real

Ahmed Darwish prosecuted his defence to Civil Suit No. 292 of 2013 until 3rd February 2020 when that suit was decided in the Applicant's favour. He also opposed the subsequent execution proceedings unsuccessfully until sometime in 2022. Following those execution proceedings, the Court allowed the Applicant to buy the suit shares which it did. Throughout all these years, Ahmed Darwish represented to the Court that he was the owner of the suit shares. It was only when the main suit was filed in 2022 that notice of his alleged sale of the suit shares to the Respondent in 201 β came to the fore.

The Applicant did not come forward to notify the Court about her purported purchase of the shares for all those years since 2013 when she claims to have bought them. The proceedings in Civil Suit No. 292 of 2013 and in all related matters progressed and ended without her involvement. I have also noted that, in the main suit, the Respondent did not plead any claim in misrepresentation against Ahmed Darwish for the impression he created to the Court that he was the owner of the shares for all those years.

I am convinced that the Respondent was, at all material times, aware of the proceedings in Civil Suit No. 292 of 2013 and in related matters since, according to her own evidence, Aberdeen Real Estates Ltd and Emirates Africa Link Real Estates Ltd made resolutions as far back as January 2014 accepting her purchase of the suit shares. Since these two companies participated in the execution proceedings in Civil Suit No. 292 of 2013, and she was a director in both of them, she could have come forward and introduced her transaction to the Court at any time before those proceedings were concluded, if at all it was genuine. In any case, just like any other court record, the Court record in Misc. Application No. 555 of 2013 is a public record, and the Respondent can only blame herself for not knowing about the attachment order issued therein and approaching the Court in time to contest the same.

I have also found it very suspicious that the Respondent did not plead any real claim against Ahmed Darwish in the main suit yet he is the ¹ Defendant therein. Although she sought a declaration that Ahmed Darwish breached the share purchase agreement, the Respondent did not plead any specific allegation regarding the alleged breach of contract. Indeed, part D of the Complaint which sets

out the alleged particulars of fraud, illegality and breach of contract does not contain any single averment against Ahmed Darwish pointing to his breach of the agreement, fraud or illegal actions.

The preceding analysis irresistibly points to the deduction that the main suit is a sham. The Respondent's complaints in the main suit are not only inauthentic but they are also insincere. Even without a trial, I am already certain that there was no genuine contract of sale of shares between the Respondent and Ahmed Darwish. If that contract had been there, Ahmed Darwish would have brought it to the attention of the Court in Civil Suit No. 292 of 2013 for all the years that case was still being heard. The Applicant would also have come forward and told the Court about the transaction $d_{\{\text{string}\}}$ all those years, and she would have been evidently cross with Ahmed Darwish, on the face of the plaint in the main suit, for his misrepresentations to the Court on the ownership of the shares.

My impression is that the Applicant's claim in the main suit is only a desperate afterthought crafted by the Applicant, in collusion with Ahmed Darwish, to try and salvage the suit shares. It is a desolate bid to fight on in order to frustrate the court orders arising from Civil Suit No. 292 of 2013 and related matters.

The Applicant became the proprietor of the suit shares after a protracted and thorough court process. If the Court entertains the main suit as against the Applicant, the Court would, in effect, be sitting in appeal or in review of its decisions in Civil Suit No. 292 of 2013 and in the subsequent execution without proper legal basis. It is obvious that, if the Respondent is aggrieved by those earlier court proceedings, her solution lies in appeal or in review. She cannot present a fresh and independent action over ten years after those court proceedings commenced, without any mention of, or reference to, those earlier proceedings. Entertaining the main suit, at least as against the Applicant, is recipe for illegality and impropriety because this Court would be setting itself up to rewrite its final orders on the question of ownership of the suit shares.

Counsel for the Respondent revealed in their submissions that the highest court in Abu Dhabi has since overturne ϕ the debt which was the subject of the Applicant's claim in Civil Suit No. 292 of 2013. The Court notes that the judicial systems in Uganda and in Abu Dhabi are different. If Ahmed Darwish successfully appealed a lower court's finding over the debt in Abu Dhabi, he should have similarly appealed the decree of this Court in Civil Suit No. 292 of 2013 and

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secured an order staying execution of the same pending disposal of the appeal. As long as this Court's orders in Civil Suit No. 292 of 2013 and the subsequent execution still stand, the findings in the Abu Dhabi courts change nothing.

The main suit, as it stands against the Applicant, is unmaintainable because the Applicant's title to the suit shares arose out of a judgment, decree and orders of this court in execution, all of which are still on the Court record and have not been set aside. These decisions can only be set aside through an application for review or through an appeal. The main suit is neither an application for review nor an appeal. I am convinced that the main suit is only intended to deprive the Applicant of the fruits of its litigation. It is a mere ruse intended to trick this Court into reopening its final decision on the question of the ownership of the suit shares, a matter over which the court is now functus-officio.

This Court finds that the main suit, as it stands against the Applicant, is frivolous, vexatious and an abuse of the Court process. On the basis of that conclusion, it is no longer necessary to delve into the question of whether the plaint in the main suit discloses a cause of action against the Applicant or not. Consequently, I make the following orders:

- $\dot{\mathbf{I}}$. This application is hereby allowed. $\Box$
- The claims against, and relating to, the Applicant in the plaint in Civil ii. Suit No. 0732 of 2022 are hereby struck off that plaint and off the Court record, and the Applicant is fully discharged from all proceedings in Civil Suit No. 0732 of 2022.
- The Respondent shall bear the Applicant's costs in this application and iii. in the main suit.

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Patricia Mutesi JUDGE

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\$(28/03/2024)\$

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