

UGANDA / JUDGMENT

Kalibbala v Kaggwa & 3 Ors (HCT-00-CV-MISC Appeal- 09 -2015) [2016] UGHCCD 45 (19 May 2016) [2016] UGHCCD 45

COURT

HC: Civil Division (Uganda)

BEFORE

Musota, J

CASE / FILE NUMBER

HCT-00-CV-MISC Appeal- 09 -2015

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

HCT-00-CV-MISC APPEAL- 09 -2015

(Arising out of Misc Application No. 509 of 2015)

(Arising out of Civil Suit No. 190 of 2015)

KALIBBALA MUSAAZI :::::::::::::::::::::::::::::::::: APPELLANT

* VERSUS –

1. FRED KAGGWA

2. MUKWAYA MWEBE JOSEPH :::::::::::::::::::::: RESPONDENTS

3. BIRISO ALEX

4. CHAINLINK TECHNOLOGY LTD

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

This is an appeal by notice of motion brought under Order 50 Rule 8 of the Civil Procedure Rules and Section 79 (2) of the Civil Procedure Act against the decision of the Acting Deputy Registrar His Worship Festo Nsenga granting an Interim Order to the 1st and 2nd respondent stopping the appellant, 3rd and 4th respondents or their agents/servants/employees or any person claiming under them or acting on their behalf from operating and withdrawing money from the 4th respondent's bank account with standard chartered Bank.

The facts constituting the appeal are that the 1st and 2nd respondents sued the appellant, the 3rd and 4th respondents in High Court Civil Suit No. 190 of 2015 challenging that they were unlawfully dismissed from the company. The 1st and 2nd respondents then filed High Court Miscellaneous Application No. 259 of 2015 for a temporary injunction and then Miscellaneous Application No. 260 of 2015 for an interim order. The appellant filed Miscellaneous Application No. 268 of 2015 for an order that he convenes, constitutes the quorum and holds a one man's meeting of the 4th respondent company to pass the resolution instructing lawyers to defend the company. The 1st and 2nd respondents fixed Miscellaneous Application No. 260 of 2015 for an interim order which was abandoned and dismissed by the Acting Deputy Registrar since the hearing of the temporary injunction had started. Upon a preliminary objection being raised to the effect that hearing and determination of the temporary injunction would be irregular if the respondent company was not given an opportunity of legal representation, this court halted hearing of Miscellaneous Application No. 259 of 2015 pending hearing of Miscellaneous Application No. 268 of 2015.

The 1st and 2nd respondents then filed Miscellaneous Application No. 395 of 2015 seeking to be added as parties to hold a one man's meeting. They later filed Miscellaneous Application No. 509 of 2015 for an interim order which was then granted by the Ag. Deputy Registrar. The appellant was dissatisfied with the order hence this appeal.

The grounds of appeal as set out in the notice of motion are that;

1. *The appellant is aggrieved by the findings and orders of the Learned Deputy Registrar His Worship Festo Nsenga dated 21st day of December, 2015 granting an interim order against the appellant.*
2. *That the Learned Deputy Registrar erred in law and in fact when he failed to consider the preliminary objections raised before him by the appellant and held that the matter was urgent.*
3. *That the Learned Deputy Registrar erred in law and in fact when he continued to hear and determine High Court Miscellaneous Application No. 509 of 2015 after the preliminary objections had been raised before him by the applicant.*
4. *That the Learned Deputy Registrar erred in law and in fact when he held that the 1st and 2nd respondents had satisfied the grounds for the grant of an interim order, that there was a risk of the substantive application being rendered nugatory and that the matter was urgent.*

The appeal is supported by an affidavit sworn by the applicant.

The respondents on the other hand opposed the appeal by an affidavit in reply sworn by the 2nd applicant wherein he stated that the application is frivolous vexatious and bad in law.

At the hearing of the appeal counsel for the parties were allowed to file written submissions. In their submissions counsel argued ground one first, ground 2 and 3 were combined while ground 4 was argued separately.

I have perused the record of appeal and the submissions of learned counsel on either side. I have also made use of the authorities cited for my assistance. I am alive to the principle that the first appellant court should reconsider evidence, evaluate it itself and draw its own conclusion though it should bear in mind that it has neither seen nor heard the witness: See ***Banca Arabe Espanol Vs Bank of Uganda SCCA No. 1/1999.***

In regard to ground 1, it is the appellant's submissions that he is aggrieved by the decision of the trial Deputy Registrar as the Interim Order has affected the operation and management of the 4th respondent company to which the appellant is the Managing Director for no withdraws of money for payments can now be done.

On the other hand counsel for the 1st and 2nd respondents submitted that the appellant is not in any way aggrieved and if he is aggrieved the word aggrieved would have acquired a secondary meaning.

I do not agree with the argument of counsel for the respondent as the interim order was issued restraining the respondents to wit Kalibbala Musaazi, Biriso Alex and Chain Link Technology Ltd or any other person claiming under them or action on their behalf. From the wording interim order it is very clear that the appellant is concerned and aggrieved as the order affected him too as the Managing Director of Chain Link Technology Ltd. I accordingly answer ground one in the affirmative.

On ground 2 and 3, it was submitted for the appellant that the trial Deputy Registrar erred in law and fact when he failed to consider the preliminary objection raised before him by the applicant. He argued that a company is at law a separate legal entity with a right to be heard and to legal representation which are the key facts of fair hearing founded on natural justice.

He contended that Order 41 Rule 3 of the Civil Procedure Rules requires mandatorily that in all cases before granting a temporary injunction notice of the application should be directed or given to the opposite party. He submitted that the learned Deputy Registrar after hearing the submissions of both counsel and despite conceding that the respondent company was at the heart of the whole misunderstanding ruled that it was difficult to place the respondent company anywhere and that the matter was urgent and thus hearing would continue.

He contended that a decision of court declared in violation of the principles of natural justice is no decision at all and it is the courts duty to provide for general remedies necessary for the ends of justice to be met to prevent abuse of the process of court so that as far as possible all matters in controversy are completely and finally determined to avoid multiplicities of legal proceedings.

Counsel for the respondent did not agree and submitted that the interim order was against the appellant personally and that even if the company had been represented it would not stop the interim order. I have already discussed in ground one that the order was both against the company and the appellant.

I do agree with counsel for the appellant's submissions that having ascertained that the company was at the heart of the whole misunderstanding the registrar erred when he found that he could not place it anywhere.

Once a company is registered as a limited liability company, it acquires the legal personality capable of suing and being sued in its own right. "A company is at law a different person altogether from the subscribers" See ***Solomon Vs Solomon 1897 AC 22.***

From the record of appeal it is clear that the 4th respondent is a going concern. Therefore freezing the company's account automatically puts its activities at a standstill and this would end up crippling the company as a separate entity from the individual members.

I note from the record of proceedings that there seems to be ongoing internal fighting between the individual share holders and members and if this court is to be used to issue orders to cripple a separate entity from individuals without hearing its side of the story, it would be unjust and unfair. Court will accordingly not allow such orders to stand.

Since ground 2 and 3 disposes off the appeal, I do not need to go into the fourth ground on conditions for grant of interim injunctions.

I will allow this appeal and accordingly set aside the order of the trial Deputy Registrar.

Stephen Musota

J U D G E

19.05.2016.

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