

UGANDA / JUDGMENT

KCB Bank Uganda Limited v Range Consult Uganda Limited (Miscellaneous Application 15 of 2022) [2025] UGHC 98 (31 January 2025)

[2025] UGHC 98

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Miscellaneous Application 15 of 2022

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA

MISC. APPLICATION NO.15 OF 2022

(Arising from C. S No.022 of 2022 formerly MSD C. S No.01 of 2022)

KCB BANK (U) LTD ::::::::::::::::::::::::::::::

VERSUS

RANGE CONSULT (U) LTD ::::::::::::::::::::::::::::::

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

- This is an application brought under S. 98 CPA, S.33 of the Judicature Act §[1]\$ and O.52 rr. 1 & 3 CPR seeking for orders that C. S No.022 of 2022 formerly MSD C. S No.01 of 2022; Range Consult (U) Ltd Vs KCB Bank (U) Ltd be struck out with costs on the following grounds:
- a) That the Respondent sued the Applicant vide C. S No.022 of 2022 (formerly MSD C. S No.01 of 2022) for a declaration that the Applicant wrongly and negligently paid out a sum of Ugx 21,000,000/=, an order that the Applicant refunds the said money, general damages and costs of the suit.

- b) That the suit is based on the allegation that a one Musinguzi Bigirwenkya Patrick who is purported to be a director in the Respondent company and co-signatory to the Respondent's bank account with the Applicant forged the signature of his Co-signatory on a cheque and wrongly obtained the sum of Ugx 21,000,000/= without proper authorisation.
- c) That the Applicant filed Misc. Application No.003 of 2022 for orders that Musinguzi Patrick be added as a co-defendant to C. S No.001 of 2022 which orders were granted on 13th July 2022 but the Respondent/Plaintiff has without justification failed and/or refused to amend its plaint to add the said Musinguzi Bigirwenkya Patrick.
- d) That the Respondent's refusal to comply with the orders of court is contemptuous, an abuse of court process and unjust.
- The application is supported by an affidavit deposed by a one Judy \$[2]\$ Wambaire, the Company Secretary of the Applicant, wherein the grounds

\$1\$ | Page

of the application are contained and opposed by an affidavit in reply deposed by **Bahemuka Birigenda**, the director of Respondent, which is to the following effect:

- a) That it is the Applicant's duty to serve the Court order and amend their defence and counter claim against Musinguzi Birigwenkya because the Respondent/Plaintiff has no cause of action against him in the plaint.
- b) That there is no court order placing a burden on the Respondent to amend the plaint as court had already added Musinguzi Bigirwenkya as a co-defendant but the Applicant he was not served with the court order.
- c) That the Respondent does not wish to amend its pleadings for any reason as its case is sufficiently pleaded in the head suit.

Counsel legal representation

The Applicant was represented by Mr. Kakuru Luke of Ms H & G Advocates, \$[3]\$ Kampala while the Respondent was represented by Mr. Simon Kasangaki of Ms Kasangaki & Co. Advocates, Masindi. Both counsel filed their respective submissions for consideration in the determination of this application.

Background

- The Respondent sued the Applicant in C. S No.022 of 2022 (formerly MSD \$[4]\$ C. S No.01 of 2022) inter alia, for breach of the banker- customer relationship, recovery of Ugx 21,000,000/= which was wrongfully and Plaintiff/Respondent's account the out from negligently paid No.2291036483 held with the defendant bank, Hoima Branch, general damages and costs.

- In the plaint, the Plaintiff/Respondent alleged that on the 28/12/2021, the Defendant/Applicant wrongly and negligently paid out Ugx 21,000,000/= to Musinguzi Bigirwenkya Patrick who forged the signature of the cosignatory of a one Bahemuka Birigenda Julius who was not in the bank and had not authorised the payment.
- The Defendant/Applicant filed a defence alleging that the money was paid out in accordance with the mandate provided by the plaintiff to the defendant and filed MSD Misc. Application No.03 of 2022 seeking to add Musinguzi Bigirwenkya Patrick as a co-defendant in C. S No.022 of 2022 (formerly MSD C. S No.01 of 2022). The application was granted by court

\$2\$ | Page

on 13/07/2022. On 5th/10/2022, the Applicant/defendant filed the instant application to struck out the Respondent/plaintiff's suit.

Issue: Whether the Plaintiff's suit ought to be struck out for the failure of the plaintiff/Respondent to add Musinguzi Bigirwenkya as a co-defendant in the suit.

Counsel submissions

- Counsel for the Applicant submitted relying on O.1 r.10 (4) CPR that it was not necessary for the learned Registrar to specifically issue a consequential order directing the Respondent/plaintiff to amend its plaint and serve summons upon Musinguzi Bigirwenkya. He submitted further that it is over nine months since the registrar issued the order to add Musinguzi as a party but the respondent has showed no intention of complying with the said order which amounts to an abuse of court and contempt of court. That the suit cannot proceed in the absence of Musinguzi and therefore, the need to strike out the plaintiff's suit.
- that the submitted Counsel for the Respondent on his part [8] Musinguzi against Respondent/plaintiff has no cause of action Bigirwenkya since its bank-customer relationship was with the Applicant. That therefore, it was incumbent on the Applicant to serve the court order on the said Musinguzi to enable him file his defence. That the Applicant filed MSD M. A No. 03 of 2022 under O.1 r.13 CPR and not O.1 r.10 CPR rendering the Respondent unable to amend the plaint without as specific order from court as the same remained silent on the matter.

Determination of the Application

Section 98 CPA provides thus; [9]

> "Nothing in this Act shall be deemed to limit or otherwise *affect the inherent power of the court to make such orders* as may be necessary for the ends of justice or to prevent abuse of the process of court."

Section 33 of the Judicature Act provides that;

"The High Court shall, in exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in

3 | Page

controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of these matters avoided."

- [10] In light of the above provisions, it follows that the High Court has inherent power to entertain any matter including this one, brought before it and make such orders as it deems fit for the ends of justice.
- [11] MSD M. A No. 03 of 2022 which granted the order to add Musinguzi as a party to C. S No.022 of 2022 (formerly MSD C. S No.01 of 2022) was filed under Section 98 CPA and 0.1 r.13 of the CPR. Rule 13 is to the effect that any application to add or strike out or substitute a plaintiff or defendant may be made to the court at any time before trial. Indeed, the application to add Musinguzi Bigirwenkya was filed by the Applicant and the same was allowed with costs therein to be in the cause.
- [12] In my view, under this rule, both the Applicant and the Respondent had a duty to amend their pleadings to add the said Musinguzi accordingly. In the instant case, the Respondent contended that she did not have a cause of action against Musinguzi and therefore could not amend the plaint to include a party with whom she had no cause of action and this reason was stated and or given by the Respondent in MSD M. A No. 03 of 2022. This meant that the duty fell upon the Applicant who felt that the addition of Musinguzi Bigirwenkya as a party would enable court do away with a multiplicity of proceedings and therefore finally determine all issues arising in the suit.
- [13] From the foregoing, I find the claim by the Applicant that the Respondent ought to be held in contempt of court unjustifiable as there is no order of court which the Respondent violated. The order on record was brought about by and for the benefit of the Applicant.

The ruling in MSD M. A No. 03 of 2022 in part reads thus:

"This application has been brought under Section 98 of the Civil Procedure Act and Order 1 rule 13 of the Civil Procedure Rules for order that; Musinguzi Bigirwenkya Patrick be added as a co-defendant to Civil Suit No.001 of 2022....

The circumstances of this case are such that, the actions of a one Musinguzi Bigirwenkya Patrick influenced the breach of the banker customer relationship between the Applicant and Respondent.....

It is my considered view that given the cause of action in this matter arose from the actions of Musinguzi, he's (sic) addition to this suit shall enable the court effectually and completely adjudicate upon and settle all questions involved in the suit. This application is allowed with costs in the cause. I so order."

It is clear from the above ruling that the application was allowed and it would follow that whoever applied to have Musinguzi be added as a **codefendant** had the duty to do so by amending their pleadings accordingly and this duty definitely, was on the Applicant who had moved court to grant the order. The Defendant/Applicant had the option to file an application seeking to add Musinguzi Bigirwenkya as a 3rd party or file an application seeking leave to amend the WSD and add a counter claim against him depending on what he deems appropriate.

- the instant case, I find no justification out the to strike \$[14]\$ In Plaintiff/Respondent's suit. In the premises, in the interest of justice, I dismiss this application with the following orders;
- a) The Plaintiff/Respondent is directed to amend the plaint to add Musinguzi Bigirwenkya as a necessary party/defendant and serve upon him the summons within 2 weeks from the date of this ruling. The Defendant/Applicant, KCB Bank (U) Ltd to file an amended defence within one week and Musinguzi Bigirwenkya Patrick to file his defence within 2 weeks after service of the summons upon him. In default of the plaintiff/Respondent to amend the plaint accordingly, the Defendant/Applicant to amend the WSD and include the said **Musinguzi** as a 3rd party or to file a Counter claim against him as a Counter defendant.
- b) No order is made as to costs since it was the duty of court to give directions to the parties after allowing the application to amend pleadings.

Dated at Hoima this 31st day of January, 2025.

Bvaruhanga Jesse Rugyema JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2025/98/eng@2025-01-31>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/kcb-bank-uganda-limited-v-range-consult-uganda-limited-miscellaneous-application-15-of-2022-2025-ughc-98-31-january-2025-unknown-topic-unknown-court-2>

Prepared on 12 October 2026 · Esheria