

UGANDA / JUDGMENT

# Nalubega Ruth v Cairo Bank (U) Limited (Miscellaneous Application No. 1142 of 2024) [2025] UGCommC 118 (5 June 2025) [2025] UGCommC 118

## COURT

Commercial Court of Uganda

## BEFORE

Dr. Ginamia Melody Ngwatu, J

## CASE / FILE NUMBER

Miscellaneous Application No. 1142 of 2024

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL COURT DIVISION) MISCELLANEOUS APPLICATION NO. 1142 OF  
2024 (ARISING OUT OF CIVIL SUIT NO. 546 OF 2022)**

**NALUBEGA RUTH (Trading as Nyonyi Farm Supply):: :::::::::::APPLICANT**

**VERSUS**

**CAIRO BANK (U) LIMITED:::::::::::::::::::::::::::::::::::::::::RESPONDENT**

**15 Before: Hon. Lady Justice Dr. Ginamia Melody Ngwatu**

## RULING

The applicant brought this application under section 98 of the Civil Procedure Act, Section 33 of the Judicature Act cap 13, Order 9 rule 12 and Order 52 rules 1 and 3 of the Civil 20 Procedure Rules S. I. 71-1. The applicant seeks orders that the consent judgment/order entered vide \*Civil Suit No. 0546 of 2022\* be set aside; and that costs of the application be provided for.

- The background to this application is that the applicant obtained a loan facility of Ugx 25 500,000,000 from the respondent bank. Considering that the applicant already had an outstanding loan facility of Ugx 44,638,464 which was still being serviced, the respondent availed her the loan less Ugx 56,711,387. As a result of an allegation from the respondent bank's officials that the applicant applied for an additional Ugx 300,000,000, in addition to a criminal investigation, \*Civil Suit No. 0546/2022\* was filed seeking declarations that the respondent breached the contract entered into with the applicant on 15th 30 February 2021 and

- that the alleged respondent's actions of forging the applicant's signature on different documents amounted to fraud. During the hearing of \*Civil Suit No. 0546/2022\*, a decision was made by the parties to explore the possibility of having the matter settled amicably and a consent judgment was subsequently entered into. The applicant, however, later disputed the
- 35 outstanding principal sum indicated in the consent judgment of Ugx 501,698,006; hence this application to have it set aside.

### Representation at the hearing

The applicant was represented by M/s Nexus Solicitors & Advocates; while the respondent 40 was represented by M/s KSMO Advocates. The parties were granted leave to file written submissions which are on Court record.

### Issue for determination

The main issue for determination is whether the applicant has raised sufficient grounds to warrant the setting aside of the consent judgment entered vide \*Civil Suit No. 0546 of 2020\*.

### 10 Preliminary objection raised by counsel

The applicant raised a preliminary objection questioning the competence of the respondent's affidavit in reply. One of the preliminary objections raised by the applicant was that the affidavit in reply was based on hearsay by virtue of the deponent, the Legal Manager of the respondent, having not indicated the source of her information; and that she had no personal knowledge of the case as she was not the Legal Manager at the time.

Order 19 rule 3(1) of the Civil Procedure Rules as amended states that an affidavit shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated. This rule was explored in the case of *S\*andard\**

*\*Goods Corporation Ltd. vs Harakchand Nathu & Co [1950] EACA 99\** where court held that: *"It is a well settled that where an affidavit is made on information, it should not be acted upon unless the source of information is specified."*

- 25 On perusal of the affidavit in reply to the application, the deponent categorically states in paragraph 1 that she is the Legal Manager of the respondent and is well versed with the matter. Further in paragraph 19 she states that whatever she has stated is to the best of her knowledge and belief. I find that as Legal Manager of the respondent, information pertaining to this matter would be within sphere of operation. This ground fails.
- 30

An objection was also raised on the ground that the affidavit in reply does not bear a copy of the authorization for the deponent to swear the affidavit in reply.

The deponent deposed the affidavit in reply to the application in her capacity as the Legal 35 Manager of the respondent bank. Order 3 rule 1 of the Civil Procedure Rules, as amended provides that:

"Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by\* 40 \*the party in person, or by his or her recognized agent, or by an advocate duly appointed to act on his or her behalf; except that any such appearance shall, if the court so directs, be made by the party in person."\*

In the case of \*Electro-Maxx Uganda Limited Versus Oryx Oil Uganda Limited Miscellaneous Application No. 251 of 2020;\* also cited by counsel for the applicant; court stated that:

"It is clear to me that deponing to an affidavit is one of the acts authorized by law that can be done either by the party themselves or by a recognized agent or\*

10 \*by an advocate. Just like a party appearing for themselves, there is no requirement for a recognized agent or an advocate to furnish proof of authority to plead on behalf of their principal. The advocate only has to prove the fact of instructions by the named client."\*

15 It is not in contention that Ms. Larya Catherine Victoria is the Legal Manager of the respondent bank and attended and participated in the determination of \*Civil Suit No. 0546/2022\* on behalf of the respondent in that capacity. Her being Legal Manager clothes her with the required authority and knowledge of the matter to depose an affidavit on behalf of the respondent. Ms. Larya clearly states that she is well versed with the matter. It is, 20 therefore, not necessary that Ms. Larya should have an authorization to swear the affidavit in reply. \*(see Jacqueline Rugasira vs Andrew Rugasira Miscellaneous Application No.553/2022)\*

Nevertheless, article 126 (2) (e) of the 1995 Constitution of the Republic of Uganda and 25 section 98 of the Civil Procedure Act cap 282, are invoked to entertain the substantive issue raised in this application in the interest of justice. Article 126 (2) (e) enjoins this court to administer substantive justice without undue regard to technicalities; while section 98 of the Civil Procedure Act cap 282 empowers this court to make orders necessary for the ends of justice.

## Submissions

At the hearing of this application, counsel for both parties were availed schedules for the filing of their respective written submissions and they all complied. This court shall consider them in the determination of this application.

**\*Determination of court\***

The submissions of the parties have been taken into consideration; as well as the relevant legal authorities cited. The submissions will, however, not be reproduced. This application is resolved as follows:

5 A consent judgment is an agreement between parties and is provided for under Order 25 rule 2 and Order 50 rule 2 of the Civil Procedure Rules SI 71-1, as amended. Order 25 rule 2 of the Civil Procedure Rules provides that:

"When a suit has been set down for hearing it may be withdrawn prior to the hearing by either the plaintiff or the defendant upon filing a consent signed by\* 10 \*all the parties."

Further, Order 50 rule 2 of the Civil Procedure Rules as amended provides thus: "In uncontested cases and cases in which the parties consent to judgment being entered in agreed terms, judgment may be entered by the registrar."

A consent judgment must be validated by court and once recorded or endorsed by the Court, it becomes the judgment of the Court and is binding upon the parties. (see *\*Brooke Bond Liebeg (T) Ltd v. Mallya [1975] E. A 266\**). A consent judgment can, therefore, only be set aside for a reason that would enable the court to set aside or rescind an agreement. The 20 grounds upon which a consent judgment can be set aside were discussed in the case of *\*Peter\**

*\*Mulira vs Mitchell Cots Ltd CACA No. 15/2002\**, where the Court of Appeal held that: "The law regarding consent judgment is that parties to a civil suit are free to consent to a judgment. They may do so orally before a judge who then records the consent or they may do so in writing and affix their signatures on the\* 25 \*consent. In that case still the Court has to sign that judgment. A consent judgment may not be set aside except for fraud, collusion or for ignorance of material facts."

In the instant application, the applicant entered into a consent judgment with the respondent 30 bank but disputed the indicated outstanding loan amount of Ugx 501,698,006, after signing the said consent judgment. The applicant raises illiteracy as a defence and that her counsel misrepresented to her the true content of the consent judgment as he made her sign it with a promise that there would be an alteration of the sum due to the respondent. In this instance, there ought to be a demonstration that facts were intentionally misrepresented or false 35 promises made to obtain the consent.

It should be borne in mind that the parties appeared before the Registrar, Her Worship Nakitende Juliet, who oversaw the signing of the consent judgment. The applicant signed the said consent judgment in the presence of her lawyer. The consent judgment was later 40 presented to Hon. Justice Cornelia Sabiiti Kakooza for her endorsement, upon which it became binding upon the parties.

In *\*Attorney General and another vs James Mark Kamoga and others, S. C. Civil Appeal No. 8 of 2004\**, it was held, that:

- 5 "Prima facie, any order made in the presence and with the consent of counsel is binding on all the parties to the proceedings or an action, and it cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court.... or if the consent was given without sufficient material facts, or in general for a reason which would enable a court to set aside an\* 10 \*agreement.... It is a well settled principle therefore that a consent decree has to be upheld unless vitiated by a reason that would enable Court to set aside an agreement such as fraud, mistake, misapprehension or contravention of Court policy..."\*
- 15 At this point in time, what is critical is that the applicant participated in the process and was represented by counsel throughout the same. No evidence has been availed by the applicant to the contrary showing her non-participation; or that the process was marred by fraud, mistake or misrepresentation by their counsel.
- 20 Further, the applicant in this instance does not deny owing money to the respondent bank. The applicant does not state what she thinks she owes the bank, but rather disputes the outstanding amount of Ugx 501,698,006 indicated in the consent judgment. On page 13 of the applicant's written submissions, the applicant states that she was convinced by her former lawyer to append her signature and was informed that the errors and figures on the consent 25 judgment would be rectified after she had signed. This raises a question as to how an error on
- the consent judgment can be rectified after its signing? As indicated under Order 50 rule 2 of the Civil Procedure Rules as amended, the moment the consent judgment is signed by the parties and endorsed by court, it becomes binding. Justice Cornelia Sabiiti Kakooza confirmed the consent in issue and duly closed the file. There is no evidence adduced to 30 demonstrate that the applicant objected to any aspect of the consent judgment entered into.

It is observed that this application to set aside the consent judgment was filed on 14th June 2024, over a year and a half since the signing of the consent judgment on 3rd November 2022. The applicant's conduct is, therefore, not consistent with that of a party who was either 35 defrauded or one to whom misrepresentations were made. It took the applicant over an entire year to file this application. This application to have the consent judgment set aside, therefore appears to be an afterthought.

Further, the documents relied on by the applicant in her affidavit in support are incomplete or 40 not clear. For instance, the applicant relied on the consent judgment which she marked as "B and C". Page two of the said consent judgment was not attached despite the need for the signatories thereto to be ascertained. The respondent herein also attached a copy of the same signed consent judgment and marked it as exhibit "A". Fortunately, it bears the two pages of

5 the consent judgment; and page two clearly indicates that both the applicant and her then counsel signed the consent judgment.

Further, the applicant attached Annexure "G" a letter from Cairo Bank to the affidavit in support of her application. This annexure is dated 7th June 2024 and is a response from Cairo

- 10 Bank to Nalubega's request to cover a prevailing debt loan wherein the bank indicated that it would release her sale agreement on condition that the proceeds from the sale will be directed towards settlement of her facility. The outstanding loan balance was indicated as Ugx 392,457,285 in the said letter; meaning that the applicant had settled part of the Ugx 501,698,006 that she had consented to. It is observed that the applicant did not attach to this
- 15 application the letter she wrote to the respondent bank, that prompted the aforementioned response. This application has a number of loose ends and does not demonstrate any fraud or misrepresentation that would warrant the setting aside of this application.
- In the premises, this court is not satisfied that sufficient grounds have been raised to warrant 20 the setting aside of the consent judgment entered vide \*Civil Suit No. 0546/2022\*. The consent judgment entered by the parties on 3rd November 2022 is, therefore, upheld. This application is dismissed with costs to the respondent.

I so order.

\*Dr. Ginamia Melody Ngwatu Ag. Judge 5 th June 2025\*

\*Ruling delivered via ECCMIS\*

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