

UGANDA / JUDGMENT

Nyende and 44 Others v Shoprite Checkers (U) Limited (Miscellaneous Application No. 119 of 2021) [2022] UGIC 22 (26 October 2022)

[2022] UGIC 22

COURT

Industrial Court of Uganda

BEFORE

Namara, Panel Member, Nabirye, Panel Member, Matovu, Panel Member, Wabwire, J

CASE / FILE NUMBER

Miscellaneous Application No. 119 of 2021

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THE REPUBLIC OF UGANDA IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA MISCELLANEOUS APPLICATION NO.119 OF 2021

(Arising from Labour Dispute Claim No. 179 of 2021 and KCCA LDR No.97 of 2021)

RASHID NYENDE & 44 OTHERS:..... APPLICANTS**VERSUS****SHOPRITE CHECKERS (U) LTD:..... RESPONDENT****BEFORE:**

HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

Ms. ADRINE NAMARA, Ms. SUZAN NABIRYE & Mr. MICHAEL MATOVU

RULING**Introduction**

- 1.0 The applicants brought this application under the provisions of Order 40 Rules 1, 2 and 12 of the Civil Procedure Rules S. I 71-1 (CPR) and Section 33 of the Judicature Act Cap.13 for orders that the Respondent furnish security for its appearance in the sum of UGX 10,000,000,000/= (Ten Billion Uganda Shillings) or alternatively Majid Al Futtaim LLC be stopped from commencing business until the Respondent settles its claims with applicants

or that the respondent's officers be stopped from exiting the Country before settling their claims with the applicants and that costs be provided for.

- 2.0 Mr. Mugalula, appearing for the applicants, submitted on a prayer for security for costs. This is misplaced because the provisions of Order 40 Rule 1 and 2 of the CPR, which Counsel relied on, relate to furnishing security for a defendant's appearance. Security for costs under Order 24 of the CPR relates to a defendant seeking security for costs as against a plaintiff. The

body of the application which this court was invited to consider relates to an application to furnish security under Order 40 of the CPR. That is the matter that we shall now determine.

Analysis

- 3.0 We have perused the affidavits in support, reply and rejoinder and the submissions of the respective Counsel and find as follows:
- 3.1 The respondent has ceased operations in Uganda. It has completed a sale of all its assets in Uganda to Majid Al Futtaim LLC/ Majid Al Futtaim Hypermarkets Uganda Ltd and all its senior officials have left jurisdiction. Majid Al Futtaim LLC is now trading as Carrefour Market.
- 3.2 No legal nexus between the applicants and Majid Al Futtaim LLC/ Majid Al Futtaim Hypermarkets Uganda Ltd (t/a Carrefour Market/ MAF Carrefour Supermarket) has been established.
- 3.3 27 (twenty seven) of the 44(forty four) applicants have entered into settlement agreements with the respondent. The settled applicants have been paid varying amounts ranging from US\$ 415 to US\$ 4376.
- 3.4 The respondent has no known assets within the jurisdiction of the Court.
- 3.5 We note that the import and intent of the rules on attachment before judgment under Order 40 of the CPR are pre-emptive in character. They seek to prevent an occurrence, an exit of jurisdiction that would render a decree or an award of the Court ineffectual or inoperable. To succeed, an applicant is required to demonstrate that the respondent has quit the jurisdiction of Court with intent to avoid, defeat, delay or obstruct the process of court or execution of a decree passed against him. The purpose of the remedy was explained in a passage in the case of **MAKUBUYA ENOCK WILL T/A POLLA**

PLAST VS SONGDOH FILMS (U) LTD & ANOR M. A 321/2018. 1 This Court is called to provide a balance between the competing rights between the parties before a final decision has been rendered.

- 4.0 From the facts before us and as admitted by respective Counsel, we are not satisfied that the applicants have demonstrated that the respondent's sold its business and left jurisdiction with the intent to avoid, defeat, delay or obstruct the process of court or execution of a

decree passed against it. Conversely, the facts paint quite a different picture. The respondent is admitted to having settled 340 of its 394 employees as at 7th October 2021. It was also admitted that 27 of the applicants in the present cause, were settled as at the date of filing submissions. This denotes a willingness on the part of the respondent to meet its obligations to its erstwhile employees. We are not persuaded that the respondents senior officials exit from jurisdiction was founded or premised on an intent to avoid, defeat, delay or obstruct the process of justice or the execution of any decree that may be passed against it. To the court's mind, the respondent exited jurisdiction for ordinary business reasons. It sold its assets to Majid Al Futtain LLC not because of this dispute.

- 5.0 In view of the above finding, and the admitted facts that the respondent has no known assets, business or presence within jurisdiction, what appears to be left of this application is whether the remaining 18 applicants have any reasonable guarantees that the respondent will satisfy any decree that may be passed against it, absent of any intent to defeat Court process. That is to say, while we are not satisfied of any intent to defeat court process, the facts as admitted demonstrate a realistic absence of the respondent from jurisdiction. The applicant has sought this court's assistance to provide a relief or some remedy for a grounded fear.

¹ "The purpose is to enable the court to grant such interim relief or remedy as may be just or convenient. Such relief may be designed to achieve one or more of several objectives. For purposes of this application for attachment before judgment such objective may be to preserve a fair balance between the parties and give them due protection while awaiting the final outcome of the proceedings."

Decision of the Court

- 6.0 It is an admitted fact there are no known assets within jurisdiction. Whilst the respondent has demonstrated some goodwill by paying 27 of the applicants, it is commendable but not sufficient, in our view. Nothing in Mr. Jayte Slabbert's affidavit provides a proposal or undertaking to deposit security or credible assurances of satisfaction of an award or decree that may be passed against the respondent. Such an undertaking together with a deposit might sufficiently obviate the applicants' fear of failure to satisfy an award or decree that may be passed against the respondent. And while there is no reason to doubt the sincerity of the respondent's counsel's submission that the respondent is not going to stop honouring its obligations in Uganda, there is a clear absence of tangible security within jurisdiction. It is for this reason that it is this Court's decision that in the circumstances of this case, the applicants would be entitled to some measure of guarantee. The respondent would be ordered to furnish security for its appearance.
- 7.0 As to quantum, the Applicant proposed a figure of UGX 10,000,000,000/= (**Ten Billion Shillings**). The materials placed before us do not lay a firm foundation for this sum. There is no justiciable case for security in this sum. The respondent submitted that the sum was exorbitant and we agree with this proposition. In other decisions by this court, the court

Court Clerk: Mr. Amos Karugaba.

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