

Ssenyondo v Tesco Industries Limited
(Miscellaneous Application 2703 of 2024)
[2025] UGCommC 46 (7 February 2025)
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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) MISC. APPLICATION NO. 2703 OF 2024 (ARISING OUT OF
CIVIL SUIT NO. 205 OF 2023) 10 SSENYONDO
VINCENT ::: APPLICANT VERSUS TESCO INDUSTRIES
LIMITED ::: RESPONDENT BEFORE: HON. LADY JUSTICE
PATIENCE T. E. RUBAGUMYA**

RULING

15 Introduction

This application was brought by way of Chamber Summons under **Order 10 rules 12 and 14 of the Civil Procedure Rules SI 71-1**, seeking orders that:

- 1. The Applicant be availed with the bank statements for; Equity Bank 20 Account No. 1002201214314 for the period from 1st January, 2020 to 31st December, 2022; I&M Bank Account No. 59904404010105 for the period from 1st January, 2023 to 28th February, 2023 and IMF Bank Account No. 5990440401 for the period from 1st January, 2023 to 28th February, 2023.
- 25
2. The Applicant be availed with URA rental tax returns for the years 2020, 2021, 2022 and 2023 in respect of the following buildings; Pentagon building, Vienna building, Jaboli arcade, Totala arcade, Ouallcel arcade, Katonga arcade and Kabale arcade.

53. The Respondent's Managing Director avails the certified copies of the documents on oath.

Background

The background of this application is detailed in the Applicant's affidavit in support, and is summarized below:

- 10 1. That the Applicant instituted *Civil Suit No. 205 of 2023* against the Respondent for a claim in breach of a tenancy agreement, undue influence, illegality, duress and fraud.
- 2. That in its written statement of defence, the Respondent contended 15 that the Applicant never remitted or paid rent for over 117 shops among other claims yet the Applicant made payments to the account numbers as and when he received directives from the Respondent's Managing Director, Mr. Drake Lubega.
- 3. That the Applicant's payments for rent were first made on Equity Bank Account No. 1002201214314 which was availed by the Respondent's Managing Director.
- 25 4. That subsequently the Respondent further, issued other instructions to deposit all the rent payments on I&M Bank Account No. 59904404010105 and IMF Bank Account No. 5990440401.
- 30 5. That immediately after making a deposit, the Applicant would take the deposit slip to the Respondent's Managing Director, who would then issue a tax invoice.
- 6. That, some of the buildings which formed the Respondent's claim in 35 the impugned agreements were not under the management of the Respondent and this can be confirmed by the rental tax returns filed
- 5 by the Respondent for all the buildings under its management and were disclosed to URA.
- 10 7. That the requested documents are relevant, critical and necessary for comparative purposes and to provide adequate support for the Applicant's case.

In reply, the Respondent through its Managing Director, **Mr. Francis Drake Lubega** opposed the application contending that:

- 15 1. The Applicant sued the Respondent in *Civil Suit No. 205 of 2023* challenging the agreements he executed with the Respondent on 27th July, 2022 and 18th November, 2022 respectively and even sought to recover the monies paid to the Respondent pursuant to those agreements.
- 2. The Applicant avers that he paid the rent in cash and that sometimes he deposited it in the bank and even attached the deposit slips.
- 25 3. Therefore, the Applicant does not need the bank statements to prove the deposits of the money in the Respondent's bank account since he is in possession of the deposit slips issued to him.

- 4. The Applicant has not shown clearly how the rental tax returns and 30 bank statements will help him in proving his case save for comparison purposes which indicates that he already possesses the documents being sought.
- 35 5. The Applicant is on a fishing expedition as the bank statements and tax returns cannot be used to prove his claim of cancellation of the agreements, that he freely and voluntarily executed with the Respondent.

5 6. The Respondent has thousands of tenants on over thirty premises who enjoy a right of privacy and, therefore the disclosure of the said information will compromise the Respondent's business and right of privacy of the Respondent and its tenants.

In rejoinder, the Applicant reiterated his averments and further contended 10 that:

- 1. The required documents are relevant, critical and necessary to resolve the main issue in dispute, which is whether rent was paid by the Applicant and if so, the amount.
- 2. In its written statement of defence, the Respondent contends that it discovered that the money paid to the bank was not consistent with what was reflected in the records of deposits and therefore, credible and independently issued bank statements of the account in which 20 the deposits were made, would be decisive in determining the question of whether payment was made and of what amount.
- 3. The tax returns shall confirm that indeed what was filled in the rental tax returns is what is in the issued tax invoices, which was different from what was actually paid in the provided account thus exposing 25 the fraudulent scheme employed by the Respondent to come up with the claim in the impugned agreements.
- 4. The Court is empowered to order that all the disclosed documents be examined in camera or order, any other restrictions that would 30 maintain the privacy the Respondent may be entitled to.

5 Representation

The Applicant was represented by **M/s Maven Advocates** while the Respondent was represented by **M/s Kirumira & Co. Advocates**.

Both parties were directed to file their written submissions which they did and the same have been considered by this Court.

10 Issues for Determination

- 1. Whether the Court should grant an order for discovery of the documents?
- 2. What remedies are available to the parties?
- 15 Issue No. 1: Whether the Court should grant an order for discovery of the documents?

Applicant's submissions

Counsel for the Applicant relied on **Order 10 rules 12(1) and (2) and 14 of the Civil Procedure Rules** that provide for discovery and production of 20 documents. That, in the cases of *Simbamanyo Estates Ltd & Another Vs Equity Bank Uganda Limited & Others HCMA No. 583 of 2022* and *Munyangabe Emmanuel Vs Equity Bank & Another HCMA No. 2042 of 2023*, this Court laid down the principles and considerations for the grant of such an application.

25 Relating the above to the matter at hand, Counsel submitted that the Respondent claims that the Applicant never remitted or paid the rent of over 117 shops among other claims. That as averred by the Applicant under paragraphs 6 to 10 of the affidavit in support, the Applicant made 5 payments for rent to the aforementioned bank accounts upon receiving directives from the Respondent's Managing Director.

That after effecting the payments, the Respondent's Managing Director would issue the Applicant with tax invoices and clearances with either no amount reflected or under-declared sums for URA purposes which he later used to file the rental tax returns. Further, that some of the buildings in the impugned agreements were not under the Respondent's management and, can be confirmed by the rental tax returns filed by the Respondent for all the buildings under its management.

Respondent's submissions

- 15 Counsel for the Respondent first relied on the case of *Rutebe Farmers' Cooperative Society Limited Vs Muhanguzi George & 22 Others Civil Suit No. 54 of 2012*, wherein it was held that the Plaintiff bears the burden of proof in civil cases. That the Applicant contends that the Respondent discovered that the money paid through the bank was 20 inconsistent with what is reflected in the record of deposits but the above is pleaded on the basis that the impugned agreements came into existence not on the basis of the bank statements but as a result of the Police investigations where the Applicant conceded to culpability.
- That the Courts have emphasized that an application for discovery must be specific, establish materiality and must recite precisely what is needed and does not permit general inspection of the adversary's record as per the cases of *Tirupati Development (U) Limited Vs KCB Bank (U) Limited & Another HCMA No. 707 of 2022*, *Thyssen Tunneback Singapore PTA LTV Vs TIJ Civil Engineering PTE LTD [2003] ISLR (R) 25* and *John* 30 *Kato Vs Muhlbauer AG & Another HCMA No. 175 of 2011*. That the
- 5 Applicant seeks the Respondent's bank statements for a long period without specifically pointing to this Court what payments they seek to verify or that are disputed. That given the nature of the Respondent's business, it would violate the right of privacy and confidentiality of all its tenants as enshrined under **Article 27(2) of the Constitution of the**

- 10 **Republic of Uganda, 1995.** That the Applicant also seeks to be availed with rental tax returns of the Respondent for four years yet his claim is not in any way related to the Respondent's tax obligations.

That in the case of **Patricia Mutesi Vs Attorney General HCMA No. 912 of 2016**, **Hon. Justice Stephen Musota** (as he then was), held that the 15 Court would deny discovery if, used as a fishing expedition. That the Applicant's application is only intended to annoy, embarrass and oppress the Respondent's Managing Director so that he can abandon recovery of the money from the Applicant despite having partly performed his obligations under the impugned agreements.

20 Analysis and Determination

I have carefully considered this application, the affidavit in reply and rejoinder, and the submissions by both Counsel and the relevant law.

Section 22(a) of the Civil Procedure Act, Cap. 282 provides that:

"Subject to such conditions and limitations as may be prescribed, the* 25 *Court may, at any time, either of its own motion or on the application of any party-

*> *(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts and**

*5 *the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence."**

Order 10 rule 14 of the Civil Procedure Rules also provides that:

"The Court may, at any time during the pendency of any suit, order* 10 *the production by any party to the suit, upon oath, of such of the documents in his or her possession or power, relating to any matter in question in the suit, as the Court shall think right; and the Court may deal with the documents, when produced, in such manner as shall appear just."

15 In the case of **Patricia Mutesi Vs Attorney General (supra)**, **Hon. Justice Stephen Musota** (as he then was) defined discovery as:

"... a category of procedural devices employed by a party to a civil or criminal action, prior to trial, to require the adverse party to disclose information that is essential for the preparation of the requesting* 20 *party's case and which the other party alone knows or possesses. It is a device used to narrow the issues in a law suit or obtain evidence not readily accessible to the Applicant for use at trial and/or ascertain the existence of information that may be introduced as evidence at trial provided it is not protected by privilege."

25 It is therefore trite that, discovery must not be allowed to be used as a fishing expedition for the Applicant to build up an unsure case. (See: **John Kato Vs Muhlbauer A. G and Another (supra)**. The prerequisites for grant of an order for discovery were laid down in the case of **Simbamanyo Estates Ltd and Another Vs Equity Uganda Ltd & Others (supra)** to 30 include:

- 5 1) Relevancy and materiality.
- 2) Not otherwise privileged or protected by law.
- 3) The document is in the Respondent's possession, custody, control or power; and
- 4) Attempts to obtain the same voluntarily were futile.
- 10 In the matter at hand, the Applicant filed *Civil Suit No. 205 of 2023* against the Respondent for breach of the tenancy contract, undue influence, duress and fraud and sought a declaration that the agreements dated 27th May, 2022, and 15th November, 2022 respectively executed between the Applicant and Respondent were crafted and procured through fraud and duress, a declaration that the above mentioned agreements were voidable and illegal, an order setting aside the said agreements, a refund of UGX 1,492,888,000/=, a permanent injunction against the Respondent restraining it from claiming any sums under the impugned agreements, general damages, commercial interest on all the money received by the
- 20 Respondent and costs of the suit.

The claims were based on the facts that from 2020 to early 2023, the Applicant was a tenant of the Respondent on several buildings in Kampala. That for all the period the Applicant rented the said premises, he duly and promptly paid the rent directly in cash, and the Respondent issued tax 25 invoices as evidence of full payment in the name of DL Properties Ltd or without any name appearing on the receipts. That in some cases, he deposited on the Respondent's bank account after which rent clearance receipts would be issued by the Respondent. That from 25th to 27th May, 2022 the Respondent locked up 83 shop spaces on all the buildings the Applicant was renting claiming rent arrears. That the Applicant paid UGX 200,000,000/= as a condition to reopen the shops.

- 5 That the Respondent's lawyers further demanded for UGX 3,602,557,000/= as rent arrears for the period of 3 years from 2020 to 2021 wherein he was forced to sign another agreement on 15th November, 2022 and compelled to pay the said money.
- In its written statement of defence, the Respondent denied the allegations 10 and contended that during the covid period, it discovered that the money in the bank did not reflect the rent supposedly deposited. That upon investigation, it was discovered that one of the receptionists whom the Applicant colluded with had abused his authority. That the matter was reported to the Police and several meetings were held with the Applicant 15 which led to the signing of the agreements in dispute.

Through the instant application, the Applicant now seeks an order for discovery/production on oath, of the certified copies of the following documents; bank statements for Equity Bank Account No. 1002201214314 for the period from 1st January, 2020 to 31st December, 2022; I&M Bank Account No. 59904404010105 for the period from 1st 20 January, 2023 to 28th February, 2023 and IMF Bank Account No. 5990440401 for the period from 1st January, 2023 to 28th February,

2023 as well as URA rental tax returns for the years 2020, 2021, 2022 and 2023 in respect of Pentagon building, Vienna building, Jaboli arcade, Totala

25 arcade, Quallcel arcade, Katonga arcade and Kabale arcade.

The Applicant contends that the above documents are necessary and relevant to prove the main issue in the suit which is; whether the Applicant paid the rent and if so, how much?

That the tax returns will also show how much the Applicant has been 30 paying to ascertain whether he is in default. On the other hand, the

- 5 Respondent opposes this application averring that the bank statements are unnecessary since the Applicant needs them for comparative purposes and that given the nature of its business, its tenants' rights to privacy and confidentiality will be violated.
- Considering the above and the remedies sought in the suit together with 10 the facts constituting the cause of action, it is my observation that the Applicant seeks to set aside agreements executed in 2022 on grounds that they were voidable and illegal having been procured through fraud and duress. His basis is that he paid all his rental dues to the Respondent and that therefore the agreements were signed unlawfully.
- 15 To that effect, paragraphs 4(e) and (f) of the plaint state that, for all the period he rented the shops, he duly and promptly paid the rent directly in cash and tax invoices/clearances were issued as evidence of full payment. That in some cases, he deposited some of the money for rent in the Respondent's account after which a rent clearance form would be issued
- 20 by the Respondent.

From the above pleadings, it is shown that not all the money for rent was deposited on the Respondent's account. This means that some of the money for rent was paid directly in cash and receipts were issued to that effect. For the monies deposited in the bank, the Applicant stated that he 25 has the deposit slips with the corresponding receipts to that effect as averred in all his pleadings.

The Applicant's prayer is directed to all the deposits made on the Respondent's three respective accounts from the year 2020 to February 2023. No clarity has been presented with specific dates or months when 30 the money was deposited but a general order is sought which in my view

5 would amount to general inspection/discovery which is barred as stated hereinabove.

I also noted that the Applicant was not the only one depositing money on the said accounts, as averred in paragraph 13 of the affidavit in reply but other tenants were also depositing money on the said accounts. This 10 averment is undisputed by the Applicant. Therefore, granting such an order risks the danger of violating the Respondent and other tenants' rights to privacy by exposing their transactions which are not material or in contention in this matter. This would in my view violate their right to privacy which is enshrined under **Article 27(2) of the Constitution of**

15 the Republic of Uganda, 1995.

In addition, since the Applicant already has documents to rely on like the deposit slips, and the ones sought in this application are for comparative purposes as stated in his pleadings, his case will not be jeopardized. It would not be fair to expose the confidential details of the Respondent's 20 bank accounts for comparative purposes. Therefore, in the interest of justice, I refrain from granting that order as sought by the Applicant.

The Applicant also wanted the rental tax returns produced on the basis that some of the properties included in the impugned agreements are not under the Respondent's management among others and that they would 25 reflect how much he had been paying from 2020 to 2023. Tax returns likewise contain confidential information and a prayer for an order for production of the same should be justified, relevant to the issues in contention and exceptional to warrant granting an order for production of the same. However, the Applicant has not in this application provided any 30 convincing justification to warrant the grant of the order given the claims in the main suit against the Respondent which are based on alleged breach

5 of a tenancy contract, undue influence, duress and fraud. This all stems from claims for recovery of alleged rental arrears and irregularities in the rental amounts paid after investigations were conducted. I would therefore agree that requesting for copies of the rental tax returns of the Respondent is more of a fishing expedition to obtain information about the 10 Respondent's tax affairs which are not the subject of this case. In the case of **Patricia Mutesi Vs Attorney General (supra)**, **Hon. Justice Stephen Musota** (as he then was) stated that:

"It is also trite law that Court will deny discovery if the party is using it as a fishing expedition to ascertain information for the purpose of 15 *starting an action or developing a defence. A Court is responsible for protecting against the unreasonable investigation into a party's affairs and must deny discovery if it is intended to annoy, embarrass, oppress or injure the parties or the witness who will be subjected to it. A Court will stop this discovery when used in bad faith and if the information* 20 *to be produced is not protected by privilege."*

As rightly submitted by Counsel for the Respondent, the Applicant's claims in this matter are not in regards to its tax obligations. The issues relating to undervalued amounts are serious allegations that should be brought to the attention of URA for investigation and conclusion of the same since 25 they relate to the Respondent's tax affairs. It should however be noted that the tax affairs of the Respondent are a separate matter; that is distinct from the Applicant's claims in **Civil Suit No. 205 of 2023**.

In the case of **Kabaka of Buganda Vs Male H Mabirizi Kiwanuka CACA No. 184 of 2017**, the Court of Appeal stated that the information 30 requested for therein in respect of certificates of title could be obtained through ordinary channels available under the Registration of Titles Act.

- 5 Relating the above to this case, as to, who manages the Pentagon building, Vienna Building, Jaboli Arcade, Totala Arcade, Quallcel Arcade, Katonga Arcade and Kabale Arcade; my view is that this information can be ascertained from other channels like the various tenancy agreements and it is not necessary nor material; in light of the Applicant's claims in *Civil*
- 10 *Suit No. 205 of 2023.*

In the premises, this issue is answered in the negative.

Issue No. 2: What remedies are available to the parties?

Having resolved issue No. (1) above in the negative, I decline to make the orders sought by the Applicant. Accordingly, this application is dismissed.

15 The costs of this application shall be in the cause.

I so order.

Dated, signed and delivered electronically via ECCMIS this 7th day of February, 2025.

20 Patience T. E. Rubagumya

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Prepared on 13 October 2026 · Esheria