

UGANDA / JUDGMENT

True African (U) Limited v Flutterwave, Inc.
(Miscellaneous Application 706 of 2024)
[2024] UGCommC 349 (31 December 2024)
[2024] UGCommC 349

COURT
Commercial Court of Uganda

BEFORE
Mutesi, J

CASE / FILE NUMBER
Miscellaneous Application 706 of 2024

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

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 0706 OF 2024 ARISING FROM CIVIL SUIT NO. 0290 OF 2024

TRUE AFRICAN (U) LIMITED ::::::::::::::::::::::::::::::

VERSUS

FLUTTERWAVE, INC. ::::::::::::::::::::::::::::::

(Before: Hon. Lady Justice Patricia Mutesi)

RULING

Background

The Respondent instituted Civil Suit No. 0422 of 2023 ("the summary suit") seeking to recover the liquidated sum of UGX 517,781,538.69/= from the Applicant.

The Application

This Applicant then filed this application by Notice of Motion under Section 98 of the Civil Procedure Act and Order 36 Rules 3 and 4 and Order 52 Rule 1 of the Civil Procedure Rules for unconditional leave to appear and defend the summary suit. Briefly, the grounds of the application are that the summary suit is incompetent as the agreements from which that suit arises have an arbitration clause and that the claim in the suit is not liquidated/ascertained.

The application is supported by an affidavit sworn by Nelson Kizza, the Applicant's Accounting Manager. He conceded that the Applicant and the Respondent entered into a Bulk Collection and Payment arrangement through 2 agreements dated 10th October 2018. In those agreements, the Applicant was to offer disbursements of payments to the Respondent's customers through a mobile money transfer service platform called PAYLEO. The Applicant avers that it fully and diligently executed its obligations under the agreements and that the Respondent's claim for the sum of UGX 517,781,538.69 allegedly on account of non-payment is false.

Mr. Kizza further said that the application is barred by law since the agreements bear an arbitration clause which binds the parties to resolve their disputes through arbitration. He maintained that there is no money that is due and owing from the Applicant to the Respondent under the agreements and that the claimed sum is not ascertained or liquidated.

The Respondent opposed the application through an affidavit in reply sworn by Eva Gladys Nansikombi, a Senior Associate, Account Management in the Respondent's group of companies covering the Ugandan market. She stated that, on 10th October 2018, the Respondent and the Applicant executed a Bulk Collection and Payment Agreement. Thereunder, the Applicant's obligation was to offer disbursements of payments to the Respondent's customers using the Applicant's Mobile Bulk Money transfer service platform, PAYLEO. The parties continued performing according to the terms of the Service Level Agreements entered above until March 2023 when the Respondent began to experience delays in settlements from the Applicant.

Ms. Nansikombi stated that the Respondent reached out to the Applicant through several correspondences inquiring about the pending payments with little success. After some time, the Applicant started processing payments to the Respondent in installments. This was in breach of the agreed payment terms. On 5th June 2023, the Respondent's officer received an email from the Applicant's managing director who admitted the existence of the debt and proposed a payment plan to settle the outstanding payments.

She said that the payment plan, which constituted a fresh agreement between the parties, was regrettably breached by the Applicant who only remitted one month's instalment. To date, despite several reminders, the Applicant refuses to settle the outstanding sums owed to the Respondent. Since the payment plan constituted a fresh agreement from the earlier two agreements, the summary suit was filed on the basis of that payment plan which meant that the dispute was not subject to the arbitration clause in the earlier agreements.

Issues arising

1. Whether this Court has jurisdiction to hear and determine the summary suit.
2. Whether there is a bonafide defence to, or any triable issue in, the summary suit.

Representation and hearing

At the hearing of this application, the Applicants were represented by Mr. Jesse Magala of M/s Maldes Advocates while the Respondent was represented by Ms. Ninsiima Bernadette of M/s AKN Advocates. Counsel filed written submissions to argue the application. I have fully considered all the materials on record, the submissions of the counsel and the laws and authorities they cited in reaching this decision.

Determination of the issues

Issue 1: Whether this Court has jurisdiction to hear and determine the summary suit.

One of the grounds on which this application is founded is that the summary suit is premature and barred in law since the two agreements from which it arises bears an arbitration clause. This ground invites the Court to assess whether or not this Court has jurisdiction over the dispute in the main suit in the first place.

Jurisdiction refers to the power of court to entertain, hear and determine an action or proceedings. Jurisdiction is a matter of law and the power of a court to entertain, hear and determine an action must be expressly prescribed by law before the court can proceed with that action. It is trite law that proceedings of a court without jurisdiction are a nullity since lack of jurisdiction goes to the root of the legality of the court's decision. (See *Desai v Warsama* (1967) EA 351).

Article 139(1) of the Constitution of the Republic of Uganda, 1995 (as amended) is to the effect that this Court has unlimited original jurisdiction in all matters subject to the Constitution itself and other laws. This naturally implies that unlimited original jurisdiction is tempered by, and must be understood in accordance with, the Constitution and other laws which affect/relate it.

One such other law which affects the jurisdiction of this Court is the Arbitration and Conciliation Act Cap 5. Most notably, Section 9 of that Act ring-fences all matters governed by that Act and locks the Court out of their resolution. The legal effect of

Section 9 of the Arbitration and Conciliation Act Cap 5 is that, except as expressly provided in that Act, no court (including this Court) has jurisdiction to intervene in matters governed by the Act. The provision, thus, affects this Court's jurisdiction by taking away its mandate to entertain and determine disputes which are subject to arbitration and, or, conciliation.

In the instant case, it is an agreed fact in paras. 5 of the Affidavit in support of the application and paras. 7 and 12 of the Affidavit in reply that one of the agreements that delineated the terms of the parties' contractual relationship has an arbitration clause. The first agreement sets out the terms for bulk payments while the second agreement prescribed the terms for collections via PAYLEO (the mobile commerce platform).

Clause 14 of the agreement for bulk payments defines how the parties are to settle the disputes arising from their arrangement. That provision entrusted their senior managers to be the first point of settlement of any disputes. If the senior managers failed to resolve the dispute within 7 days of first meeting, it would be referred to a senior executive nominated by the chief executive officer of each party. If the two senior executives also failed to resolve the dispute, it would finally be referred to arbitration before a single arbitrator to be appointed by agreement of the parties or, in default of agreement, by the Executive Director of the Centre for Arbitration and Dispute Resolution (CADER).

The Respondent acknowledges the above arrangement for dispute resolution. It, however, contends that the summary suit was instituted, not on the basis of the 2 earlier agreements between the parties, but on the basis of a subsequent ⁵ June 2023 email authored by the Applicant's managing director to the Respondent.

That email contained a proposal of a payment plan to settle the outstanding sum. It was suggested therein that the Applicant pays UGX 50,000,000 monthly for ten months to settle the debt along with UGX 2,000,000 monthly for those ten months to cater for the inconvenience caused by the delayed payment. It is these proposals that the Respondent claims to have constituted a separate agreement between the parties which justifies resort to litigation in this Court as opposed to a reference of the dispute to arbitration.

I find the Respondent's argument to be misconceived for two reasons. First, at best, the said email constituted suggestions for settlement of the outstanding amount. A proposal of a payment plan remains inchoate until accepted. The proposal may be accepted as it is, it may be rejected completely or a counter-proposal may be made in reaction to it. It is not final and cannot have any binding contractual force.

Second, even if the said proposal of a payment plan had constituted an agreement, it would not be separate from the parties' earlier agreements of 10th October 2018. It would simply be in furtherance of those earlier agreements as its purpose would only be to ensure that the consideration under those agreements duly moves from the promisor (the Applicant) to the promisee (the Respondent). In that sense, the said email is neither a separate agreement nor an agreement at all.

This dispute, concerning enforcement of payment obligations, squarely falls within the four corners of the earlier agreements. The dispute can aptly be described as a "dispute or disagreement arising between the Parties in relation to this Agreement" within the meaning of **Clause 14.1** of the 10th October 2018 Agreement for Bulk Payments through the Mobile Commerce Platform between the parties.

Accordingly, it is my considered finding that the dispute in the main suit is governed by the Arbitration and Conciliation Act Cap 5 because one of the agreements from which it arises contains an arbitration clause. The Respondent has acknowledged the existence of that arbitration clause in para. 12 of the Affidavit in reply and has not presented any claim or evidence to prove that that clause is not valid, binding, operative and enforceable.

In the premises, it is evident to me that, pursuant to Section 9 of the Arbitration and Conciliation Act Cap 5, this Court does not have jurisdiction to entertain, hear and determine the dispute in the summary suit. This latter finding renders all other issues arising in this application to be moot.

Consequently, I make the following orders:

- Civil Suit No. 0290 of 2024 is struck off the record for want of jurisdiction. i.
- ii. This application is overtaken by events and it is, accordingly, dismissed.

Costs of this application and of the summary suit, if any, are awarded to iii. the Applicant.

neadentes

$\frac{A}{B}$

L^L

Patricia Mutesi

JUDGE

\$(31/12/2024)\$

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/ugcommc/2024/349/eng@2024-12-31>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/true-african-u-limited-v-flutterwave-inc-miscellaneous-application-706-of-2024-2024-ugcommc-349-31-december-2024-unknown-topic-unknown-court-2024>

Prepared on 13 October 2026 · Esheria