

UGANDA / JUDGMENT

Uganda Registration Services Bureau and Another v MSS Xsabo Power Limited (Miscellaneous Application No. 43 of 2024) [2024] UGHC 1286 (15 July 2024) [2024] UGHC 1286

COURT

High Court of Uganda

BEFORE

Oyuko Anthony Ojok, J

CASE / FILE NUMBER

Miscellaneous Application No. 43 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MPIGI
MISCELLANEOUS APPLICATION NO. 43 OF 2024 (Arising from Miscellaneous
Application No. 40 of 2024)

1. UGANDA REGISTRATION SERVICES BUREAU 2. REGISTRAR GENERAL/OFFICIAL
RECEIVER APPLICANTS

VERSUS

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..... RESPONDENT MSS XSABO POWER LIMITED.....

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK

Ruling

Background: 15

It is the applicant's case that Company Petition No. 5 of 2020 was filed by Great Lakes Energy Company N. V. before the Registrar of Companies in the year 2020 against MSS Xsabo Power Limited seeking the rectification of the register by expunging resolutions allegedly executed and filed illegally to revoke or forfeit the applicant's 96 shares in MSS Xsabo Power Limited. The application was heard by the Assistant Registrar of companies Solomon Muliisa on behalf of the Registrar General/Registrar of Companies.

That upon submission of the ruling by the Assistant Registrar of Companies for clearance, the 2nd applicant advised the Assistant Registrar of Companies to review the awards from the London Court of Arbitration and all documents available on record in order to ensure that the question of payment for shares was well evaluated. However, contrary to the directive of the 2nd applicant, the Assistant Registrar went ahead and issued what he had presented as a draft ruling on 8th November, 2024.

That the said action of the Assistant Registrar of Companies prompted the Registrar General/Registrar of Companies to recall the ruling and communicated

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this decision to the parties in a letter dated 12th November, 2024. Resultantly, the Registrar General/Registrar of Companies took over the matter, relied on the pleadings, evidence and submissions of the parties on record and issued a ruling on 15th November, 2024.

On 18th November, 2024, the applicants learnt that on 15th November, 2024, this Honourable court issued an exparte Administrative interim order directing URSB and Registrar General/Official Receiver to maintain status quo and stop the implementation of the decision to recall the ruling made by the Assistant Registrar of Companies on 8th November, 2024 in Company Petition No. 5 of 2020 until the hearing of the interim Application on 18th November, 2024.

Further, on 19th November, 2024, the applicants learnt that on 18th November, 2024, this honourable court endorsed a consent interim order against the applicants vide Miscellaneous Application No. 40 of 2024 (MSS Xsabo Power Limited v. Uganda Registration Services Bureau and Registrar General/Official Receiver) in the same terms as the Administrative Exparte Interim Order until the hearing and determination of the Judicial Review Application Vide Miscellaneous Cause No. 04 of 2024.

On the other hand, it is the respondent's case that it is a Ugandan Company operating and owning a 20 Mega Watt pilot solar FV power park in Kabulasoke, Gomba District. It allotted 96 shares of UGX 1,000,000/= each to Great Lakes Energy Company N. V. pursuant to an investment agreement, a shareholder's agreement and a call on shares option agreement. However, Great Lakes Energy Company N. V. refused to pay for the shares despite a call on them thereby forfeiting these shares. It was found out that Great Lakes Energy Company N. V. had defrauded the respondent close to USD 6.5million in a fraudulent consultancy agreement that never was. The respondent thus revoked the Great Lakes Energy Company N. V shareholding.

The Great Lakes Energy Company N. V. challenged the respondent's decision vide Company Petition No. 5 of 2020 filed with the Registrar of Companies. The Assistant Registrar of Companies, Solomon Muliisa, heard the matter, received by statutory declarations, cross-examination, re-examination and the parties filed written submissions before him. In a ruling dated the 8th of November, 2024,

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which was duly delivered to the parties, the Assistant Registrar of Companies dismissed the petition. It happened that on the 13th of November, 2024, in a letter dated the 12th November, 2024, the respondent's lawyers received a communication from the Registrar General communicating her willingness to recall the decision of Solomon Muliisa and that the parties would be notified of a second decision once it was ready.

On 15th November, 2024, the respondent got an administrative interim order from this Honourable court maintaining the status quo, lasting up to the end of the 18th day of November, 2024 and the same was served onto the applicants. On the same day, the respondent also served onto the applicants, the motion in Miscellaneous Application No. 40 of 2024, praying for an interim injunction.

On the 18th November, 2024 at 9:00am, the applicants appeared before this court pursuant to an effective service and summarily agreed to a consent 15 injunctive order until the final determination of the main cause. However, on the same day a second ruling was delivered by the Registrar General at 9:12am despite there being an injunctive order by this court maintaining the status quo.

Given the above facts the respondent sued the applicants for contempt of court 20 and the applicants therein filed for setting aside and vacating of the said consent order in Miscellaneous Application No. 40 of 2024.

The Application

The applicants brought this application by Notice of Motion under Article 28(1) of the Constitution, Section 98 of the Civil Procedure Act, Section 37 of the Judicature Act, Order 41 Rules 3, 4 and Order 52 Rules 1 and 3 of the Civil Procedure Rules against the respondent seeking orders that;

- 1. The consent interim order issued on the 18th November, 2024 by Hon. 30 Justice Oyuko Anthony Ojok Vide Miscellaneous Application No. 40 of 2024, be vacated and set aside.
- 2. Costs of the application be provided for.

The application is supported by an affidavit sworn by Mustapher Ntale, the 1st applicant's Director Business Registration and the grounds the respondents 35 adopted are that;

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- a. Company Petition No. 005 of 2020 was heard by the Assistant Registrar of Companies on behalf of the Registrar General/Registrar of Companies.

- b. Under Section 258(4) of the Companies Act, Assistant Registrars execute the duties of a registrar including quasi-judicial powers, subject to the directions of the Registrar General.
- c. Upon submission of the draft ruling by the Assistant Registrar, the Registrar General directed the Assistant Registrar of Companies to review the awards of the London Court of arbitration and all documents available on the record in order to ensure the question of payment of shares was well evaluated.
- d. The Assistant Registrar, contrary to the directive of the Registrar General, went ahead and issued what he had presented as a the draft ruling on 8th November, 2024, acting without the powers and authority of the Registrar.
- e. As such, the Registrar General recalled the ruling of the Assistant Registrar of Companies, took over the matter, relied on the pleadings, evidence and submissions of the parties and issued a ruling on 15th November, 2024 at 11:07am and 11:54am.
- f. The 2nd applicant made her ruling on the 15th November, 2024 and the said ruling was implemented on the same day.
- g. As such, the consent interim order as well as the exparte Administrative interim order were served upon the applicants after the 214 applicant had already issued her ruling.
- h. Ms. Stella Muheki lacked knowledge of the material facts of the matter at the time she signed the consent order dated 18th November, 2024 and was not authorized to sign the said consent.

35 The application was opposed through the affidavit in reply sworn by Bernard Okello, a general manager in the respondent company, whose grounds I will not reproduce but will refer to where necessary while resolving this applicafio\z,

Representation:

Senior State Attorney Allan Mukama appeared for the applicants while Counsel Mumpeje Andrew appeared for the respondent. Both parties filed their written submissions.

Issues for determination:

1. Whether the application satisfies grounds for setting aside a consent order?
2. What remedies are available to the parties?

10 Resolution:

Issue One:

Whether the application satisfies grounds for setting aside a consent order?

Both counsel cited the often quoted case of Attorney General & Another v. James Mark Kamoga, S. C. C. A No. 8 of 2004 which reiterates the principle of law stated in Hirani v. Kassim [1952] E. A 131, where it was held that;

"Prima facie, any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action, and cannot be varied or discharged unless obtained by fraud or collusion, or an agreement contrary to the policy of the court...or if the consent was given without sufficient material facts or in misapprehension or in ignorance of material facts, or in general for

a reason which would enable court to set aside an agreement."

The applicant in this case contends that Muheki signed the consent from which an order of injunction was granted without sufficient material facts or in ignorance of material facts as such this application should be granted.

Counsel added that by the time the email serving the applicants with the administrative interim order dated 15th November, 2024 was sent at 8:00pm, the 2nd applicant had already issued her ruling and that Ms. Stella Muheki signed the consent on behalf of the applicants after the decision of the 24 applicant. Counsel thus averred that the status quo the administrative interim order intended to maintain had already changed. And, Muheki Stella signed the

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consent interim order through mistake of facts because she was not aware that the second ruling had already been issued on the 15th November, 2024.

Counsel relied on the case of Niolecom Limited v. Kodjo Enterprises Ltd, Civil Suit No. 18 of 2014, where Justice Mubiru defined mistake of fact as a factual error $\$ \backslash \mathrm{mathsf{S}} \$$ that if the correct fact had been known, would have resulted in a different contract. His Lordship gave the circumstances under which a mistake of fact may arise and they are where the facts exist but are unknown and the other being where the facts do not exist as they are believed to exist.

Counsel concluded that had Muheki Stella known that the Registrar General had already issued her ruling on the 15th November, 2024, she would not have consented to maintaining the status quo which had already changed. Counsel implored court to exercise its inherent power under Section 98 of the Civil Procedure Act and cited the case of Nyakake v. Kitembo, Miscellaneous Application No. 0039 of 2016, which imposes a duty on court to ensure that the ends of justice are met and concluded that the consent order should be vacated and set aside for the ends of justice to be met.

Counsel for the respondent on the other hand submitted that Muheki Stella was \$20\$ an agent of the applicants and that by the time she signed the consent injunctive order, there was no ² ruling delivered yet.

Counsel further submitted that Stella Muheki acted as agent of the applicants and as such her actions bind the principal. She was sent by the applicants to court on 25 the 18th November, 2024 and she cannot claim that she did not know the nature of the document she was signing. Counsel noted that there was no attack on the cognitive ability of Muheki Stella, she agreed to the consent order and that is exactly what she got. The applicant cannot now claim non est factum/not my deed and the same cannot now be set aside when it is a true reflection of what 30 they signed.

Counsel noted that Order 41 Rule 1 of the Civil Procedure Rules which the applicants relied on to apply for review does not support their case and that for mistake or error to be a ground of review, it must be apparent on the face of the record. Counsel relied on the case of Edison Kanyabwera v. Pastori Tumwebaze, S. C. C. A No. 06 of 2004, which defines such an error to be evident and does not

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require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on record. It should be an error glaring at court from the record before it.

Counsel went on to submit that the alleged second ruling was nowhere on the record of the High Court so that it could be said that it was a mistake by the parties at that time to enter into the consent to bar what had already been delivered and enforced. As such, this application does not satisfy Order 46 Rule 1 of the Civil Procedure Rules.

It was further submitted that the respondent company got an administrative interim order from court on the 15th November, 2024 maintaining status quo up to the 18th November, 2024. The same order was served onto the applicants on the same day and as a result of proof of service, Stella Muheki appeared in court on the 18th November, 2024 and agreed to the issuance of a consent injunctive order up to the final determination of the main cause.

20 Counsel contended that there was no decision delivered on the 15th November, 2024 and this can be deduced from physically looking at annexure "B" attached to the affidavit in reply by Bernard Okello and annexure "D" attached to the affidavit of Mustapher Ntale. While annexure "B" has a sign of an attachment, annexure "D" has no such sign. Counsel implored court to rely on the report of Egesa a cyber-expert to prove that there was no ruling delivered on the 15th November, 2024.

30 Counsel for the respondent concluded that by vacating the consent order means that even paragraph 2 of the orders has to be expunged. That would mean that this court has denied the applicants the right to respond to the main cause on judicial review. That if court did so, it would have been illegal and an affront on the principle of fair hearing which is non-derogable under

Articles 28 and 44 of the Constitution. Thus, the applicants cannot approbate and reprobate; they cannot want court to vacate paragraph 1 of the consent interim order and retain the right to respond to the main cause as paragraph 2 of the impugned order states. Hence, a party cannot blow hot and cold over the same document. __,%

Counsel for the applicants in rejoinder reiterated their submissions and added that Stella Muheki lacked sufficient and material facts prior to signing the consent order. And that based on that ground the consent judgment can be set aside. (See: Harani v. Kassam [1952] E. A. C. A 131 and Mohammed Alibhai v. W. E Bukenya and Another, Civil Appeal No. 56 of 1996).

Counsel added that Stella acted without consultation and thus the consent order was entered without their express authority. And that Stella Muheki being an employee of the 1st applicant had an obligation to act in their best interests. And the litigant has no obligation to ratify the errant actions of an advocate that are not done in good faith and are detrimental to the litigant's interests.

Consideration of court:

This is an application to have the consent interim order issued on the 18th November, 2024 by this Honourable court Vide Miscellaneous Application No. 15 40 of 2024, vacated and set aside. I have carefully considered the Notice of motion, the affidavit for and against it, the submissions by counsel, the law and authorities cited therein in resolving this application.

The applicants in this case averred that the consent interim order was signed by 20 mistake by Muheki Stella who did not know the material facts in the case. The respondent on the other hand contended that the law as proceeded under by the applicants being Order 41 Rule 1 of the Civil Procedure Rules is in applicable to the facts at hand and went on to add that for one to rely on mistake of fact, it must be glaring on the record.

Decided cases have established that citing the wrong law in a legal application or proceeding is generally not fatal to the case if the court has the jurisdiction to grant the relief sought. Courts can correct such errors by inserting the correct law. However, if the application is based on a fundamental lack of jurisdiction 30 due to the wrong law being cited, it could lead to the application being dismissed. If an application omits to cite any law, or cites the wrong law, but the court has the jurisdiction to grant the relief sought, the court can ignore the error and apply the correct law. (See: Nanjibbi Prabhudas & Co. Ltd v. Standard Bank Ltd \$[1968]\$ E. A). 35

In the instant case the correct law is Order 46 Rule 1 of the Civil Procedure Rules which this court will go by and not the provisions of Order 41 Rule 1 of the Civil Procedure Rules quoted in their Notice of Motion. Whereas, the applicants argued that the consent order was signed by mistake, I have considered the sequence of events before the consent was signed which I will discuss.

The Company Petition No. 5 of 2020 was heard and determined and a ruling was delivered to that effect on the 8th November, 2020. The 2nd applicant on the 12th November, recalled the said ruling claiming that it was issued in defiance of her directive by the Assistant Registrar (Solomon Muliisa) and another date would be communicated promptly once the second ruling was ready. The said letter was served onto the applicants on the 13th November, 2024.

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On the 15th November, 2015 the respondent run to court and got an ex-parte administrative interim order on the same day maintaining status quo up to the 15 18th November, 2024. The same order was served onto the applicants on the very day. The respondent attempted to have service done physically at the premises of the 1st applicant in Mpigi but it was declined and they were directed to serve at their headquarters; but the same could not also be effected since the offices were closed for an urgent staff meeting. As a result of failing to physically serve the \$20\$ applicants, service was then effected through WhatsApp and email on the 15th November, 2024.

It also quite correctly appears to me that the service was effective since counsel Stella Muheki did appear in court on the 18th November, 2024 on behalf of the 25 applicants. Counsel Muheki by way of Consent agreed to the issuing of an injunctive order until the final determination of the main cause for judicial review.

I have no doubt that counsel Stella's appearance in court on the 18th of November 30 2024 clearly indicated that she had been sent by the applicants. From what I gather in the affidavit of service dated 16th November, 2024, service of the administrative interim order issued by this court on the 15th of November, 2024 was served through the official 1st applicant's email ursb@ursb.go.ug and through the personal WhatsApp number of the 2nd applicant 0772555878 in the 35 name of Mercy Kyomugasho Kainebwiso. It is upon such service that counsel Muheki appeared before this court on the 18th November, 2024 on behalf of the applicants.

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However, be that as it may, the applicants contend that despite counsel Muheki's entering into a consent on 18th November, 2024, there was no status quo to maintain on the basis that the 2nd applicant (Registrar General) had already issued a second ruling on the 15th November, 2024 and communicated the same to the respondent that very day by email at 11:07am and 11:54am way before the administrative order could be served on the applicants.

Counsel for the respondent on the other hand contended that there was no decision delivered on the 15th November, 2024 and this can be deduced from 10 physically looking at annexure "B" attached to the affidavit in reply by Bernard Okello and annexure "D" attached to the affidavit of Mustapher Ntale. While annexure "B" has a sign of an attachment sent on the 18th November, 2024, annexure "D" has no such sign allegedly sent on the 15th November, 2024 by the applicants. \$15\$

Given the above contrasts, to resolve the dispute between the parties court is persuaded to look into the question as to whether the actions of counsel Muheki Stella who represented the applicants and the actions she undertook were binding on the applicants and whether indeed a second ruling was delivered on 15th November, 2024.

In the East African case of *Hirani v. Kassim*, (Supra), it was held that;

"Prima facie, any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action..."

I am persuaded from the trajectory of events as per the evidence adduced before this court by both parties that there was no ruling delivered on the 15th November, 2024 as claimed by the applicants for the following reasons;

- a) The 2nd applicant in her letter dated 12th November, 2024 while recalling the first ruling indicated that the parties would be promptly notified when the second ruling was to be issued which was never done and no explanation was furnished in that regard. I have found no record of any notification of the readiness of the said ruling issued to the respondent save for an email of the ready ruling that was sent on the 18th November, 2024. And a letter that was served onto the

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respondent on the 19th November, 2024 notifying them that the second ruling had been enforced.

- b) On the 15th November, 2024 when the existence of the ex-parte administrative order and Miscellaneous Cause No. 40 of 2024 were communicated to the 2nd applicant via WhatsApp as a mode of service, there were two blue ticks and she responded with question marks. This indicated that the message had been received, however the 2nd applicant did not respond to the sender intimating that a second ruling had already been issued which the administrative order sought to halt and have the status quo maintained.
- c) Upon service being effected on the 15th November, 2024, Stella Muheki appeared in court representing the applicants and did not mention anything to do with the second ruling having been delivered on the 15th November, 2024. It is worthy of note that the 2nd applicant (the registrar general) was well aware of the order of

court and had every opportunity to ensure that counsel Muheki who appeared for the applicants was well briefed of the facts and had proper instructions on the action to take. Had she done that, this application would never have seen a day of light in this court. She chose not to treat the orders of this court with the importance they deserved.

- d) There is absurdity in the claim by the applicants that Stella Muheki appeared in court ignorant of what was on going in regard to the matter. In my opinion, there was no mistake on the part of Muheki Stella but rather she acted in a way any reasonable advocate would given the facts/ information availed to them. Had she been unaware as the applicants claim, her overall supervisor (Registrar General) was aware of the events that took place in court on 15th November, 2024 and the orders therein issued. This should have prompted her to immediately offer guidance on what should be done upon appearance in court on 18th November, 2024 for hearing of the injunction.
- e) I have also examined annexure "B" attached to the affidavit in reply by Bernard Okello and annexure "D" attached to the affidavit of Mustapher Ntale. While annexure "B" has a sign of a file folder attachment, annexure "D" has no such sign. It is a clear indication that there were no emails sent to the respondent on the 15th November, 2024 of the second ruling but rather were sent on the 18th November,

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2024 while the Administrative order maintaining status quo was still valid.

sufficient material facts to act as she did and in that regard, I find that there was \$5\$ no ignorance on her part of the material facts and her actions bind her principals. I am also inclined to believe that Stella as an employee of the 1st applicant was well aware of her obligation to act in the best interests of her employer. And indeed as submitted for the applicants in rejoinder, it is trite that advocates are for all intents and purposes, agents of the litigants. Thus, the actions of Stella Muheki are binding on the applicants as her principals.

I therefore find that there was no mistake made by Stella Muheki and she had

Additionally, I concur with the submissions for the respondent that the applicants cannot apply to have the consent injunctive order vacated and set aside and yet they continued to put in their reply so that they can be heard in the main cause. I

therefore, find that this application does not satisfy the grounds for setting aside a 15 consent order. This issue is hereby resolved in the negative.

Issue 2: remedies available to the parties

Counsel for the respondent submitted that there was no mistake at all in the execution of the consent order and there was no second ruling by the time 20 Muheki entered into the consent order on the 18th November, 2024. As such there is no reason to vacate the consent order on record.

Having found that this application does not satisfy the grounds for setting aside a consent order, it lacks merit and is accordingly dismissed with costs.

I so order.

Right of appeal if any explained.

OYUKO ANTHONY OJOK

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JUDGE

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