

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISC. APPLICATION NO. 234 OF 2012
(Arising from H.C.C.S No. 138 of 2008)

1. KYAMBADDE HENRY

2. PAUL NYAMARERE:..... APPLICANTS

VERSUS

1. UGANDA ELECTRICITY

TRANSMISSION COMPANY LTD

2. UGANDA ELECTRICITY

DISTRIBUTION COMPANY

3. UGANDA ELECTRICITY

BOARD (IN LIQUIDATION)

4. ATTORNEY GENERAL

..... RESPONDENTS

BEFORE: HON JUSTICE ELDAD MWANGUSYA

RULING

This application is brought by Chamber Summons under Section 33 of the Judicature Act (Cap 13) Laws of Uganda, Section 98 of the Civil Procedure Act (Cap 71) Laws of Uganda, Order 11 Rules 1 & 2 and Orders 13 Rule 6 of the Civil Procedure Rules seeking the following orders:-

- i) That High Court Civil Suit No. 967 of 2005, John Walugo and others versus Uganda Electricity Transmission Company & others and High Court Civil Suit No. 760 of 2006, Nakafeero Josephine and others Vs Uganda Electricity Transmission Company Limited be consolidated with High Court Civil Suit No. 138 of 2008.

- ii) That Judgment be entered on admission in favour of the Applicants/plaintiffs in HCCS No. 138 of 2008, HCCS No. 967 of 2005 and HCCS No. 760 of 2006 for the sum of Ug Shs 47.972.421.017/= (Forty Seven Billion Nine Hundred Seventy Two Million, Four Hundred Twenty One Thousand Seventeen only) as partial payment to the Applicants/Plaintiffs.
- iii) That all payments arising out of HCCS No. 138 of 2008, HCCS No. 967 of 2005 and HCCS No. 760 of 2006 be paid through the Applicants/Plaintiffs' Lawyers M/s Bashasha & Co. Advocates or alternatively be paid through the Official Receiver/Liquidator Uganda Electricity Board in Liquidation after offsetting/deducting the lawyers' fees.
- iv) The costs of this application be provided for.

The grounds of the application are contained on the affidavit of Nyamarere Paul and John Walugo but briefly are that:-

- (i) HCCS 138 of 2008, HCCS No. 967 of 2005 and HCCS No. 760 of 2006 are all pending before this Honourable Court and the facts and issues for determination by this Honourable Court in the suits are similar and analogous.
- (ii) The Auditor General an Official/agent of the 3rd Respondent herein has computed ascertained and admitted part of the claim due to the plaintiffs under HCCS No. 138 of 2008, HCCS No. 967 of 2005 and HCCS No. 760 of 2006.
- (iii) That the Respondents are in the process of paying the plaintiffs individually when some benefits have not been computed, all issues involved in the suits are not determined and legal fees due to the lawyers in conduct of the suits are not paid.
- (iv) That it is just and equitable that this application be granted and all issues involved in the suits be settled to their finality.

At the hearing of the application the applicants were represented by Mr. Alex Bashasha assisted by Mr. Abraham Mpumwire, the 1st, 2nd and 3rd respondents were represented by Mr. John Fisher Kanyemibwa assisted by Mr. Dennis Wamala while the Attorney General was represented by

Mr. Elisha Bafirawala. All the Counsel agreed to file written submissions addressing the following issues:-

1. Whether High Court Civil Suits No. 138 of 2008, No. 967 of 2005 and No. 760 of 2006 should be consolidated.
2. Whether judgment on admission should be entered against the 1st, 2nd, 3rd and 4th Respondents.
3. Whether all payments should be made through the applicants' Lawyers or alternatively through the official receiver/Liquidator Uganda Electricity Board after offsetting the Lawyers' fees.
4. Costs of the application.

In their submissions all counsel agreed on the first issue and I do not need to belabor the point. It suffices to state that Order 11 Rule 1 of the Civil Procedure Rules provides that where two or more suits are pending in the same court in which the same or similar questions of law or fact are involved, Court may order consolidation of the suits. I agree with the counsel all of whom acknowledge that the suits raise similar facts and issues that a consolidation will dispose of.

The second issue whether judgments on admission should be entered against the 1st, 2nd, 3rd and 4th Respondents. This is a procedure provided for under Order 13 Rule 6 of the Civil Procedure Rules which provides as follows:-

“6. Judgment on admissions.

Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for determination of any other question between the parties; and the court may upon the application make such order, or give such judgment as the court may think just”

This Rule was discussed in the case of **LUKA MATOVU AND OTHERS -VS- ATTORNEY GENERAL MISCELLANOUES APPLICATION NO. 143 OF 2008**. (Arising from Civil Suit No. 248 of 2003) where Mr. Justice V. F Musoke Kibuuka stated as follows:-

“In a persuasive Judgment of the Court of Appeal of Kenya in Agricultural Finance Corporation Vs Kenya National Insurance Corporation, Civil Appeal No. 271 of 1996, the Court took the view that where the admission is not ambiguous, the court ceases to have a discretion whether to enter a judgment or not. It must do so. According to Phipson on Evidence, Chapter 24, In Civil cases, Statements made out of Court by a party to the proceedings or by any person connected with him by any relevant relationship are admissible in evidence against but not in favour of such party. Admissions are admissible against the Crown as against ordinary parties. It is generally immaterial to whom the admission was made. An admission made to a stranger to the suit is receivable and as relevant as one made to the opposite party. The position of the law appears to be, that private memoranda, though not communicated to the opposite side or to third persons as are admission made to himself or herself in soliloquay. (Underlining provided for emphasis).

In the instant case the argument of the applicants is that arising out of a consent judgment the Auditor General verified the plaintiffs’ claim and ascertained it at Shs 47.972.421.017= and on this verification a judgment on admission should be entered. In opposition to this application the fact of the verification is not denied by either counsel for the 1st, 2nd and 3rd respondents or that of the 4th respondent. I will start with the submissions of the Attorney General where he submitted as follows:-

“The Report that is being relied upon as constituting an admission was prepared by the Auditor General, who is not a party to the main suit. The contents, remarks and findings of the said report cannot therefore be held as indication of an admission. The Auditor General was not our client or an agent of the 4th Respondent for purposes of the said report.”

On the other hand counsel for the 1st, 2nd and 3rd respondents submitted as follows:-

“Furthermore the said report upon which this application is premised was made by the Auditor General in the exercise of his functions under Article 163(3) of the constitution and the National Audit Act. The said report cannot be construed as an admission by the 1st-3rd respondents but a recommendation to Government and Parliament”.

The genesis of the Auditor General’s Report is consent order entered by this court on the 27th October 2009 and annexed to this application as Annexure “D” Clauses 3 and 4 of the Consent Order are as follows:-

“3. The parties to HCCS No. 138 of 2008 shall cause the computations and verification of the said claims in HCCS to be carried out before submission of the said computations to the Auditor General for final verification.

4. The verification of the said claims by the parties to HCCS No. 138 of 2008 shall be effected within two (2) months from date hereof or such a long period as the parties shall agree upon”.

These two clauses provide the nexus between the Auditor General who verified the claim and all the parties in HCCS No. 138 of 2008, 760 of 2006 and 967 of 2005 that have been consolidated. According to the consent order the Auditor General’s verification was to be the final verification and it passes the ambiguity test and other test laid down in the case of **Luka Matovu Vs Attorney General** (supra). This court would in agreement with the applicants order that a judgment on admission be entered against all the respondents.

The last issue is as to whether all payments should be made through the applicants' Lawyers or alternatively through the official receiver/Liquidator UEB after offsetting the lawyers' fees. In this regard counsel for the 1st, 2nd and 3rd Respondents submitted that since the Privatisation Unit has the capacity to pay the plaintiffs' terminal benefits (less their lawyers' fees) the payment should be handled by them. Counsel for the Attorney General prayed that "for all fairness this court should issue an order directing the defendants whether to pay through the applicants' lawyers or the 3rd Respondents."

Ideally the lawyers who have handled a case to fruition would be the best suited to handle the payments. However I have detected elements of mistrust between some of the plaintiffs and the lawyers. The most prudent process would be to determine the Lawyers' Fees. So that it is paid to them directly. It would not be fair to pay each of the plaintiffs individually and expect all of them to honour their obligations to the lawyers especially when the plaintiffs are scattered. After the lawyers' fees have been paid the claimants would be paid their claims through the 3rd Respondent, who, apart from the lawyers is the best suited person to identify them. I wish to add that I need not emphasise that as far as the remuneration of the Advocates is concerned it is well regulated and I would expect that like the claim, the Advocates' Fees would first be verified before payment is made to ensure that the plaintiffs are protected.

In conclusion this application is granted and it is ordered that :-

- (1) That High Court Civil Suit No. 138 of 2008, 967 of 2005 and 760 of 2006 be and are hereby consolidated.
- (2) That Judgment be entered on admission in favour of the Applicants/Plaintiffs in High Court Civil Suit No. 138 of 2008, 967 of 2005, 760 of 2006 for the sum of Ug Shs 47.972.421.017/= (Forty Seven Billion Nine Hundred Seventy Two Million, Four

Hundred Twenty One Thousand Seventeen only) as partial payment to the Applicants/Plaintiffs.

- (3) That all payments arising out of HCCS No. 138 of 2008, HCCS N. 967 of 2005 and HCCS No. 760 of 2006 be paid through Official Receiver/Liquidator Uganda Electricity Board in Liquidation after deducting the lawyers' fees.
- (4) The costs of the judgment on admission shall be met by the defendants in all the consolidated Civil Suits

Eldad Mwangusya

J U D G E

13.07.2012