

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0008-2009

ROCK PETROLEUM (U) LTD APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY RESPONDENT

BEFORE: HON MR. JUSTICE LAMECK N. MUKASA

RULING:

This is an ex parte application brought by notice of motion under Order 37 rules 6 and 8, Order 48 rules 1 and 3 of the Civil Procedure Rules for Orders that:

1. Originating Summons issue against the Respondent, Uganda Revenue Authority.
2. The costs of this application be provided for.

By this Court's Order in Misc. Application No: 181 of 2009 dated 7th April 2009, the Applicant, M/s Rock Petroleum (U) Ltd, was granted permission to sue the Respondent in a representative suit on its behalf and on behalf of and for the benefit of numerous importers of diesel and petrol

in Uganda seeking refund of monies illegally collected by the Respondent as Excise Duty in the 2007 – 2008 Financial Year.

Pursuant to that Order the Applicant on 8th May 2009 filed this application on his behalf and on behalf of other importers as listed in annexure “B” to the affidavit in support. Notice of institution of the application was advertised in the Daily Monitor Newspaper of 22nd May 2009.

The main ground for the application is that the Applicant and the said other importers paid Excise duty in the 2007/2008 Financial Year to the Respondent and they seek proper construction of the Excise Tariff (Amendment) Act No 5 of 2008 as regards the legality of the imposition and collection of the said tax and their right to a refund.

The procedure for taking out an Originating Summons is provided for by rule 8 of the Order. Proceedings by Originating Summons are not commenced by a preliminary application, whether be by Notice of Motion or Chamber Summons.

It is the Originating Summons which is presented *ex parte* to a judge setting in chambers with an affidavit setting forth the facts upon which the relief sought is grounded. If the Judge is thereby satisfied that the case is a proper one to be dealt with on originating summons he/she then signs the summons for service as directed by him or her. So the procedure adopted by the Applicant is wrong.

Secondly persons who can take out originating summons under the Order are indicated in rules 1, 3, 4, 5, and 6 thereof. The Applicant and the others on whose behalf these proceedings have been taken out do not qualify.

From the nature of the complaint, as can be gathered from the Notice of Motion and the Affidavit in support, most likely the Applicant intended an application for Judicial Review which is now governed by the Judicature (Judicial Review) Rules, 2009 – SI 11 of 2009.

The procedure adopted by the Applicant is being used for a purpose for which it was not established. In the premises the application is dismissed. Since it was *ex parte* I make no order as to costs.

Hon. Mr. Justice Lameck N. Mukasa

19th June 2009