



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Suit 1181 of 2002

**UNIVERSAL BANK LIMITED.....
.....PLAINTIFF**

VERSUS

**JASWINDER SINGH VIRDI t/a JASWINDER SINGH ENTERPRISES.....1ST
DEFENDANT**

**PARAMINDER SINGH VIRDI2ND
DEFENDANT**

AND

**PARAMOUNT UNIVERSAL BANK LIMITED.....
APPLICANT**

R U L I N G

When this case came up for hearing on 9th June 2005, the plaintiff failed to attend court and accordingly the suit was dismissed for non attendance with costs being awarded to the defendant.

The plaintiff filed an application dated 24th March 2006 seeking to set aside that dismissal but before same could be argued defence raised preliminary objections.

The first objection related to locus of the plaintiff in this suit in view of a ruling delivered in this matter on objection proceedings by Paramount Universal Bank Ltd.

The background to that ruling is that the plaintiff, Universal Bank Ltd entered into a merger agreement, dated 30th December 2000, with paramount Universal Bank Ltd, whereby the assets of the plaintiff were taken over by paramount Universal Bank Ltd, among those assets that were taken over was the asset that formed the subject of this suit.

The aforesaid parties entered into another agreement called Articles of settlement, which sought to return to the plaintiff the asset forming the subject matter of this suit.

Justice Waweru in his ruling dated 2.3.2006 of the objection proceedings brought by Paramount Universal Bank concluded as follows:

“It is clear under section 9 (1) that the prior written approval of the minister was necessary

otherwise the Articles of settlement would have no legal force. I so hold. The assets and liabilities that the objector purported to transfer back to the plaintiff remained with the objector. These assets and liabilities included the subject matter of this suit, and by extension the costs awarded to the defendants.”

Defence counsel in advancing the objection said that this suit was filed after the merger agreement had been entered into, whereby the plaintiff’s assets, which include this suit, were transferred to Paramount Universal Bank Ltd. That since the ruling of Justice Waweru found that the subsequent agreement did not have a legal force to have the said assets returned to the plaintiffs, those assets, which include this suit still belong to Paramount Universal Bank Ltd. Defence counsel submitted that the ruling of Justice Waweru had the effect of “*removing the carpet*” under the plaintiff’s feet and accordingly the rightful part to pursue this court action is Paramount Universal Bank Ltd.

The defendant’s second objection was to effect that the court cannot hear the plaintiff’s application for reinstatement of this suit, for to do so would amount to the court sitting in appeal against this courts own ruling by Justice Waweru.

Plaintiff opposition to defence objection said that, that objection was “*barking at the wrong tree*”, in that the court should not concern itself with matters that relate to the claim in this suit. That what ought to concern the court is that the plaintiff seeks to reinstate the suit that was dismissed for non-attendance. That is only after the suit is reinstated that defence can raise the objections being raised on locus and on non-compliance to certain sections in The Banking Act [Cap 488].

Plaintiff also drew the courts attention to a pending application, seeking to join in these proceedings Paramount Universal Bank Ltd.

I have considered arguments presented before me it is clear that Justice Waweru found that the plaintiff’s assets, which include the subject of this suit are held, or are the property of Paramount Universal Bank Ltd. That ruling has not been stayed or appeal against. The effect of that ruling is to take away any right that the subject matter of this suit. The ruling essentially found that the correct plaintiff was always Paramount Universal Bank Ltd. That being the finding in the ruling of Justice Waweru, can the plaintiff seek to move the court on a matter it has not right of ownership. I dare say that the answer is in the negative, the plaintiff cannot so move the court and in that regard, the objections raised by the defendant succeed in that the plaintiff has no ‘*leg*’ to stand on in regard to the application to reinstate the suit.

The defendant did not seek in raising the objection, the dismissal of the plaintiff’s application for reinstatement. Accordingly the court finds in favour of the defendant’s objection which is hereby upheld and the plaintiff’s application dated 24th March 2006 is hereby stayed until further orders of this court.

The defendant is awarded costs of the preliminary objection.

MARY KASANGO

JUDGE

Dated and delivered this 31st July 2006

MARY KASANGO

JUDGE