



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**CIVIL CASE NO. 95 OF 2018**

**UBA KENYA BANK LIMITED.....PLAINTIFF**

**VERSUS**

**ALBRIGHT HOLDINGS LIMITED.....1<sup>ST</sup> DEFENDANT**

**RAPID COMMUNICATIONS LIMITED.....2<sup>ND</sup> DEFENDANT**

**ANWAR MAJID HUSSEIN.....3<sup>RD</sup> DEFENDANT**

**BENSON NDETA.....4<sup>TH</sup> DEFENDANT**

***AS CONSOLIDATED WITH***

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**CIVIL CASE NO. 302 OF 2015**

**ALBRIGHT HOLDINGS LIMITED.....PLAINTIFF**

**VERSUS**

**UBA KENYA BANK LIMITED.....DEFENDANT**

**SULTAN PALACE DEVELOPMENT LIMITED.....PURCHASER**

**RULING**

1. As per the terms of letter dated 30<sup>th</sup> November 2013 **UBA KENYA BANK LIMITED** (UBA) provided financial facility to **RAPID COMMUNICATIONS LIMITED** (hereafter Rapid). UBA obtained securities of legal mortgage over properties L.R. NO. 209/11609/2, L.R. NO. 209/11609/3, L.R. 209/11609/4, L.R. NO. 209/11609/5, L.R 209/11609/11 for that facility. Those properties are registered in the name of **ALBRIGHT HOLDING LIMITED** (hereinafter ALBRIGHT). UBA also obtained guarantee of Albright, and guarantee and indemnity of directors of Rapid namely **ANWAR MAJID HUSSEIN** (Anwar) and **BENSON NDETA** (Benson). It is not denied that Rapid defaulted in servicing the facility. When UBA undertook to exercise its statutory power of sale of the charged properties Albright filed HCCC 302 OF 2015 and thereby challenge the exercise of that statutory power of sale. HCCC 95 of 2018 and HCC 302 of 2015 were consolidated by this court's ruling dated 5<sup>th</sup> March 2019. The consolidation of the suits was based on the fact that the claims in both matters relate to determination of the amount Rapid owes UBA.

2. By this Ruling this court is called upon to determine a Notice of Motion application dated 12<sup>th</sup> February 2020 filed by **MOHAMMED MUNYANYA KHAMIS** (Khamis). By that application Khamis seeks that he be joined in this action as an interested party. Khamis has premised that application on the ground that Anwar obtained a loan from an entity known as **SPEED CAPITAL LIMITED** (Speed Capital) in June 2015 which loan Khamis guaranteed and charged his property L.R. NGONG/NGONG/24097 as security. Further that Anwar had failed to repay that loan in accordance with the Memorandum of Understanding with Khamis. As a consequence, and in order to avoid the sale of his property by Speed Capital Khamis had repaid Anwar's loan to the tune of Ksh 6.5 million. Khamis stated that since Anwar had no

other known assets than the properties charged to UBA he needed to be joined as an interested party

### **ANALYSIS AND DETERMINATION**

3. The only issue for determination is whether Khamis has shown he has a stake in these proceeding for him to be permitted to join this action as an interested party. The costs of the application will follow the event.

4. Khamis application is based on the ground that he guaranteed Anwar's debt to Speed Capital. Anwar has failed to repay that debt. Khamis would wish to recover the amount he guaranteed from Anwar.

5. The Court of Appeal in the case **Elizabeth Nyambura Njuguna & another (suing as the Legal representatives of Njuguna Mwaura Mbogo) v E. K. Banks Limited & 2 others; Edward Kings Onyancha Maina (Interested Party) [2019] eKLR** considered who can be joined as an interested party and stated:

**“...in *MOSES WACHIRA VS NIELS BRUEL & 2 OTHERS*(supra) the court quoted the Supreme Court in *COMMUNICATIONS COMMISSION OF KENYA & 4 OTHERS VS. ROYAL MEDIA SERVICES LIMITED & 7 OTHERS* (supra) wherein the Supreme Court pronounc-ed itself on who an interested party is and held as follows:**

***“In determining whether the applicant should be admitted into these proceedings as an interested party we are guided by this Court’s decision in the Mumo Matemo case where the court (at paragraphs 14 and 18) held:***

***“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:***

***(i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;***

***(ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;***

***(iii) Joinder to prevent a likely course of proliferated litigation.***

***We ask ourselves the following questions: a) what is the intended party’s state and relevance in the proceedings and b) will the intended interested party suffer any prejudice if denied joinder.?”***

6. Khamis stated that he wishes to be joined as interested party because Anwar having defaulted in repayment of the loan granted by Speed Capital, and because Anwar had no other asset other than property L.R. MN/111/92033 Sultan Palace, Kilifi Kikambala, he would suffer prejudice if he was not joined as interested party.

7. Khamis, it should be noted, has not obtained judgment against Anwar. It remains his word against Anwar that Anwar failed to repay his debt to Speed Capital and Khamis was put in a position to repay it for him to avoid the sale of his property he offered as security of the loan of Speed Capital.

8. Secondly and perhaps more importantly, I set out at the beginning of this Ruling the properties charged to UBA as security and which are the subject of this actions. Those properties are not what Khamis stated to be the properties Anwar owns.

9. From the above it will be noted that there is no nexus or relevance between Khamis’s claim against Anwar and these actions. Khamis therefore has failed to prove that if he is not joined in this action he will suffer prejudice.

10. It is also important to note that the properties charged to UBA are registered in the name of Albright. Albright is a limited liability company. A limited liability company has its own corporate status separate from its directors. Khamis wishes to follow the debt owed by Anwar not Albright. He cannot do so in this suit.

11. The Notice of Motion dated 12<sup>th</sup> February 2020 in view of what is stated above is misconceived and it fails.

12. In the end the Notice of Motion dated 12<sup>th</sup> February 2020 is dismissed with costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 2<sup>nd</sup> day of OCTOBER 2020.**

**MARY KASANGO**

**JUDGE**

Before Justice Mary Kasango

C/A Sophie

For the Plaintiff:

For the Defendants:

**ORDER**

This decision is hereby virtually delivered this 2<sup>nd</sup> day of **October, 2020**.

**MARY KASANGO**

**JUDGE**