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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

MISCELLANEOUS APPLICATION No. 1481 OF 2021

(ARISING FROM MISCELLANEOUS APPEAL No. 007 OF 2021)

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(ARISING FROM MISCELLANEOUS APPLICATION No. 727 OF 2021)

(ARISING FROM CIVIL SUIT No. 338 OF 2021)

MARTS JP CONSULT – SMC LTD APPLICANT

VERSUS

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AIRTEL UGANDA LIMITED RESPONDENT

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

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This application was brought by Notice of Motion under Order 44 Rules 2, 3, and 4, and Order 52 Rule 1 of the Civil Procedure Rules SI 71-1, and section 98 of the Civil Procedure Act, Cap 71, where the Applicant seeks for orders that:

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1. The Applicant be granted leave to appeal against the ruling, and orders of the Learned Judge in Miscellaneous Appeal No. 007 of 2021.
2. Stay of the hearing, and or proceeding in Miscellaneous Appeal No. 007 of 2021.
3. Costs of this application be provided for.

Facts

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This Application is supported by the affidavit of Mr. Patrick John Kateeba the Applicant's Manager, in which the grounds are deposed in paragraphs 1-30, but briefly that;

- 5 I. The Applicant instituted Civil Suit No. 338 of 2021 against the Respondent, and the same was allocated to Hon. Justice Richard Wejuli. That after filing the said suit, the Applicant filed two applications to wit Miscellaneous Application No. 727, and 728 of 2021, for a temporary, and interim injunction respectively.
- 10 II. Upon hearing the said applications by His Worship Kisawuzi Erias as the trial Registrar, an order was issued in Miscellaneous Application No.727 of 2021 for a temporary injunction. The Respondent was served with the said order on 14th June, 2021, and they filed an appeal arising from the said order, which was forum shopped to Her Lordship Susan Abinyo.
- 15 III. The Respondent abused the orders issued by the Learned Registrar, and the Applicant filed an application for contempt of Court vide Miscellaneous Application No. 1269 of 2021. That the said application was allocated to His Lordship Richard Wejuli since he was the trial Judge in Civil Suit No. 338 of 2021.
- 20 IV. The Advocates for the Applicant raised a preliminary objection before Her Lordship Susan Abinyo in respect of the administrative error, and anomalies in the allocation of the appeal pending the hearing of an application for contempt of Court adjourned before the trial Judge but was dismissed on the grounds that it was proper for her to hear the appeal, and the trial Judge hears the main suit, and the application for contempt. The Learned Judge is faulted, and the Applicant intends to appeal against the same.
- 25 V. This application has been brought without delay, and that it is the interest of justice that the application is allowed.

The Respondent opposed this application in an affidavit deposed in paragraphs
30 1- 18 by Mr. Hudson Andrew Katumba the Legal, and Commercial Manager of the Respondent, and summarised as hereunder:

That he has been advised by his Lawyers M/S Verma Jivram & Associates which advice, he believes to be true that:

- 35 i. This application is misconceived, frivolous, vexatious, and an abuse of Court process.
- ii. The allegations of forum shopping are unfounded, baseless, and false since Miscellaneous Appeal No. 007 of 2021 was allocated and fixed for hearing by the Registrar of the Commercial Court and not the Respondent.