

5
THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: OWINY-DOLLO, C.J; MWONDHA; TIBATEMWA-
EKIRIKUBINZA; TUHAISE; CHIBITA, JJSC].

10
CIVIL APPEAL No.30 OF 2020

BETWEEN

15 SABRIC INTERNATIONAL LIMITED::::::::::::: APPELLANT

AND

ATTORNEY GENERAL::::::::::::: RESPONDENT

20 *[An appeal from the decision of the Court of Appeal at Kampala before:
(Hon. Justices: Elizabeth Musoke; Cheborion Barishaki and Remmy
Kasule, JJA) in Civil Appeal No.21 of 2015 dated 31st August 2020.]*

25 **Representation:** *The Appellant company was represented by
Counsel Okello Oryem of Okello Oryem & Co.
Advocates.*

*There was no official from the appellant company
present in Court*

30 *The Respondent was represented by Counsel
Goretti Arinaitwe from The chambers of the
Attorney General.*

*Both counsel filed written submissions which the
Court will base on in determination of the appeal.*

5 **summary: Doctrine of misnomer-** The doctrine applies to correct
inconsequential deficiencies or technicalities in naming
or identification of a party to a suit.

Guiding Test- The test that guides court in determining
whether or not there is a misnomer is that of a
10 reasonable reader.

JUDGMENT OF PROF. TIBATEMWA—EKIRIKUBINZA, JSC.

Facts

15 Sabric International Ltd, the appellant company entered into two
separate building contracts with the UPDF to renovate Masaka Army
Barracks. The appellant company alleged that the UPDF was guilty
of breach of the contracts by failing to pay the entire contractual sum
within the agreed time.

20 The appellant company therefore instituted a suit against the
Respondent in its representative capacity in the High Court *vide*
HCCS No. 173/2010 Sabric Building and Decorating Contractors v AG
for breach of Contract. The Company sought for an order of special,
general and aggravated damages.

25 The respondent filed its written statement of defence as well as a
Counter-claim to the effect that the appellant Company had not
executed its work to the acceptable standard and had failed to follow
the procurement laws. The respondent claimed damages from the
Company.

30 While hearing of the suit was still underway, the respondent filed
Misc- Application No. 299 of 2012; Attorney General v Sabric Building
& Decorating Constructors Ltd seeking for orders to strike out the
Company's plaint No.173/2010 for being bad in law on the ground
that the plaintiff in that suit- Sabric Building and Decorating
Contractors LTD was a non-existent party which had no capacity to
35 sue or be sued since it was not an incorporated entity.

The said application was heard by Musalu Musene J who held in
favour of the respondent and struck out the company's plaint for

5 being bad in law and for its failure to disclose a cause of action. Court further held that since the Plaintiff was non-existent, no orders as to costs were to be made.

Dissatisfied with the said Ruling, the appellant company lodged an appeal in the Court of Appeal vide *Civil Appeal No. 21 of 2015; SABRIC INTERNATIONAL LTD (erroneously stated in the plaint as Sabric Building & Decorating Constructors Ltd) v Attorney General*.

10 The Court of Appeal dismissed the appeal by a majority of 2:1. The main contention in the appeal was whether Section 100 of the Civil Procedure Act allows court through amendment to substitute a non-existent person.

15 The majority Justices of Appeal held that the settled position of law was that a suit in the names of a wrong plaintiff or defendant cannot be cured by amendment.

20 The majority Justices further held that an unincorporated association is not a legal entity capable of suing or being sued. A suit by an unincorporated body is a nullity.

25 On the other hand, the dissenting Judge (Musoke, JA) held that the laws of Uganda permit the substitution of a wrong non-existent party for the right one in appropriate circumstances. She reasoned that what is important in such cases is ensuring that all the matters in controversy are considered by the Court and that the party which is sought to be substituted for the non-existent plaintiff has sufficient connection to the dispute.

30 Dissatisfied with the majority decision, the appellant appealed to this Court on grounds that:

- 1. The learned majority justices of the Court of appeal erred in law and fact in holding that the Appellant was a non-existent party in total disregard of the prima facie evidence adduced by the appellant at the hearing in the High Court and the evidence accompanying the plaint, written statement of defence and counter claim wherein it is not denied that the appellant executed the contract with the**

5 **Respondent by renovating Masaka Army Barracks thereby occasioning miscarriage of justice.**

2. **The learned majority justices of the Court of Appeal erred in law and fact in holding that an error and/ or misnomer in describing the appellant as Sabric Building and Decorating Contractors Ltd in the plaint before the trial Court could not in all the circumstances of the Appeal be cured by an amendment under Section 100 of the Civil Procedure Act and/ or Order 1. R. 10 of the Civil Procedure Rules thereby causing a miscarriage of justice.**

3. **The learned majority justices of the Court of Appeal erred in law and fact in holding that the Appellant as the incorporated entity that contracted with the respondent's agent could not replace Sabric Building and Decorating Contractors Ltd the non-registered entity by amending the plaint.**

Prayers

The appellant prayed that the appeal is allowed and HCCS No.173 of 2010 be reinstated and amended to indicate Sabric International Limited as the plaintiff therein and the matter be heard on its merit in the High Court.

The appellant also prayed for costs of the appeal here and below.

Parties' submissions

Both the Appellant and the Respondent argued the three (3) grounds of appeal together. The appellant submitted that the issue to be resolved in the three grounds is: *whether there was a misnomer in the name of the Plaintiff company in the original suit which is curable on the basis of the written law and authorities or not.*

Appellant's submissions

Counsel submitted that there was a misnomer in the appellant's name as evidenced on the record. Counsel pointed out that, the proper party to the contracts was Sabric International Limited (the

5 present appellant). Counsel therefore argued that it was a mere
misnomer to name and describe the plaintiff as Sabric building and
Decorating Contractors Limited in the plaint filed at the trial court.
That at all material times, the respondent knew the proper party to
10 the contracts as well as the suit. Therefore, the Respondent was not
misled and suffered no injustice. The respondent was able to file a
defence to the suit and even raised a counter claim. That therefore,
the respondent knew the proper party to the suit and the party it had
contracted to carry out the renovations and even subsequently
15 advanced some money. Counsel also argued that in the event that
the trial Court had found merit in the counter claim, it would mean
that the respondent would have to recover its money from a non-
existent party.

In light of the foregoing, counsel submitted that what was required
of the trial Court was to invoke the provisions of Section 100 of the
20 Civil Procedure Act to make the necessary amendments, correct the
misnomer and hear the suit to its conclusion.

Counsel further submitted that the position of the law (that the Court
has no discretion to order an amendment to replace a non-existent
party) relied upon by the majority Justices of Appeal was not
25 applicable to the instant case because the original suit was filed by a
duly incorporated legal entity but whose name was erroneously cited
in the pleadings. That the learned majority Justices of Appeal indeed
noted that the unassailable evidence placed before the trial Court
proved that the appellant which is a duly incorporated and existent
30 legal entity was erroneously described by a different name that does
not exist. Therefore, the suit was not filed by a wrong party. It was
filed by a proper party erroneously described by a wrong name.

Counsel maintained that there was evidence on record to prove that
the appellant was duly incorporated and contracted by the
35 defendant. Counsel referred to several documents to support the
foregoing assertion. The first document appears at page 105 of the
record - the Memorandum and Articles of Association of Sabric
International Limited.

5 The second document referred to was the certificate of incorporation of the appellant in the names of Sabric International Limited.

The third document was the letter awarding the contract to Sabric International Limited to carry out renovation works, marked annexure B, which appears on the Record at page 127.

10 The fourth document was a letter dated 2nd June 2008 signed by Edward Luyinda the Managing Director of Sabric International Limited addressed to the commander Engineering Brigade UPDF. It appears on record at page 127.

15 The fifth document referred to appears at page 128 of the record and was marked annexure E; It is an interim certificate for additional works signed by the quantity surveyor, chief architect and construction regiment. The document bears information that the Contractor is Sabric International Limited.

20 The sixth document appears at page 130, which was a bank guarantee letter by Tropical bank addressed to the Permanent Secretary of the Ministry of Defense, and is marked annexure G. Counsel submitted that the guarantee letter correctly identified the contractor as Sabric International Limited.

25 Counsel also referred to annexure H appearing on the Record at page 131 which was a debit advice receipt showing partial payment by the Respondent to the appellant for executed work.

30 Counsel argued that the misnomer occurred in the filing of the suit at the trial Court by using a wrong name for the Plaintiff but that all the documents between the parties bear the correct description and name of the appellant as Sabric International Limited.

35 From the foregoing documentary evidence on record, counsel argued that the trial Court should have applied Section 100 to amend the pleadings to correct the error and proceeded to complete the hearing of the suit. In support of this argument, counsel relied on the authority of **A.N Fhake vs. World Wide Agencies Ltd (trading as**

5 **Traders)**¹, where the plaint in that case was in the names of Traders
Ltd and an application was filed to amend the plaint to the name
World Wide Agencies (trading as Traders). The amendment was
allowed and the defendants appealed against the decision raising the
arguments that the party who sued did not exist and there should
10 have been no amendment. Sir. Graham Paul. CJ held that: "*quite
clearly the plaintiffs' advocate made a mistake of giving the trading
name of the plaintiff instead of the real name. That was a mistake in
the plaint and the mistake was quite properly corrected by amendment
...*"

15 Counsel also relied on the decision of **Shamsherali Zaver Virji Vs.
F.L. Kadibhai & Others**², where there was confusion in the names
of the parties and Hon. Lady Justice A.E.N.Mpagi Bagheine held that
the mix up in the names, causing a suit to be filed in the wrong
names, is a mistake that is curable so that the real issues in
20 controversy can be determined.

Furthermore, counsel relied on the authority of **Salt works limited
& Another vs. Alimadi Osman**³. In that case, the plaintiff was
ordered to amend the plaint to delete the words Camel trade
promoters from the description of the defendant. They amended the
25 plaint but did not remove this offending description and the trial
Judge struck out the plaint. The Judge found that his order to the
wrong description of the plaintiff was not done. The plaintiffs
appealed to the Court of Appeal. Justice Engwau, JA, held that the
learned trial Judge should have read the plaint together with all the
annexures as a whole in order to ascertain the description of a person
30 the appellants had intended to sue. In his view, the question is not
whom the appellants had intended to sue but rather a reasonable
man reading all the documents in the proceedings. Justice Engwau,
JA, further held that evidence should have been called because the
35 real defendant would have been identified and the intended
defendant who was not a party would have been discharged from the

¹ (1948)15 EACA 1.

² Court of Appeal Civil appeal 81 of 2004

³ Civil Appeal No.3 of 2002.

5 suit. He concluded that in the circumstances of that case and looking at the documents as whole, it was clear that the appellants had intended to sue the respondent but wrote his name wrongly.

Counsel prayed that the Court be persuaded by the authorities cited and allow the appeal.

10 Counsel emphasized that in the instant case there would have been no injustice occasioned to the respondent if the misnomer had been corrected by amendment of the plaint at the trial. That the trial Court had the powers and duty to do so. On the contrary, by failing to allow the amendment, the appellant was occasioned a grave miscarriage of
15 justice, because it could not be heard and recover the consideration for work done under a valid contract. Furthermore, the appellant could not hold the respondent to account for breach of the contracts.

Respondent's submissions

20 The Respondent's counsel agreed with the Judgement of the lower court and prayed that it is upheld. Counsel submitted that the court correctly addressed itself on all the issues and properly applied the principles of law on the subject matter before coming to the correct decision.

25 Counsel contended that the appellant is mistaken in lodging the present appeal which is premised on a misconception that a nonexistent party can be cured by amendment.

30 Counsel submitted that the Appellant, Sabric Building and Decorating Contractors Limited does not exist as a legal entity and therefore cannot maintain an action as a party to the suit. That in founding a suit, the first move is identification of the parties to the suit. That in the suit filed in the High Court (viz HCCS No 173/2010), it is stated that the Plaintiff is Sabric Building and Decorating Contractors Limited and the Plaintiff is described as a limited liability company incorporated in Uganda.

35 Counsel stated that it was not in dispute that the company known as Sabric Building and Decorating Contractors Limited which filed HCCS No 173/2010 against the Respondent is not an incorporated

5 entity. Therefore, the appellant's submission that Sabric Building and Decorating Contractors Limited was erroneously named instead of Sabric International Limited is untenable because the said company did not exist in the first place. It followed that a non-existing party cannot maintain as a party to the suit, a cause of action in law.

10 In support of the foregoing submission, counsel referred to the holding by the majority Justices of Appeal that:

"Any entity and/or organization to qualify to institute an action in the courts of law, that entity or organization must be recognized by law since it is an elementary principle of law that an unincorporated organization is not a legal entity capable of suing or being sued. A suit
15 *by an unincorporated body is a nullity".*

Furthermore, counsel relied on the case of **Fort Hall Bakery Supply Co. Ltd vs Frederick Muigai Wangoe**⁴ where the Plaintiffs brought an action for recovery of a sum of money from the Defendant. At the
20 hearing, it turned out that the Plaintiffs were not an incorporated entity. The Court held that:

"A non-existent person cannot sue, and once the court is made aware that the Plaintiff is non-existent, and therefore incapable of maintaining the action, it cannot allow the action to proceed".

25 Counsel also referred to the case of **Banque International De Commerce De Petrograd vs Goukassow**⁵ which was quoted in the Fort Hall case (supra) where the Government of Russia had by reason of a decree, abolished the Plaintiff bank in its country of origin. On that basis, the court found that the Russian bank had no legal
30 existence anymore and could not therefore maintain the action. At page 688, Scrutton L.J held:

"The party seeking to maintain the action is in the eye of our law no party at all but a mere name only, with no legal existence. A non-existent person cannot sue, and once the court is made aware
35 *that the Plaintiff is non-existent, and therefore incapable of*

⁴ [1959] E. A 474

⁵ [1923]2 KB. 682.

5 *maintaining the action, it cannot allow the action to proceed. The order of court is that the action be struck out as the alleged Plaintiff has no existence. Since a non-existent Plaintiff can neither pay nor receive costs, there can be no order as to costs."*

10 Furthermore, counsel relied on the Constitutional Court case of **Uganda Freight Forwarders Association & Anor vs Attorney General**⁶, where court struck out the Constitutional Petition on the ground that the Petitioner, being an unregistered Association with no legal capacity was incapable of maintaining the Petition in court.

15 Regarding Section 100 of the Civil Procedure Act, counsel submitted that the above provision of the law does not apply where the party is non-existent. That a non-existent Appellant could not be substituted as in reality there is no valid plaint and where the plaint is filed, the anomaly cannot be cured under Order 1. Rule 10. That this position is well stated by Remmy Kasule J in the case of **Trustees of Rubaga Miracle Centre vs Mulangira Ssimbwa**⁷ where he held that:

20 *"The law is settled. A suit in the names of a wrong Plaintiff or Defendant cannot be cured by amendment. The Defendant described as the board of Trustees of Rubaga Miracle Centre Cathedral does not exist in law."*

25 Counsel argued that in the instant case, there was no company called Sabric and Decorating Contractors Ltd. Therefore, the issue of substitution would not arise in this case. A suit filed by a non-party is no suit at all as held in the case of Fort Hall Bakery case (supra).

30 Counsel also submitted that the cases cited by the appellant's counsel are distinguishable from the facts of this case. The case of **A. N Phakey Ltd (supra)** in which Sir Graham Paul, CJ held that it is quite clear that the Plaintiffs advocates made a mistake of giving the trading name of the Plaintiff instead of the real name, was a mistake in the plaint and the mistake was quite properly corrected by amendment was not applicable in the present matter. This is because
35 in that case the advocate who prepared the plaint used the trading

⁶ Constitutional Petition No. 22 of 2009.

⁷ Miscellaneous Application No. 576 of 2006.

5 name of the company instead of the actual company name to file the
suit. However, in the present matter, it was not argued that Sabric
Building and Decorating Contractors limited was a trading name for
Sabric International Limited..."

10 In respect of the authority of **Shasheraliza Zaver Virj**, counsel
submitted that the said case concerned a mix up of names and it is
for this reason that the court in that case observed that *a mix up in
the names was a genuine mistake as names from some ethnic groups
are sometimes not very simple to other groups and vice versa*. Counsel
15 argued that the aforementioned case is not applicable in the
circumstances of the present case as there is no way Sabric Building
and Decorators Ltd can be mixed up or mistaken for Sabric
International Limited.

20 Regarding the **Mombasa Salt Works Ltd** authority, counsel
submitted that it was distinguishable from the facts of the instant
appeal. That a perusal of the contract and the pleadings in the HCCS
No. 173/2010, there was no evidence that this matter was a
misnomer. The parties to the contract were Sabric Building and
Decorating Contractors Ltd and Ministry of Defence. The parties to the
25 contract are the same to the pleadings in the head suit vide (HCCS
No. 173/2010) and this Court has no mandate to change the parties
to the suit since it has the consequence of changing/amending the
contract.

30 Counsel argued that it is trite law that the burden of proof is on the
Appellant to demonstrate that this was a matter of misnomer which
it has failed to discharge. In support of this submission, counsel cited
Section 101 of the Evidence Act as well as the case of **Sheikh
Senyonga & 7 Others vs Sheikh Kakooza**⁸

35 Counsel therefore submitted that the trial court and Court of Appeal
arrived at a correct finding that since the Plaintiff in the High Court
suit was a non-existent entity, the courts could not exercise the

⁸ SCCA No. 9 of 1990.

5 discretion under Section 100 of the Civil Procedure Act to amend the error.

Counsel prayed that this Court does not interfere with the above findings and consequently dismisses the appeal.

Court's consideration

10 The submissions of both parties call for determination of the following issues:

(i) *Whether or not the Appellant's variation in name can be regarded as a mere misnomer; and*

15 (ii) *Whether or not the misnomer is a curable defect which affected the appellant's locus to initiate a suit in the trial court.*

According to **Black's Law Dictionary**⁹, a misnomer is defined as a mistake in name; the giving of an incorrect name to a person in a pleading, deed, or other instrument.

20 The basic function of the misnomer doctrine is to correct inconsequential deficiencies or technicalities in the names of parties. The doctrine is reflected in **Section 100** of the **Civil Procedure Act** which provides that:

25 **The court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.**

30 In addressing the issue of whether or not the appellant company was incorrectly named in the plaint filed at the trial court and could take benefit of the above provision of law, the majority Justices of the Court of Appeal made a finding to the effect that, a civil suit in the names of the wrong Plaintiff or Defendant, and which does not exist legally, cannot be cured by way of amendment of the plaint or other

⁹ 2nd Edition,

5 pleadings. Justice Cheborion, JA whose opinion formed part of the majority decision specifically reasoned that:

10 *“In exercising the discretion [stipulated in Section 100 (supra)], court should take cognizance of the requirements of Order 1 rule 10 of the Civil Procedure Rules ... amendment of a plaint under Order 1 rule 10 can only be made if the errors are minor matters of form, not affecting the substance of the identities of the parties to the suit ...*

15 *When a company does not exist legally, that is not mere form or misnomer but substance. This was not a case of misspelling or missing out of the words in the name but of non-existence. Where the amendment is to replace a party that has no legal existence, the plaint must be rejected because a plaint with only one party is no plaint at all ...*

20 *An argument was advanced that a reasonable man reading the documents would consider the error to be an honest mistake. The question is not what the writer of the document intended but what a reasonable man reading the document would understand it to mean ... I agree with the trial Judge that a reasonable man cannot say that Sabric building and decorating contractors limited can be mistaken to be Sabric International Limited.” (My emphasis)*

25 The above *ratio* was reached after a discussion of authorities such as **Trustees of Rubaga Miracle Centre v Mulangira Ssimbwa**¹⁰; **Uganda Freight Forwarders Association 2009**¹¹; **Banque Internationale de Commerce Petrograd v Goukassow**¹²; **Kilembe Mines Limited v Uganda Gold Mines Limited**¹³. In all the
30 aforementioned cases, the courts held that a non-existent company cannot be mistaken for any other company.

The foregoing holding was drawn from the reasoning of Templeton J in **The Fort Hall Bakery Supply Co. v Fredrick Muigai Wangoe (supra)** decision. In that case, the Plaintiff brought an action for

¹⁰ Miscellaneous Application No.576 of 2006.

¹¹ Constitutional Petition No.22 of 2009.

¹² [1923] 2 K.B.

¹³ HCT 312 of 2012.

5 recovery of a sum of money from the Defendant. It turned out that the Plaintiff was not an incorporated or registered entity. Templeton J held that, *the Plaintiff could not be recognized as having any legal existence, and as such they were incapable of maintaining an action and therefore the court could not allow the action to proceed.*

10 I note that all the above authorities talk about the renowned principle that an unregistered or non-existent entity is incapable of maintaining an action. I agree with the said principle. However, apart from the authorities of **Trustees of Rubaga Miracle Centre v Mulangira Ssimbwa (supra)** and **Kilembe Mines Limited v Uganda**
15 **Gold Mines Limited (supra)**, the rest of the cited cases do not deal with the issue of the applicability of Section 100 of the Civil Procedure Act to a misnomer.

20 Can it then be concluded from the above jurisprudence that the misnomer doctrine is limited in its application to cases where there is a misspell of the name of a legally existing party? What test should guide courts in determining whether a case is a mere misnomer or not?

I am persuaded by the test propounded by Devlin L.J. in **Davies v. Elsby Brothers Limited**¹⁴. In that case, the plaintiff brought an
25 action against his employers describing them in his Writ as "Elsby Brothers (a firm). He later discovered that the partnership had been changed into a limited liability company, but that discovery was made too late for him to amend his Writ before the expiration of the relevant statute of limitations.

30 In determining whether the description of the company was a mere misnomer which could be corrected or if it amounted to the addition of a new party, Devlin L.J. adumbrated a test which he regarded as of general application by which a Court can be guided in determining the question. He stated as follows:

35 *"It is a general principle of English law, not merely applicable to cases*

¹⁴ [1960] 3 ALL ER 672.

5 of misnomer, that the intention which the framer of the document has in mind when he brings it into existence is not material ...

10 In English law as a general principle, the question is not what the writer of the document intended or meant, but what a reasonable man reading the document would understand it to mean; and that is the test which ought to be applied as a general rule in cases of misnomer - which may embrace a number of other situations apart from a misnomer on a writ. for example, mistake as to identity in the making of a contract.

15 The test must be: How would a reasonable person receiving the document take it? If, in all the circumstances of the case and looking at the document as a whole, he would say to himself: Of course it must mean me, but they have got my name wrong, then there is a case of mere misnomer. If, on the other hand, he would say: 'I cannot tell from the document itself whether they mean me or not and I shall have to
20 make enquiries" then it seems to me that one is getting beyond the realm of misnomer. One of the factors which must operate on the mind of the recipient of a document and which operates in this case, is whether there is or is not another entity to whom the description on the writ might refer". (My emphasis)

25 The above reasonable reader test was applied by the Jamaican Supreme Court of Appeal in the decision of **Auburn Court Limited v Jamaica Citizens Bank Limited**¹⁵ . The brief facts of that case were that on November 20, 1985 a specially endorsed writ was filed in the Supreme Court by the respondent against four defendants
30 including Auburn Limited, as a first defendant, claiming the sum of \$4,123.723.866.74 as well as interest. On December 11, 1985 and on January 15, 1986, judgment was entered against all four defendants in default of filing a defence. Subsequently, on September 26 1967, the Master entered a default judgment ordering that the
35 writ of Summons be amended by deleting the name "Auburn Limited" and substitute it with "Auburn Court Limited". The said decision was challenged by the appellant on the ground that the Writ was issued

¹⁵ Supreme Court Civil Appeal No. 69/90.

L.T-E

5 against a non-existent entity and was therefore null and void notwithstanding purported service thereof upon the non-existent entity and the entry of appearance on behalf of the non-existent entity. On the other hand, it was argued for the respondent that the Writ was issued against an existing legal entity but due to
10 inadvertence, it was mis-named.

In determining the issue whether or not the description of the first defendant on the writ as "Auburn Limited" [instead of Auburn Court Limited] could be regarded as a mere misnomer, the Court applied the reasonable reader test and *inter alia* held as follows:

15 *"at the date of issue of the writ, ... there was no such entity as fitted the description of Auburn Limited at that time ...*

Furthermore, the third defendant must have been well aware of the applicant's indebtedness to the plaintiff ...

20 *Significantly, too, appearance was entered on behalf of all the defendants named in the plaintiff's writ.*

The present case is one of mere misdescription or misnomer which does not invalidate the writ."

25 Applying the above test to the present matter, the question to be answered is: *whether a reasonable reader in the position of the Respondent would have doubt as to the appellant's existence and the claims it lodged in the trial Court.*

30 There is overwhelming evidence on record that Sabric International Limited was well known to the Respondent. From the commencement of the contractual relationship, the documents on record (the award of the contract marked annexure "E") shows that the Respondent at all material times dealt with Sabric International Limited. Several other documents as pointed out in the Appellant's submissions are also on record showing that there were dealings between the Respondent and the Appellant Company.

35 I note that the confusion of the entity arose from communication by the Appellant on its letterhead which bore the name Sabric Building

5 and Decorating Contractors Limited. An example of such a document
is a letter marked annexure "D", addressed to The Commander,
Engineering Brigade-UPDF, dated 2 June 2008 and titled Progress
Report Rehabilitation of A/BDE Gunshed Masaka Barracks.
10 Paragraph 4 of the said letter states that: *"The management of Sabric
International Limited wishes to extend its warm gratitude and support
that was given to us during the rehabilitation period. We assure you
continuous quality technical services and loyalty."* The letter was
signed off by Edward Luyinda (Managing Director) for Sabric
International Limited.

15 Another document is a letter marked annexure "M". It appears on a
letter head bearing the name Sabric Building and Decorating
Contractors. It is addressed to a Consultancy firm known as ICM
Consultants requesting for an independent evaluation of the Bill of
Quantities quoted for the construction works. It is signed off by
20 Edward Luyinda for Sabric International Limited.

I opine that although the letterhead bearing the name Sabric Building
and Decorating Contractors was used in the appellant's
communications to the Respondent, the same was always signed off
with the name-Sabric International Limited. The documents bore
25 both names. In such circumstances, it was clear that the Respondent
was at all material times aware of the name/phrase-Sabric Building
and Decorating Contractors had a connection with Sabric
International Limited which is a legally registered entity.

It is therefore no surprise that the Respondent went ahead and
30 defended the suit brought by the appellant in the wrong name and
actually lodged a counter-claim against it. If the argument made by
the Respondent was to be upheld, then the counter-claim would also
be rendered futile.

It is also noted that the Respondent had made a partial payment to
35 the appellant for the executed work. That payment is reflected on a
Tropical bank debit receipt marked annexure "H" dated 24 Jan 2009
stating as follows: *"we have today debited your account with the sum*

5 (461,900,000.00) being part payment of 100 PCT cash margin on LG
02/196/08 BO Sabric International Limited.”

Furthermore, I note that there is no assertion by the Respondent that
the name Sabric Building and Decorating Contractors brought such
confusion as to cause them not to identify or know the entity it had
10 contracted to carry out the renovation works.

From the above analysis, I opine that institution of the suit by the
appellant in a wrong name did not change the fact that the
Respondent had taken benefit of the appellant’s expertise through
executed works but later uses the mishap to decline to pay the
15 appellant its full consideration on the premise that it brought a claim
for its money in the names of a non-existent party. In the interest of
Justice, the Respondents cannot be allowed to take benefit from the
contract and later on turn around to deny payment for the work done
on the ground that the claimant is non-existent. This would fall foul
20 of the doctrine of approbating and reprobating which is to the effect
that a person cannot approve of or take benefit from an action and
later disapprove of it.¹⁶

Arising from the above analysis, I hold that a reasonable reader can
clearly see that Sabric Building and Decorating Contractors Limited
25 was a misnomer for Sabric International Limited; and that misnomer
is curable by Section 100 of the Civil Procedure Act. The misnomer
was a technicality and **Article 126 (2) (e)** of the **Constitution** enjoins
this Court to administer substantive justice without undue regard to
technicalities.

30 In the result, I would allow the appeal and set aside the majority
judgment of the Court of Appeal. Consequently, I would order that:

1. The plaint instituted by the appellant in the names of Sabric
Building and Decorating Contractors Limited be reinstated and
amended to reflect the correct entity-Sabric International
35 Limited.

¹⁶ Osborn’s Concise Law Dictionary, 11th edition, page 35.

L.T.E

5 2. The matter be remitted to the High Court to be determined on
the merits.

10 3. The Costs of this appeal as well as those in the Courts below be
granted to the Appellant.

Dated at Kampala this...13th... day of...October..... 2023.

W. Isalense

15

.....
PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

**CORAM: OWINY-DOLLO, CJ; MWONDHA, TIBATEMWA-EKIRIKUBINZA, TUHAISE &
CHIBITA, JJSC**

CIVIL APPEAL NO. 30 OF 2020

**SABRIC INTERNATIONAL LIMITED.....APPELLANT
VERSUS**

ATTORNEY GENERAL RESPONDENT

*(Arising from the decision of the Court of Appeal in Civil Appeal No. 21 of
2015)*

JUDGMENT OF OWINY - DOLLO; CJ

I have had the benefit of reading in draft the judgment of my learned sister Tibatemwa-Ekirikubinza, JSC. I concur with the reasoning, conclusions, and orders proposed therein.

Since Mwendha, Tuhaise, Chibita, JJSC, also agree, orders are hereby issued in the terms proposed by Tibatemwa-Ekirikubinza JSC in her judgment.

Dated, and signed at Kampala this ^{13th} day of October 2023


Alfonse C. Owiny + Dollo

Chief Justice

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA TA KAMPALA

(Owiny-Dollo, CJ, Mwendha, Tibatemwa-Ekirikubinza, Tuhaise, Chibita, JJ.SC)

CIVIL APPEAL NO. 30 OF 2020

SABRIC INTERNATIONAL LIMITED.....APPELLANT

VERSUS

ATTORNEY GENERAL.....RESPONDENT

(Appeal arising from the judgment and orders of the Court of Appeal at Kampala before Musoke, Cheborion Barishaki, JJA and Kasule, Ag. JA, dated 31st August 2020)

JUDGMENT OF MWONDAH, JSC

I have had the benefit of reading in draft the judgment of my learned sister Prof. Tibatemwa-Ekirikubinza, JSC. I concur with the reasoning, decision and the proposed orders.

..........

Mwendha
Justice of the Supreme Court.

13th - October 2023

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Owiny-Dollo, CJ, Mwendha, Tibatemwa-Ekirikubinza,
Tuhaise, Chibita, JJ.S.C)

CIVIL APPEAL NO. 30 OF 2020

BETWEEN

SARBRIC INTERNATIONAL LTD :::::::::::::::::::: APPELLANT

AND

ATTORNEY GENERAL :::::::::::::::::::: RESPONDENT

[Appeal from the decision of the Court of Appeal of Uganda delivered by Hon. Lady Justice Elizabeth Musoke, JA, Hon. Mr. Justice Cheborion Barishaki, JA and Hon. Mr. Justice Remmy Kasule, JA delivered on 31st August, 2020 in Civil Appeal No. 21 of 2015]

JUDGMENT OF PERCY NIGHT TUHAISE, JSC.

I have had the benefit of reading the Judgment of Hon. Lady Justice Prof. Tibatemwa-Ekirikubinza, JSC.

I agree with the decision, and the orders therein.

Date at Kampala, this 13th day of October 2023.



Percy Night Tuhaise

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

*(CORAM: Owinyi-Dollo, C.J; Mwendha, Tibatemwa–Ekirikubinza, Tuhaise,
Chibita; JJSC)*

CIVIL APPEAL NO. 30 OF 2020

BETWEEN

SABRIC INTERNATIONAL LIMITED:.....APPELLANT

AND

ATTORNEY GENERAL:.....RESPONDENT

*{Appeal from the decision of the Court of Appeal at Kampala (Musoke,
Barishaki, Kasule; JJA). Dated 31st August, 2020 in Civil Appeal No. 21 of
2015}*

JUDGMENT OF MIKE J. CHIBITA, JSC.

I have had the benefit of reading in draft, the Judgment of my learned sister Hon. Justice. Prof. Lillian Tibatemwa-Ekirikubinza, JSC. I agree with her decision that this Appeal should succeed for the reasons she has given in her Judgment. I also agree with the Orders she has proposed.

Dated at Kampala this 13th day of October 2023



MIKE J. CHIBITA
JUSTICE OF THE SUPREME COURT