

UGANDA / JUDGMENT

Abaho & 4 Others v Rwabushaija & 22 Others (Miscellaneous Application 258 of 2022) [2023] UGHC 415 (11 August 2023)

[2023] UGHC 415

COURT

High Court of Uganda

BEFORE

Katamba Nkwanga, J

CASE / FILE NUMBER

Miscellaneous Application 258 of 2022

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

MISCELLANEOUS APPLICATION NO. 258 OF 2022.

(ARISING FROM CIVIL SUIT NO.48 OF 2021)

- 1. ABAHO ANANIA
- 2. NUWE OMUHEREZA
- 3. MUNYOOGA JOHN
- 4. KAMUKAMA ABEL
- 5. BIRABO JOYCE:.....APPLICANTS.

VERSUS

1. RWABUSHAIJA STEVEN AND 21 OTHERS

2. COMMISSIONER LAND REGISTRATION:.....RESPONDENTS

Before; Hon. Justice Victoria Nakintu Nkwanga Katamba

RULING

This Application was brought under Section 98 of the Civil Procedure Act Cap 71, Order 9 Rule 23, Order 52 Rule 1 and 3 of the Civil Procedure Rules SI 71-1 seeking the following orders that;

- 1. The order dismissing Civil Suit No.48 of 2021 be set aside and Civil Suit No.48 of 2021 be reinstated, heard and determined on its merits.
- 2. Costs of the Application be provided for.

The Application was supported by an affidavit deponed by Gordon Bagambe who was appointed by the first Applicant, Abaho Anania as his lawful attorney and the Deponent states as follows, that;

1. The Applicants instituted Civil Suit No.48 of 2021 against the Respondents.

- 2. The parties to the suit filed their respective pleadings and the matter came up for directions before the Learned Registrar in January 2022 where after, the matter was later adjourned to 21st September at 10.00am. The process was concluded and the matter was forwarded to the Trial Judge to be heard on 9th November 2022.
- 3. On 9th November 2022 when the matter came up before the Judge, the same was dismissed for nonattendance of the Plaintiffs or their Counsel.
- 4. Counsel in personal conduct of matter made all efforts to reach court in time and indeed arrived at Court shortly after the matter was called and found that it had been dismissed with costs.
- 5. The Applicants intended on attending Court that day but their attendance was interrupted by a heavy down pour that disrupted transport means from the village to Masaka Court.
- 6. Non-attendance was a mistake of Counsel that should not be visited on the litigants.

An affidavit in reply was deponed by the 1st Respondent, Rwabushaija Stephen on his behalf and on behalf of all the other Respondents except the Commissioner Land Registration. The Deponent states as follows, that;

- 1. The suit land no longer exists owing to the fact that the certificates of title were cancelled.
- 2. The Application has been overtaken by events.
- 3. Prior to dismissal, the learned Trial Judge had perused the record of proceedings and noted that the matter had on several occasions been called for directions but the Applicants did not appear thus indicating that the Applicants/Plaintiffs had lost interest in the case.

- 4. The matter was fixed for 9th November 2022 by the Applicants lawyers however, they never entered appearance and that even after an hour after the matter was determined in absence of the Applicants or their Counsel, neither the Applicants nor their Counsel appeared at Court.
- 5. The Applicants nor their Counsel has ever complied with Court's orders of filing a trial bundle or witness statements.

Both Parties filed written submissions. Counsel for the Respondent raised preliminary points of law;

- 1. The affidavit in support is incurably defective as it was sworn by a Person with void powers of attorney.
- 2. The 2nd to 5th Applicants are suing for the estate of the late Lazaro Ikaga and they never swore any affidavit in support for reinstatement of a suit in regard to their late father's estate.
- 3. The 21 other Respondents are not known.
- 4. The Suit is over taken by events.

Submissions for the Respondent on the Preliminary objections

1. **The affidavit in support is incurably defective as it was sworn by a person with void powers of attorney.**

Counsel submitted that there is only one affidavit in support and the same was deponed by Gordon Bagambe who was acting under authority of powers of attorney granted to him by the 1st Applicant Kagalama Anania. However, the authority delegated to the Deponent was authority derived from the letters of Administration granted to the 1st Applicant. Counsel submitted that an Administrator cannot delegate authority derived from letters of administration. Counsel relied on Nakabuye Agnes versus Martin Stokes and Another, HCMA. No.38 of 2021 to support his submission. Counsel also submitted that the authority granted to the Deponent was void and as such the affidavit in support is fatally defective.

2. The 2nd to 5th Applicants are suing for the estate of the late Lazaro Ikaga and they never swore any affidavit in support for reinstatement of a suit in regard to their late father's estate.

Counsel submitted that the Affidavit in support was deponed on behalf of only the 1st Applicant under void powers of attorney. The result being, the 2nd to 5th Respondents have not furnished any evidence to support reinstatement of the suit and they therefore concede.

3. The 21 other Respondents to the Application are not known.

It was submitted that the Application fails to identity the other 21 Respondents. Counsel submitted that this leaves Court to speculate on who the other Respondents are. Counsel submitted that this amounts to an abuse of Court process. Counsel cited Hon. Gerald

Kafureeka and Another versus Attorney General and others, HCMC. No.060 of 2015 to support his submissions.

4. The suit is over taken by events.

It was submitted that Civil Suit No.48 of 2021 was premised on the registrable and legal interest in land comprised in FRV MSK 458 Folio 8 Block 26 Plot 17 Land at Kashunga formerly LRV 2238 Folio 6, Mawogola Block 26 Plot 17 and the Applicants were seeking a declaration that the suit land belongs to the estates of the late Kagalama Anania and Lazaro Ikaga.

Counsel submitted that the Respondents no longer hold legal interest in the suit property since the certificates of title were cancelled by the Commissioner Land Registration.

Counsel submitted that as a result, determination of the suit will be academic. Counsel relied on Mark Kamanzi versus NDA and Another, HCMC. No.206 of 2017.

It is this Court's observation that the Applicant never filed a reply to the preliminary objections raised. I shall therefore dispense with the Applicants' submissions and proceed to determine the preliminary objections.

Determination of Preliminary objections.

A preliminary objection consists of an error on the face of the pleadings which rise by clear implication out of the pleadings and which, if argued as a preliminary objection may dispose of the entire matter. (See: *Mukisa Biscuits Manufacturing Co. Ltd. versus West End Distributors Ltd (1969) EA 696.*)

1. The affidavit is incurably defective because it was deponed by a person with void powers of attorney.

A power of attorney is a deed by which one person empowers another to represent or act in his stead generally or for specified purposes. It is a document which grants authority of the principal to an agent to act on behalf of the principal. (See: *Serufusa Ronald versus Zirimenya Jimmy and others, COACA. No.16 of 2013*).

On a perusal of the powers of attorney attached to the affidavit, it is my observation that the 1st Applicant, Abaho Anania, as an administrator of the estate of the late Kagalama Anania, granted authority to Bagambe Gordon to appear on his behalf in Court in relation to Civil Suit No.48 of 2021 and to also do, sign and execute all such documents as may be necessary and incidental to the suit.

As to whether an administrator can delegate his duties with regards to litigation, Section 264 of the Succession Act is instructive. *Section 264* of the *Succession Act* provides that; *After any grant of probate or letters of administration, no person other than the person to whom the same has been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, until the probate or letters of administration has or have been recalled or revoked.* (emphasis is mine)

The above provision is very clear that no other person besides the holder of letters of administration can act on behalf of deceased generally but more specifically with respect to suing and prosecuting of any suit.

This also implies that the powers granted under letters of Administration cannot be delegated and any delegation thereof is void.

This was the position in *Nakabuye Agnes versus Martin Stokes, HCMA. No.38 of 2021* and I see no reason to depart from the above position.

I am also in agreement with the above position because letters of administration granted to a person come with authority that can only be granted by Court and in delegating such authority, a person would be usurping the powers of Court. According to the law, only the Court has power to grant or revoke such authority.

The Applicant as administrator of estate of late Kagalama Anania in issuing powers of Attorney to Bagambe Gordon which entailed authority to also depone an affidavit on behalf of the Applicant, put Bagambe Gordon in a position of the Applicant. The effect being that the said Bagambe Gordon was acting on behalf of the estate of the late Anania on authority

of powers of Attorney and not letters of Administration. Considering the fact that an Administrator cannot delegate their duties as observed earlier and that only a holder of letters of Administration has authority to act on behalf of a deceased person, the powers of attorney issued to the said Bagambe Gordon and the acts of Bagambe Gordon swearing an affidavit on behalf of the 1st Applicant as an Administrator are both void.

In light on the above, the affidavit in support deponed by Bagambe Gordon on behalf of the 1st Applicant (Administrator) is incurably defective or invalid for want of authority.

Where there is only one affidavit in support of an Application and the affidavit is found to be invalid, the Application cannot stand because it is not supported by any affidavit. (See: *SSali Samuel versus Gladys K. Rwamwamba, HCMA. No.514 of 2014*).

Having found that the Affidavit in support of this Application is invalid, the Application is not supported by any affidavit and therefore, the Application cannot stand.

The preliminary objection is upheld.

Having found that the preliminary objection succeeds, I do not find it necessary to address the merits of the Application.

This Application is hereby dismissed with costs to the Respondents.

Subject to the law of limitation, I would advise the Applicants to file a fresh suit.

I so order.

Dated and delivered electronically at Masaka this 11th day of August 2023.

Victoria Nakintu Nkwanga Katamba. Judge.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://ulii.org/akn/ug/judgment/ughc/2023/415/eng@2023-08-11
CASE PAGE	https://chat.esheria.ai/case-law/uganda/abaho--4-others-v-rwabushaija--22-others-miscellaneous-application-258-of-2022-2023-ughc-415-11-august-2023-unknown-topic-unknown-court-2023--6a3ea4db3b1caa91297e8a2d

Prepared on 13 October 2026 · Esheria