

**Aribariho v Nakayiki (Miscellaneous
Application No. 56 of 2021) [2021]
UGHCCD 211 (5 November 2021)**
[2021] UGHCCD 211

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The grounds of the application as contained in the affidavit of Aribariho Andrew the Applicant are briefly that;

- 1. The pleadings in Civil Suit No. 77 of 2020 were signed by a one Terzol Jobey as "Attorney for the Plaintiff" with no instrument attached conferring Powers of Attorney to the said Terzol;
- 2. The pleadings are incompetent at law and practice and an illegality that should be struck out of Court record;

In his affidavit in reply, Terzol Jobey stated that the application is misconceived and raises matters handled at preliminary stages of suits. He further stated that he holds Powers of Attorney conferred to him on the 1st day of December 2020. He contends that he filed the Civil Suit in December 2020 under Covid-19 lockdown and was not able to access URSB to register the Power of Attorney.

Both Parties filed written submissions which I will refer to in my determination of the application.

I have carefully examined the Plaintiff in the main suit and established that it was filed in the names of Nakayiki Gilaida, the Plaintiff. Paragraph 1 of the plaintiff states that;

The plaintiff is an adult Ugandan of sound mind whose address for the purpose of this suit is care of Plot 4 Berkeley Road Old Kampala, P. O Box 72022, Kampala, and telephone number 0759614542, 0786001453.

That she is an adult female Ugandan citizen presumed to be of sound mind and the plaintiff's Advocate Attorney undertakes to effect court process onto the Defendant.

From the reading of those paragraphs it is clear that the Plaintiff intended to file the suit in her own capacity and not through an attorney. There is no mention of a representative or lawful attorney.

However, at the foot of the Plaintiff, the Plaintiff did not append her signature but rather, the Respondent Terzol Jobey signed as "*Attorney for the Plaintiff*".

The Plaintiff was also drawn and filed by the said Terzol Jobey, the Respondent. It is not clear whether the Respondent drafted and filed the pleadings as the Plaintiff's representative or lawful attorney.

Nevertheless, for one to represent another as attorney, they must be either an Advocate validly allowed to practice in the Courts of Judicature in Uganda or a lawful attorney holding Powers of Attorney authorizing them to act in such representative capacity. In the instant case, the Respondent needed to have valid powers of attorney authorizing him to act in such representative capacity in matters pertaining to the Plaintiff's suit.

The Respondent is not an Advocate of the Courts of Judicature in Uganda and he has not adduced any evidence as such, therefore he has no authority or instructions whatsoever to sign Pleadings on behalf of the Plaintiff.

At the time of filing the Complaint, the Plaintiff and respondent did not attach a valid power of attorney giving the Respondent authority to sign the Complaint as the Plaintiff's attorney.

There is no evidence as to his appointment as the Plaintiff's attorney with authority to draft, sign and file pleadings on the Plaintiff's behalf. Counsel for the Applicant submitted that this is an illegality that renders the pleadings incurably defective and prayed for the Complaint to be struck out.

The Respondent argued that this was simply a technicality that was cured at the hearing for summons for directions. The Respondent adduced a power of attorney purportedly conferring him powers to file the suit on 1st December, 2020. The document attached was purportedly signed by the donor on 1st December 2020 and witnessed on 9th December 2020. For one to be called a witness to a document, the document has to be executed in their presence.

The power of attorney was purportedly granted on the 1st day of December, 2020, commissioned on the 9th day of December, 2020, and registered on the 5th day of May, 2021. The Complaint was filed on the 7th day of December, 2020.

A Power of Attorney according to the *Osborn's Concise Law Dictionary 11th Edition page 315* is a deed by which one person empowers another to represent or act in his stead either generally or for specified purposes. A Power of Attorney grants authority of the Principal to an agent to act on behalf of an agent. *See Gold Trust Bank (U) Ltd vs Josephine Zalwango Nsimbe HCCS 226/1992.*

At the time of filing the impugned Complaint, the Respondent clearly did not have authority. He blames the delays in registering the Power of Attorney on the restrictions surrounding the Covid19 Pandemic. This court however takes judicial notice of the fact that the Uganda Registration Services Bureau was open for service in December 2020. The Respondent therefore had sufficient time to validate his power of attorney before filing the suit without authority to do so.

A complaint filed in the names of a Plaintiff and signed by another person purporting to be his attorney without a valid power of Attorney attached cannot stand as this court cannot establish whether this is a fictitious suit or not. An attorney must have a valid power of attorney at the time of filing the Complaint in a representative capacity.

I therefore find that there was no valid power of attorney at the time of filing the suit. The power of attorney in the instant case would have given the Respondent authority to institute the suit on behalf of Nakayiki Gilaida. There was no such power of attorney and as such, the Respondent did not have authority to institute Civil Suit No. 77 of 2020.

Furthermore, if the Respondent was instituting the suit as the Plaintiff's lawful attorney, this should have been clearly indicated in the Complaint. Without any such authorization or instruction, the Respondent remains foreign to the Complaint and the Complaint cannot stand.

Having found that there was no valid power of attorney at the time of filing the suit, I find that the Plaintiff is fatally defective and hereby strike it out with costs. The Plaintiff should properly file a fresh suit. Costs should be personally paid by Terzol Jobey.

I so order.

Dated at Masaka this 5th day of November, 2021

Signed;

Victoria Nakintu Nkwanga Katamba - Judge

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