

UGANDA / JUDGMENT

**Godfrey Katunda v Betty Atuhair
Bwesharire, Naboth Atamba(2)
(HCT-05-CV-MA-0203-2004)
(HCT-05-CV-MA-0203-2004)
[2005] UGHC 104 (27 April 2005)**

[2005] UGHC 104

COURT

High Court of Uganda

CASE / FILE NUMBER

HCT-05-CV-MA-0203-2004

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Counsel for the respondents, Mr. Ngaruye, raised preliminary objections to the application which
 Mr. Bwengye, counsel for the applicants was sent to prosecute. A summary of }{\rtlch\fcs1 \af0
 \ltrch\fcs0 \insrsid1792989\charrsid1792989 these objections}{

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989 should serve for perspective.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 1. That the affidavits of
 Kamujanduzi, one sworn on 24th November 2004 and the other sworn on }{\rtlch\fcs1 \ab\af0
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\insrsid2035377\charrsid1792989 t }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989
 January 2005 contradicted each other in factual content and should be struck ou

t because they are false. Similarly the affidavit of Ahimbisibwe sworn on 31st January 2005
 factually varied from that of the applicant and because there was a manifest falsehood the af}
 {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989 fidavi

ts should be struck out.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 2. That the affidavit of
 Ahimbisibwe David dated }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989 31s}{\rtlch\fcs1 \ab\af0
 \ltrch\fcs0 \insrsid2035377\charrsid1792989 t }{\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid2035377\charrsid1792989 January 2005 should }{\rtlch\fcs1 \af0 \ltrch\fcs0
 \insrsid1792989 be struck out also because Ahim}{\rtlch\fcs1 \af0 \ltrch\fcs0
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bisibwe lacked capacity to swear the affidavit, being neither a holder of powers of attorney, a
 person duly authorized or}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989 an Advocate for the
 applicant.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 3. That the two affidavits of the
 applicant sworn on }{\rtlch\fcs1 \ab\af0 \ltrch\fcs0 \insrsid1792989 31s}{\rtlch\fcs1 \ab\af0
 \ltrch\fcs0 \insrsid2035377\charrsid1792989 t }{\rtlch\fcs1

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January 2005 and that of Ahimbisibwe sworn the same day were supplementary affidavits filed after the respondents had filed their replies and as such the affidavits and what annextures they carried should be struck out because they w

ere filed without leave of court. }}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989

\par }}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 4. That prayer 6 of the application sought return of cattle and restoration of property worth Shs. 30,000,000/= but because appropriate fees was not paid the application was}}\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid1792989 thereby rendered incompetent.

\par }}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 5. That the applicant has no cause of action in the application given that the second prayer being sought regards a warrant which is annexure G to the applicant\rqoute

s affidavit and the parties mentioned in the warrant are Bea}}\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid1792989 trice Bwesharire and Amos Kamuj}}\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid2035377\charrsid1792989 an}}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989

duzi.

\par }}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 It is premature to speak of obvious falsehoods whatever the contradictions in the first point of objection might be. In the cases of }}\rtlch\fcs1 \ai\af0 \ltrch\fcs0

\i\ul\insrsid2035377\charrsid1792989 Jetha Brothers vs Mbarara 7W\rqoute unicipal Council and 4 others, }}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 HCT-05-CV-MA-0031-2004 (unreported) and }}\rtlch\fcs1 \ai\af0 \ltrch\fcs0

\i\ul\insrsid1792989 Sirasi Bitait}}\rtlch\fcs1 \ai\af0 \ltrch\fcs0

\i\ul\insrsid2035377\charrsid1792989 an}}\rtlch\fcs1 \ai\af0 \ltrch\fcs0 \i\ul\insrsid1792989 a & 4 others vs Emmanuel }}\rtlch\fcs1 \ai\af0 \ltrch\fcs0

\i\ul\insrsid2035377\charrsid1792989 Kananura }}\rtlch\fcs1 \af0 \ltrch\fcs0

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[1977] HCB 34 a single affidavit was scrutinized. In each of the cases the affidavit exuded falsehoods which went to the root of the averment. Where more than one affidavit is involved each of the affidavits has to be cons

idered separately before a decision is reached, on the aggregate, whether there are any falsehoods involved. As this would involve hearing I should at this sta}}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989 ge reject the first objection.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 As for the second objection there is nothing to stop a litigant,

where necessary, assembling as much evidence as is possible in support of his case. The only difference lies in certain representative actions where a particular procedure has to be adopted. The case of }{\rtlch\fcs1 \ai\af0 \ltrch\fcs0

\i\ul\insrsid2035377\charrsid1792989 Joy Kaingana per John Kaingana vs Dabo Boubon }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 [1986] HCB 59 is but one in point. As for Ahimbisibwe\rqoute

s affidavit no special procedure would be necessary and as such it is distinguishable. This obje}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989 ction also should be rejected.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 While I own the two affidavits of the applicant of 31}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid12723669 st}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989

January 2005 and that of Ahimbisibwe of the same date were filed without leave of court I am not persuaded there is anything am}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989 iss. This objection too fails.

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 The next ground of objection relates to court fees which counsel for the respondent alleges remained unpaid. The law requires that all fees ought to be paid. Where the requisite }{\rtlch\fcs1

\af0 \ltrch\fcs0 \insrsid1792989\charrsid1792989 fee is}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 partially paid the action }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989 is not struck out as Mr. Ngaruye}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid2035377\charrsid1792989 would have us believe. Rather court orders that the balance be paid up by the relevant litigant. Refer to }{\rtlch\fcs1 \ai\af0 \ltrch\fcs0 \i\ul\insrsid2035377\charrsid1792989 Paul Kalule vs Losira Nanozi, }{\rtlch\fcs1

\af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 High Court Civil Appeal No. 18 of 1974 (unreported). }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 Since the applicant paid some fee to court when this application was filed he should expeditiously make good any balance with the Registry. That would dispose of the objection. \line

Finally counsel for

the respondent submitted that the applicant has no cause of action given that an annexure to the affidavit in support of the application does not contain his name. That annexure is annexure G. Given that the application involves a multiplicity of docum

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nts my view is that this matter be determined after hearing of the actual application. In any case the administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors

and lapses should not necessarily deter a litigant} {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989 from pursuit of his rights. See} {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 } {\rtlch\fcs1 \ai\af0 \ltrch\fcs0

\i\ul\insrsid2035377\charrsid1792989 Essaji vs Solanki } {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 [1968] EA 223. } {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989 I reject this objection also.

\par } {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 Hearing of the application should proceed with costs of this objection in the cause. } {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377

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\par Judge} {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1792989

\par 27th} {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid2035377\charrsid1792989 April 2005

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