

UGANDA / JUDGMENT

Huthy Dart Mutumba v Pamco Real Estate Agency Limited (H.C.Miscellaneous Application No. 1277 of 2020) [2020] UGHCLD 62 (14 December 2020)

[2020] UGHCLD 62

COURT

HC: Land Division (Uganda)

BEFORE

Kazaarwe, J

CASE / FILE NUMBER

H.C.Miscellaneous Application No. 1277 of 2020

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION) MISC. APPLICATION NO 1277 OF 2020 5 MISC. CAUSE NO.92 OF 2020

HUTHY DAT MUTUMBA -----APPLICANT

V

10 PAMCO REAL ESTATE AGENCY LTD-----RESPONDENT

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

The applicant brought this application against the Respondent for orders that the Order issued in Miscellaneous Cause No.92 of 2020 for removal of caveat in Kyadondo Block 192-Plots 3334-3335, land at Buwate be stayed, the Order in Miscellaneous Cause No.92 of 2020 for removal of the said caveats be set aside and costs of this application to be provided for.

When this matter came up for hearing on the 3rd November 2020, Counsel for the Respondent raised a preliminary objection to the effect that the affidavit supporting the application sworn by Mr. Mutegyeka Nicholas was defective since he lacked the 25 authority to depone the affidavit on behalf of the Applicant.

Submissions by Counsel for the Respondent

Counsel for the Respondent submitted that the affidavit supporting the application was sworn by Mr. Mutegyeka Nicholas who did not state whether he had authority or power to depone the affidavit on behalf of the Applicant an action which offends the rules and cannot support the application. He therefore prayed that it be struck out and the 5 application dismissed with costs to the Respondent.

Submissions in Reply

Counsel for the Applicant in reply, submitted that the affidavit sworn by Mr. Mutegyeka indicates the capacity in which he swore the affidavit as an advocate working with

10 Katarikawe & Co. Advocates which firm is on record as Counsel for the Applicant. He relied on Order 2 of the Civil Procedure Rules which provides that an advocate is/are recognized agents of their clients.

Counsel further argued that this was a matter relating to an application received by

15 Katarikawe & Co. Advocates who were well versed with the facts pertaining to this matter. The advocate had clear instructions to represent the client and this is why the Respondents served them with a copy. He added that the Application raises issues of an illegality which once raised in court overrides all other issues including this objection. He thus prayed that the objection be overruled with costs.

Rejoinder

Counsel for the respondent in rejoinder submitted that he had perused the affidavit and it does not indicate the capacity in which the deponent swore the affidavit. He further submitted that there is no record on the application where Katarikawe & Co. Advocates 25 entered appearance or had any instructions from the Applicant. Counsel went on to argue that the service of Court process on them was based solely on the address contained in the caveats but it did not mean that those were the advocates.

It was also his argument that the fact that the advocate or any other person is versed with the affairs of Court case does not in law give him/her automatic authority to depone an affidavit.

Issue

Whether the Applicant's affidavit in support is defective and should be struck off the court record?

RESOLUTION

- 10 Order 3 r 1 of the Civil Procedure Rules provides as follows;

- *Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his or her recognised agent, or by an advocate duly appointed to act on his or her*
- 15 *behalf; except that any such appearance shall, if the court so directs, be made by the party in person.*

Mr. Mutegyeki Nicholas stated in his supporting affidavit under paragraph 2 that;

20 *"That I am an advocate working with M/S Katarikawe & Co Advocates and well conversant with facts pertaining to this application"*

According to the **Uganda Civil Justice Bench Book, 1st edition, 2016, at page 30**, an 25 advocate with knowledge of the facts of the matter before court may swear an affidavit. However, an affidavit sworn by counsel in personal conduct of the matter is fatally defective. See **Regulation 9 of the Advocates (Professional Conduct) Regulations and the case of Ismail T/a Bombo City Stores v Alex Kamukamu & Others T/a Bazari SCCA 7/1987** which reaffirm the position that an advocate should not act as a witness and counsel in the same matter.

This court finds that the description of the deponent in paragraph 2 of the affidavit is 5 sufficient to explain the capacity under which Mr. Mutegyeki swore the affidavit; not as a representative of the Applicant under Order 1 of the Civil Procedure Rules, or an advocate in personal conduct but an advocate with knowledge of the facts pertaining to the application. The affidavit is therefore not defective.

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I hereby overrule the preliminary objection with costs in the cause.

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15 Olive Kazaarwe Mukwaya

Judge

14th December 2020

Delivered by email to Counsel for the Applicant and the Respondent.

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