

UGANDA / JUDGMENT

Lugazi Progressive & Another v Sserunjogi & 4 oers (Misc.App. No.50 Of 2000) (Misc.App. No.50 of 2000) [2000] UGHC 32 (28 December 2000) [2000] UGHC 32

COURT

High Court of Uganda

CASE / FILE NUMBER

Misc.App. No.50 of 2000

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\par }{\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid11408858 \line IN THE HIGH
COURT OF UGANDA, AT MBARARA}
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\par MISC. APPLICATION NO.0050 OF 2000

\par \line Arising From LCSC NO.24 OF 1997

\par }{\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid11408858 \line 1. LUGAZI
PROGRESSIVE SCHOOL}{\b\lang1033\langfe2057\langnp1033\insrsid11408858) \line 2.
IMMACULATE MUTUTA}{\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid11408858)}
{

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\par \line }{\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid11408858 VS}
{\b\lang1033\langfe2057\langnp1033\insrsid3950822\charrsid11408858

\par SSERUNJOGI }{\b\lang1033\langfe2057\langnp1033\insrsid14102119 AND 4 }
{\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid11408858 OTHERS}
{\b\lang1033\langfe2057\langnp1033\insrsid3950822\charrsid11408858
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after hearing the case, gave judgment in favour of the respondents. The Chief Magistrate of Mbarara subsequently allowed the LC 1 court of Lugazi, in accordance with the provisions of subsection (3) of section 4 of the Resistance Committees (Judicial Powe

rs) Statute, 1988, to go ahead and execute its judgment. This application now seeks a revisional order setting aside both the LC 1 court's judgment and the Chief Magistrate's

s order allowing the LC1 court to execute the judgment, on the ground that the judgment was a nullity owing to alleged lack of competence jurisdiction in the matter.

\par } The first objection raised by learned counsel, Mr. Zehurikize, is that this application is not competent because the affidavit, deponed in support of it must be struck out ow

ing to the fact that the two Annextures attached to it, and marked as annextures A and B, were not verified by the Commissioner for Oaths. That omission, according to counsel, contravenes rule 8 of the Commissioner for Oaths Rules. Rule 8 of the Commissio

ner for Oaths Rules, according to learned counsel is mandatory and non-compliance with it would render the affidavit to which annextures are attached defective and must be struck out.

\par \line To support his submission, learned counsel relied upon two decisions of this court. One is the decision in {

\ul\lang1033\langfe2057\langnp1033\insrsid3950822 Feroz Kassam }

{\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 v. The Commissioner }

{\ul\lang1033\langfe2057\langnp1033\insrsid3950822 of Land Registration, Misc. Appl}{

\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 . No. 24 of 1996. }

{\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid3950822 The other is James}

{\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536

Matsiko, Advocate vs. Uganda }{\ul\lang1033\langfe2057\langnp1033\insrsid3950822 Railways Corporation, Misc. Appl}{\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 . No. 826 of 1998. }

\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 I have had the advantage of read

ing both those decisions. In both decisions this court held that where annextures to an affidavit have not been verified as required by rule 8 of the Commissioner for Oaths Rules, the application supported by such an affidavit would{

\lang1033\langfe2057\langnp1033\insrsid3950822 }

{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 have no probative value.

As a result, it would be struck out and the motion would be dismissed owing to the fact that it cannot stand without an affidavit in support.}

However, I am unable to follow the decision in both cases cited by learned counsel. For the Court of Appeal of Uganda in }

Uganda Corporation Creamaries Ltd. And Henry Kawalya vs. Reamation Ltd., }
judicially considered the same point. The Cour}{

t of Appeal, per Engwau, J. A.}
stated}
, '93As }

long as an affidavit is properly sworn before a Commissioner for Oaths, it is compet

ent. It is also my very well considered view that such an affidavit may or may not have exhibits attached to it. In the event of exhibits having been attached to affidavits, then all such exhibits must be sealed by the Commissioner for Oaths and must be m

arked with serial letters of identification as required by Rule 8.'94 }
(Emphasis Added) }
{

\line }
{
{

Elsewhere in the ruling, Engwau J. A. drew a distinction between '93exhibits'94 and '93annextures'94 attached to affidavits commissioned by Commissioner for Oaths. The Court of Appeal was of the view that rule 8, of the Commissioner for Oaths Rules,

\line applied only to exhibits which have been produced and exhibited to a court during a trial or hearing, in proof of facts. The rule did not apply to annextures to affidavits which are not exhibits. The court stated, at page 4 of the ruling. '93In }

my view, whether or not those annextures have been securely sealed with the seal of the advocate who commissioned the affidavits thereof, does not offend Rule 8 because they were not exhibits

produced and exhibited to a court during a trial or hearing in proof of facts. In any case, the annextures in the present case are not in dispute. Even if those annextures were detached, the affidavits thereof would still be competent to support the Noti

ce of Motion. Rule 8, though mandatory, is procedural and does not go to the root as to competence of affidavits.\94 }{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536
\line

I fully agree with the reasoning of the Court of Appeal in this matter. Indeed, I think the words of Sir Charles Newbold, P.lin }

{\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 Probhudas (N) And Co.}{

\ul\lang1033\langfe2057\langnp1033\insrsid3950822 vs. Standard Bank, (1968) E.}

{\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 A 670, at P. 683, }

{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536

have particular relevance to the instant application. The learned President of the Court of Appeal observed to the effect that courts should not treat every incorrect act as a nullity, with the conse

quence that every thing founded upon it is itself a nullity unless the incorrect act is of a most fundamental nature. Matters of procedure are not normally of a fundamental nature. I do not think that the effect of a failure by a Commissioner for Oaths to

comply with the procedure laid down in rule 8 of the Commissioner for Oaths Rules should result into the invalidation of the affidavit to which the unverified exhibi}

{\lang1033\langfe2057\langnp1033\insrsid11408858 ts or annextures are attached. }{

\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 Rather, the most a court would do would be to reject

the exhibits or annextures themselves as they would not be competently presented. The affidavit should then be considered for whatever it is worth without those exhibits of annextures.}

{\lang1033\langfe2057\langnp1033\insrsid11408858

\par }{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 I also agree that rule 8 relates to exhibits and the word \lquote annexture\rquote which cannot be used interchangeably with}{\lang1033\langfe2057\langnp1033\insrsid11408858 }{

\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 exhibit should not be read into it. I find all the circumstances and facts of the instant application to be similar to those which pertained in the }{

\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 Uganda Creamaries Ltd. }{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 case. Besides, a decision of the Court of Ap

peal binds this court. I have no option by to follow it.}

{\lang1033\langfe2057\langnp1033\insrsid11408858

\par }{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 Accordingly, I agree with Mr. W. Birungi that the first objection lacks merit and must be over-ruled. And it is overruled.}{\lang1033\langfe2057\langnp1033\insrsid11408858

\par }{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 \line The second objection is that the affidavit in support of the motion be str

uck out because it was deponed by the second applicant in support of a motion which contains a lie to the effect that the second applicant is the registered proprietor of the disputed land. Learned Counsel for the applicants submitted that the combined ef

fect of paragraphs 2(iii) of the motion and paragraph 2, of the affidavit in support, which according to counsel, must be read together, should be that the affidavit contains a falsehood and should be struck out. Counsel relies upon the authority of }{

\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 Bitaitana }

{\ul\lang1033\langfe2057\langnp1033\insrsid11408858\charrsid9782536 vs.}

{\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 Kananura (1977) HCB, 34. } {

\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 This court held in that case that any inconsistencies found in an affidavit however minor, cannot be ignored since a sworn affidavit is not a d}{

\lang1033\langfe2057\langnp1033\insrsid11408858 ocument to be treated lightly. }

{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 If it contains an obvious falsehood, then it

all naturally becomes suspect. And an application supported by a false affidavit is bound to fail.} {\lang1033\langfe2057\langnp1033\insrsid11408858

\par }{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 I have had }

{\lang1033\langfe2057\langnp1033\insrsid11408858\charrsid9782536 occasion}

{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 to read the ruling in }{

\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 Bitaitana\quote s }

{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 case. I do not think that it is applicable in the instant application. Counsel for the respondents ha

s pointed to the claim contained in paragraph}{\lang1033\langfe2057\langnp1033\insrsid11408858

\par }{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 2(iii) of the motion which reads: \line \93(iii) The applicants/Defendants is the registered proprietor of the suit land. \94}{\lang1033\langfe2057\langnp1033\insrsid11408858

\par }{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 He argued that the affidavit which supports that averment is false. He argues that the applicants have never been and are not registered proprietors of the disputed land. \line

Although I am aware that an affidavit in support of a motion is, indeed part of the motion, I do not think that it is legally tenable to argue that the reverse is also true. I d

o not think that a motion which is supported by an affidavit becomes part of the affidavit in support. For the affidavit contains evidence and is sworn before a Commissioner for Oaths while the motion contains ordinary pleadings. Anything which might be f

alse and contained in the motion }

{\lang1033\langfe2057\langnp1033\insrsid11408858\charrsid9782536 cannot}

{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 , therefore, be said to render the affidavit false because it is not part of it. }{

\lang1033\langfe2057\langnp1033\insrsid11408858

\par }{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 Besides, the question of who is the owner or registered proprietor of the land in dispute, in the instant case, is a question of evidence

in a substantive suit pending before this court. It would be prejudicial to decided it upon a preliminary objection during which no such evidence is adduced by any of }

{\lang1033\langfe2057\langnp1033\insrsid11408858 the parties. T}{

\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 hen affidavit in reply notwithstanding. \line }{\lang1033\langfe2057\langnp1033\insrsid11408858 }

{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536

For those reasons, I do not consider the rule in }

{\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 Bitaitana\rqoute s }

{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536

case (supra) to be either relevant or applicable to the instant application. Consequently the second objection also fails. \line }{\lang1033\langfe2057\langnp1033\insrsid11408858 }

{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536

Both objections are over-ruled. Costs in the cause. The substantive application is to be heard by this court on Monday, 18th January, 2001 at 9.00 a.m. The Deputy Registrar is to notify both parties of that date and time.}{

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{\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid11408858 V. F.}

{\b\lang1033\langfe2057\langnp1033\insrsid11408858\charrsid11408858 Musoke Kibuu}{

\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid11408858 ka \line Judge \line 28/12/2000}{\b\lang1033\langfe2057\langnp1033\insrsid11408858

\par }{\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid11408858 \line }
{\b\ul\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 Order: }
{\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 \line }

\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 The Deputy Registrar to deliver this ruling on a date fixed by him.}{\lang1033\langfe2057\langnp1033\insrsid11408858

\par }{\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid9782536 \line }
{\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid11408858 V. F.}
{\b\lang1033\langfe2057\langnp1033\insrsid11408858\charrsid11408858 Musoke Kib}{

\b\lang1033\langfe2057\langnp1033\insrsid12216337\charrsid11408858 uuka \line Judge

\par }{\pard\plain \ql \li0\ri0\sl360\slmult1\widctlpar\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid3950822 \fs24\lang2057\langfe2057\cgrid\langnp2057\langfenp2057
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