

UGANDA / JUDGMENT

Mataala & Anor v Kigongo (Misc. Application No. 61 of 2014) [2014] UGHCLD 113 (22 August 2014)

[2014] UGHCLD 113

COURT

HC: Land Division (Uganda)

BEFORE

Luswata, J

CASE / FILE NUMBER

Misc. Application No. 61 of 2014

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISC. APPLICATION NO. 61 OF 2014

(ARISING FROM CIVIL SUIT NO. 655 OF 2013)

1. AHMED MATAALA
2. HERMAN SEMAKULA APPLICANTS

VERSUS

WILLIAM KIGONGO..... RESPONDENTS

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

Before hearing of this application commenced, counsel for the applicant made a request that I stand down from further conduct of the matter giving the reason that Mr. John B. Kakooza counsel for the respondent is the husband to Irene Mulyagonja Kakooza my former partner in Kakooza & Kawuma Advocates. He emphasized that this was not a personal attack against me as a Judge, but that it is a cardinal rule that justice is not only done but must be seen to be done. In his estimation, Mr. Kakooza could be equated to my brother in law and his clients were not comfortable that I continue to conduct this matter.

In reply Mr. Kakooza argued that there was no conflict of interest. In his view, Ms Irene Mulyagonja Kakooza was a lawyer and partner in the above firm along with other lawyers and employees and therefore, Mr. Ssempala's argument would be stretching the relationship too far. Further that, his relationship with the Judge is only at arms' length and quiet official. Mr. Kakooza further argued that Mr. Ssempala's request was designed to delay hearing of the application which would favour the applicants. He explained that the applicants have abused the Interim Order which they themselves obtained, by mining of sand off the suit land which would deplete the land of its only resource. That the respondent has accordingly filed contempt proceedings before the Registrar who advised that hearing of the application of the temporary injunction be expeditiously handled and that it was for that reason that he requested for hearing this application to be brought forward. He argued therefore that rescuing the Judge at this point would defeat the ends of justice.

Mr. Ssempala in rejoinder stated that the question of likelihood of bias is in the mind of the parson and therefore however good the intentions of the court may be, it is always better that they recuse themselves when such a request is made. Although he admitted that the applicants are currently mining sand off the suit land, he denied the allegation that the applicants are in contempt of the interim order because according to him, that order was meant to maintain the status quo, which status quo was that prior to filing of the suit, it was his clients mining sand from the suit land. In a short rejoinder Mr. Kakooza argued that currently there are two titles in respect of the suit land but that the land registry did communicate that it is only aware of the title held by the respondent. He argued therefore that according to S.59 RTA, it is that title that is authentic and as such, the respondent would have a superior right over that of the applicants and they therefore cannot be allowed to continue mining sand off land owned by another. He concluded that since the applicants have conceded that they are mining the sand, they have come to court with unclean hands and therefore they would not even be entitled to the temporary injunction. He had no objection to the Judge stepping down at the point hearing of the main suit commenced.

In the case of **Uganda Vs Patricia Ojongole CSC. No.1/2014**, Justice Lawrence Gidudu in defining conflict of interest cited Black's Law dictionary 8th Edition *as "a real or seeming incompatibility between one's private interest and one's public or judiary duties."* He further stated that conflict of interest is both the actual and the perception that counts when tracing conflict of interest in a transaction. It is what a reasonable person would conclude while viewing the transaction from a distance that counts. It is related to the rule against bias. In his view, the best way to deal with conflict of interest is to avoid it completely.

In my view, the question before me is not so much the merits of this case or the conduct of either party *vis a vis* the contents of the interim order, but instead, it is the perception of the applicant towards my involvement in his claim and what perception the public would be if I were to remain as the arbiter in this matter. As it was rightly stated by my learned brother, such conflict must be actual or perceived. Personally, I would certainly find no inclination whatsoever to favour the respondent simply because of my past and present relationship with counsel for respondent.

However, that is my view and not of the applicant. His perception, given with reasons, would be sufficient for me to oblige this court and the parties to step down from further conduct of this matter. And I accordingly do so. Once I take the option to recuse myself, I must do so with respect to the entire suit and not part of it as requested by counsel for the respondent.

However I am not blind to the complaints that have been raised by the respondent's counsel especially where the applicants have not denied the fact that they are removing sand from the suit land, albeit with reason. However asking me to evaluate which party is in contempt would be requesting that I descend into the merits of the case which I cannot do at this point, especially when a request for my recusal has been made. That notwithstanding, much as the applicant requires that justice must seem to be done, the same principle would apply what is to the respondent and there must not be any delay in this matter. I therefore direct that the file should be put before the Registrar with immediate effect and for her to expeditiously hear the application for contempt. It is the duty of the same Registrar to place this file before another Judge for hearing.

In summary I have stepped down myself from further conduct of this matter and therefore the application is allowed but with no order as to costs.

I so order.

EVA K. LUSWATA

JUDGE

22nd August, 2014.

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