

UGANDA / JUDGMENT

Nahabwe & 2 Others v Kyepaka (Miscellaneous Application 27 of 2022) [2024] UGHC 562 (28 June 2024) [2024] UGHC 562

COURT
High Court of Uganda

BEFORE
Joyce Kavuma, J

CASE / FILE NUMBER
Miscellaneous Application 27 of 2022

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBARARA HCT-05-CV-MA-0027-2022

(Arising from Mbarara HCT-Admin-Cause no. 29 of 1990)

1. NAHABWE ROGERS KAMURENDERE

2. AMPEIRE SHARON AKA KASINGA

3. MUGANGA JOSHUA <table> AKA RUTABAIKIZA ::::::::::::::::::::::::::::::: VERSUS
KYEPAKA FRANCIS :::::::::::::::::::::::::::::::

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

RULING ON PRELIMINARY POINT OF LAW

Introduction.

Counsel for the Respondent raised a preliminary point of law $\overline{\text{[11]}}$ concerning the affidavits in support of the application filed by 1st and 2nd and 2nd Applicants.

According to counsel, the said affidavits were offensive to Order 1 rules 2(1) and 12 for having been deposed to without the authority of the 3rd Applicant who according to counsel disassociated himself from the application per his supplementary affidavit.

In reply, counsel for the Applicants submitted that the said [2] affidavits were not sworn in representative capacity and therefore the deponents did not require authority from the Respondent.

Analysis and decision of court.

This court and those superior to it have adopted a general trend [3] toward taking a liberal approach in dealing with any defects in affidavits

in line with the Constitutional directive enacted in Article 126 (2) (e) of the Constitution. This is so because rules of procedure should be used as handmaidens of justice but not defeat it. (See Hon. Theodore Ssekikubo & 3 Others vs The Attorney General & 4 Ors (Constitutional Application No. 6/2013).

An affidavit is a form of evidence usually containing a written statement of facts where the person making it promises that the facts therein are true by taking an oath or solemn affirmation. This oath is usually done in front of a commissioner for oaths, a Magistrate or notary public whatever the case may be. (See Section 6 of the Oaths Act).

It is the law that save for interlocutory applications, on which [4] statements of a deponent's belief may be admitted by a court provided that the grounds thereof are stated, affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove. (See Order 19 Rule 3 of the Civil Procedure Rules also generally per Mubiru J in Bankone Limited vs Simbamanyo Estates Limited Misc. Appn. no. 645 of 2020 (Commercial Court) and Halbury's Laws of England Volume 21 at 417).

Knowledge is usually acquired by a deponent through human senses like seeing, hearing, smelling, testing or touching followed by understanding and perceiving what one has sensed. (See **Greenwatch vs Attorney General** and another [2003] EA 83 per Mukasa AG J).

No legal prohibition exists against a party who of his or her own knowledge can prove some facts from stating them in his or her affidavit.

Counsel referred this court to paragraphs 4,5,7,8,11,16 and 17 of the 2nd Applicant's affidavit in support of the instant application and paragraphs 9,12,17,23, 25 and 26 of the 1st Applicant's affidavit in support of the application as having been sworn in representative capacity.

I have critically examined the said paragraphs referred to by counsel for the Respondent and have found them based on the knowledge of the respective deponents and not in representative capacity as alleged.

This preliminary objection is therefore with no merit and the same is hereby overruled.

HCT-05-CV-MA-0027-2022 is hereby fixed for hearing on 11th December 2024.

I so order.

Dated, delivered and signed at Mbarara on this. day of

vce Kavuma Judge.

\$\aleph\hspace{-0.15cm}\nwarrow\$

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