

UGANDA / JUDGMENT

National Chairman Democratic Party & anor v Haji Sebagala & 3 ors (Misc. Application No. 146 of 2014) [2014] UGHCCD 160 (30 May 2014) [2014] UGHCCD 160

COURT

HC: Civil Division (Uganda)

CASE / FILE NUMBER

Misc. Application No. 146 of 2014

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

MISC. APPLICATION NO. 146 OF 2014

(Arising out of misc APP No. 181/2012)

1. THE NATIONAL CHAIRMAN DEMOCRATIC PARTY
2. PROF JOSEPH MUKIIBI

-VS-

1. HAJI NASSER SEBAGALA
2. FUNGO ROGERS
3. KULAZIKULABE PETER
4. DAMBA PETER MUTEBI

BEFORE HON. JUSTICE NYANZI YASIN

RULING

1. The applicant prof. Joseph Mukiibi filed this application under Misc App No.181/2012 to seek leave of this court that the parties in Misc App. No 181/2012 be amended by additional of the names of Hon. Norbert Mao, Hon Mathias Nsubuga, Hon. Fred Mukasa Mbidde and Hon. John Ssebana Kizito.

2. Before commencement of hearing of the application counsel Justine Semuyaba and Hon. Mukasa Mbidde who represented the respondents informed court that they had a matter of preliminary nature to raise though Mr. Stevens Ssenkeezi who acted for the applicant was ready to present his application. Court permitted them to raise an objection by way of written submission but directed them for avoidance of surprise to state those objection for the benefit of counsel Stevens Ssenkeezi. They so did.
3. Objections were listed to be the following.
 - i). That the matter is res-judicata.
 - ii) That the action is time barred.
 - iii) The application sought to be amended was withdrawn under O.25r1
 - v) The applicant has no authority of the Democratic party to sue
 - vi). The respondents are not parties to the consent in Misc cause No. 2009/2009.
1. In his submission in reply learned counsel for the applicant argued that the objection on resjudicata, authority from DP to sue and the respondents not being parties to the consent could not be raised in this application but Misc Application No. 181/2012. That this matter was for a different purpose. He cited Patrick Byakagaba and 6 ors -vs- AG and 2 ORS HC-LDMA NO 914/2012 to support his reasoning.

I agree with Mr. Ssenkeezi those are matters to be raised in Misc App.181 /2012 not in an application to add parties.

1. As to this application being time barred by reason of S 10 (3) of the political parties and Organizations Act 2005. I believe that is an arguable point if at all in Misc Application 181/2012. I do not see how the law relied on in S.10 (3) of that Act makes an application to add a party time barred. I find no merit in that objection. All those objections above were made in a wrong place and are over ruled with costs.
2. This court will only answer the objection that the application to which the applicant seeks to add parties does not exist as the same was withdrawn under 0.25 r(1) Civil Procedure Rules by the applicant himself. That is an arguable objection to Misc Application 146/2014. It would serve no purpose if it is true that the application was withdrawn to add parties to it. So I will answer it.
3. In the written submission of the respondents it was argued.

“on the 1st April 2014 the applicant filed a notice of change of Advocates and instructed M/s Mbabali Jude and Co. Advocates to take over the conduct of proceedings in Misc. App No. 181/2012...) from M/s Senkeezi Ssali Advocates and later the applicant under his own hand filed a notice of withdrawal of the said application against all the respondents under 0.25.r1 CPR that means there is nothing to amend and there is no longer an application before the court.

1. I have perused the record and seen the notice of withdrawal in issue. It is a brief document which after correctly naming all the parties it stated,

“NOTICE OF WITHDRAWAL OF APPLICATION under 0.25r1 CPR)

TAKE NOTICE that this application stands wholly withdrawn against all the respondents.

Dated at Kampala this 2nd day of April 2014

Approved by

.....

Prof Joseph Mikiibi

Drawn & filed

M/S Mbabali Jude & Co. Advocates

Cardinal Nsubuga Road Rubaga.

1. I notice two important things from the notice. First that it was drawn and filed by the new firm of Advocates whom the applicant instructed after withdrawal of instructions from the former firm. Secondly that it was signed by the applicant himself. Those two aspects made this court to believe that the notice is a kind of document the applicant signed after preparation of it by his advocates and perhaps on their advice since he had new legal representation.

I was referred to the case of **NANSUBUGA MARGARET & ORS -VS- EDWARD KIWANUKA SEKANDI MISC APP No. 108 of 2011** where court refused the parties to file a fresh petition on ground that the same had been withdrawn.

11. In reply Mr. Ssenkeezi gave reasons to justify that there has never been a withdrawal. The first one is that Jude Mbabali was not asked to withdraw the application that it was for that reason, that on 14.04 2014 the applicant reinstated the same stating that he had been misadvised by the counsel to execute a withdrawal yet it was not what he intended at all. Unfortunately he did not tell court what he intended by signing the withdrawal.
12. I would have found the reasons given by the applicant tenable if this court was dealing with a lay person of some sort but not a professor.

S. 113 of the Evidence Act allows court to presume the existence of any facts which it thinks likely to have happened regard being had to common course of natural events, human conduct and public and private in relation to the facts of the case.

14. I have by reason of S.113 evidence Act deemed it imposable giving regards to common course of natural events and human conduct that a professor would sign such a document on ground of mis-advice.

15. I take it that he knew what he was doing. The court record shows that on 31st March 2014 the same lawyer filed a notice of change of advocates before withdrawing the suit on 2/04/2014. In his affidavit in support of the application, the professor did not attach any complaint to Jude Mbabali for having misled him or a complaint to the Law council to make me believe that what he is stating is an afterthought.
16. The applicant made another response but in alternative. It was argued that there is no consent to the withdrawal or leave of court is not yet given. My view is that 0.25r1 deals with unilateral withdrawal. It does not require leave or consent so long as the applicant or plaintiff is within the ambit of its provision.
17. Under 0.25r1(2) CPR the applicant cannot operate unilateral it requires the party to seek leave of court. What makes 0.25 r1(1) CPR applicable here is that the applicant moved himself and secondly the only proceedings he had taken was chamber summons which is excepted from the other proceedings. That left him free to act in a unilateral that he chose to.
18. It was therefore erroneous in my view for Mr. Ssekaazi to argue that the applicant needed consent or leave to withdraw the suit. While consent is required under 0.25r2 no such consent is required under Order 25r1 (1) or (2). Order 25 r 1 (2) requires leave which is not the case with Order 25 r 1 (1) .

My Brother Lawrence Gidudi explained how Order 25r1(1) applies in **Democratic party –vs John Sebaana Kizito & 2 ors Mis Cause No. 37OF 2010 at page 7** of this typed ruling (unreported) the judge stated;

“It was argued for the respondent s that the filing of the notice of change of advocate and the notice of withdrawal on 24/4/2010 effectively ended the matter. I agree. The withdrawal of the suit under Order 25r1(1) Civil Procedure Rule is complete upon the court receiving the notice.”

I entirely agree with the reasoning of my brother Judge. Here a notice if change of advocates was filed, it was followed by a notice of withdrawal dated 2/04/2014.

I have already said the notice was signed by the applicant himself which eliminates all kind of claims like mistakes by counsel or otherwise. He is bound by his actions and that ended the application to which he now seeks to add the respondents as parties

1. Before I end this matter I will make mention of two things.

The first, it is the claim by the applicant that he reinstated Misc. Application No. 181/2012 through what he termed “Notice of reinstatement” of the application he had withdrawn due to wrong advice. He gave notice that he had unilaterally reinstated the said application.

I regret to say that there is no procedure for such action under O 25 of Civil Procedure Rule. Much as the order gives an applicant liberty to end his own action unilaterally under O.25 r 1(1) there no such powers to reinstate the action. The applicant invented his own procedures that I cannot adopt.

20. Secondly the claim that the applicant was even after withdrawal

allowed to participate in the mediation proceedings cannot persuade me to adopt a similar procedure. Mediation is an independent process of dispute resolution. It may give no regard to technical rules so that parties tailor their own solutions to their problem. That cannot happen before a Judge in a trial.

1. Finally I uphold the objection to amendment by addition of the respondents to an application the applicant himself withdrew. I dismiss the application.
2. I however, agree with Mr. Ssenkeezi that the respondents' advocate violated the directive of court relating to the length of the submission, six(6) pages of an almost New paper type of printing was presented that was ridiculous. It took a lot of court's time. I would therefore disentitle them from half of the costs that the taxing master may award. The application is finally dismissed. The respondents are awarded half of the taxed costs.

By reason of the abov

e ruling Misc application No. 181 /2012 is fixed for being handled on 23/06/2014 at 11:00 am to decide its future under S .33 Judicial Act and S 98 CPA.

The case will continue on 2/06/ 2014 at 11:00 am

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Yasin Nyanzi

JUDGE

30/05/2014

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