THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Cheborion Barishaki, Christopher Madrama and Mulyagonja, JJA)

CIVIL APPEAL NO. 370 OF 2021

PRINCE DAVID KINTU WASAJJA :::::::::::::::::::::::::: APPELLANT

VERSUS

1. **SARAH NABUWULE**
2. **JANETH NAKAWUNDE**
3. **FARIDA ZABALI (Suing through their Attorney Dr. Muhammad Buwule Kasasa) :::::::::::::::::::::::::::::::::::: RESPONDENTS**

(Appeal from the ruling and orders of the High Court of Uganda (Land Division) delivered on 31st December, 2021 by Keiterima, J in Misc. Application No. 1432 of 2018 arising out of HCCS No. 36 of 2014)

JUDGMENT OF IRENE MULYAGONJA, JA

I have had the benefit of reading in draft the judgment of my learned brother Cheborion Barishaki, JA. I agree that the appeal should succeed and with the orders that he has made.

Dated at Kampala this 25...day of November, 2022

Irene Mulyagonja

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Cheborion Barishaki, Christopher Madrama & Irene Mulyagonja, JJA)

CIVIL APPEAL NO.370 OF 2021

(Arising out of Miscellaneous Application No.1432 of 2018)

(All arising from Civil Suit No.36 of 2014)

PRINCE DAVID KINTU WASAJJA::APPELLANT

VERSUS

1. **SARAH NABUWULE**
2. **JANETH NAKAWUNDE**
3. **FARIDA ZABALI (Suing through their Attorney Dr. Muhammad Buwule Kasasa)::::::::::::::::::::::::::::RESPONDENTS**

(An appeal from the ruling and orders of the High Court of Uganda (Land Division) delivered on the 31st day of December, 2021 by His Lordship Justice John Eudes Keitirima in Misc. Application No. 1432 of 2018 arising out HCCS No.36 of 2014 declining to strike out the plaint and ordering the main suit to proceed)

JUDGMENT OF CHEBORION BARISHAKI, JA

INTRODUCTION

The respondents through their father and attorney instituted Civil Suit No.36 of 2014 against the Kabaka of Buganda and Prince David Kintu

Wasajja (the appellant herein). The said suit challenged the decision of the Kabaka of Buganda for his failure to renew the lease of the Respondents that expired on the 16th of March, 1998. The respondents contended that the said lease upon expiry in 1998 had been illegally granted to the appellant instead of having it extended in their favour. The suit against the appellant and the Kabaka of Buganda was for recovery of the suit land with all its developments.

The appellant in his defence stated that the plaint was barred in law, disclosed no cause of action and incurably defective. He filed High Court Miscellaneous Application No.1432 of 2018 challenging the validity of the Power of Attorney which was used to institute HCCS No.36 of 2014 against the Kabaka of Buganda and contended that since Respondent's lease which had no automatic renewal clause had expired in 1998, the respondents ceased to be proprietors and that the power of attorney that they had issued in 2005 on the suit land was defective.

In his ruling, the trial Judge found that the Power of attorney issued in respect of this case had no legal effect and ought to be struck off the record. However, despite striking out the power of attorney for being defective, he allowed the suit to proceed. The appellant filed HCMA NO.042 of 2021 seeking leave to appeal which application was granted and appealed to this Court on the following grounds;

1. *That the learned trial Judge erred in law and contradicted himself by allowing Civil Suit No.36 of 2014 to proceed having rightly found that*

the power of attorney used to institute the said suit was defective and had no legal effect.

2. *That the learned trial Judge erred in law and in fact in holding that Civil Suit No.36 of 2014 was instituted by the respondent as opposed to the purported attorney.*
3. *That the learned trial Judge erred in law and fact in holding that Miscellaneous Application No.1432 of 2018 partially succeeded and did not cause the rejection of the plaint as envisaged under O.7 R 11 of the Civil Procedure Rules.*
4. *That the learned trial Judge erred in law and fact in not awarding costs to the appellant.*

At the hearing of the appeal, Mr. Christopher Bwanika, Mr. Isaac Kafeero, Mr. George Muhangi, Mr. Mukwaya Edward and Mr. Matovu Ronald appeared for the appellant while the respondents were represented by Mr. Kiiza Simon Kabandana.

On ground 1 of the appeal, counsel for the appellant submitted that the learned trial Judge rightly held that the power of attorney used in Civil Suit No. 36 of 2012 was defective and had no legal effect and rightly struck it out but erred when he declined to strike out the suit which was instituted on the basis of the defective power of attorney. He further submitted that Civil Suit No.36 of 2014 which was founded on a defective power of attorney was not only bad but incurably bad. According to counsel, the power of attorney did not in law exist and any suit founded on such power of attorney ought to have collapsed with the said power of attorney. He relied on ***Mohammad***

Buwule Kasasa V Jaspha Buyonga Bwogi, Supreme Court Civil Application No.23 of 2014 for the proposition that a suit filed on the basis of a nullity can only be a nullity itself.

Counsel further submitted that the decision of the learned trial Judge to continue with the proceedings in the main suit after nullifying the power of attorney was a perpetration of an illegality because the main suit ought to have collapsed with the defective power of attorney. Counsel added that a nullity in law is an illegality which is incurably bad and not even an amendment can cure it. He added that by the learned trial Judge allowing the suit to proceed on its merits was in essence allowing the respondents to amend the face of the plaint by removing the words suing through their Attorney Dr. Mohammad Buwule Kasasa. In counsel's view, this raised substantial questions of law as to whether a nullity can be cured by an amendment. He relied on ***The Fort Hall Bakery Supply Co. V Fredrick Muigai Wangoe (1959) EA 474*** for the proposition that no amount of amendment can cure a nullity.

Counsel contended that no cause of action can be found on an illegality because where the power of attorney is declared defective, then the issue of cause of action cannot arise. The plaint will be barred by the provisions of O.7 R 14 (1) (a) of the CPR which make it mandatory to attach a document upon which the plaintiff's suit is founded. According to counsel, the trial Court having nullified the powers of attorney meant that the present suit instituted by the attorney on behalf of the respondents was unlawfully instituted and no cause of action can rise from the same. He relied on ***John***

Sebataana (Suing through his Attorneys) V Abanenamar Yorokam & Anor, Civil Suit No.99 of 2005 for the proposition that once the Attorney sues the defendant unlawfully, the plaint cannot stand as the Attorney has no cause of action against the defendants.

On ground 2 of the appeal, counsel submitted that the instant suit was commenced by the Attorney on the basis of the impugned power of attorney which was found to be null. He added that the suit was not commenced by the respondents and later its prosecution donated to the attorney to proceed with the suit. In counsel's view, the learned trial Judge erred in holding that the respondents could proceed with the suit. That the Attorney lacked the capacity to institute the suit because the powers of attorney were void abnitio. The donees themselves did not have the capacity to donate to him the powers to deal with registered land to which they were not proprietors and he acquired no capacity by the powers of attorney.

Counsel further submitted that it was clear from the plaint that the suit was instituted by Dr. Mohammed Kasasa on behalf of the plaintiffs (respondents herein) as their Attorney because the respondents were living, working and pursuing studies in the United Kingdom. Counsel added that Civil Suit No.36 of 2014 was instituted by the respondent's purported attorney who had no locus to institute the said suit using a void power of attorney because a donee can only institute a suit on behalf of a donor as long as the power of attorney is valid. He relied on ***Mohammad Buwule Kasasa V Jaspha Buyonga Bwogi, Supreme Court Civil Application No.23 of 2014.***

On ground 3 of the appeal, counsel submitted that HCMA No.1432 of 2018 was brought under the provisions of O.7 Rules 11(a) & (d) of the CPR and the said legal provisions provide for rejection of a plaint where it does not disclose a cause of action and where a suit appears from the statement in the plaint to be barred by any law. The application sought two orders that the plaint in Civil Suit No.36 of 2014 be rejected and/ or struck out for being barred in law and the entire suit be dismissed and an order for costs. That the learned trial Judge declined to dismiss the suit and did not award costs to the appellant but went ahead to hold that the application partially succeeded yet both prayers sought in the application were rejected.

Counsel submitted on ground 4 that the learned trial Judge made an order denying the appellant costs of the application because the application partially succeeded and it did not successfully cause the rejection of the plaint as envisaged under O.7 R11 of the CPR and secondly that the appellant had raised a number of preliminary objections piecemeal instead of raising all at ago. In counsel's view, the learned trial Judge improperly exercised his discretion in making the order denying the appellant costs, secondly that the reasons given by the learned trial Judge for the denial of costs did not, with due respect constitute good reasons for denial of costs to the appellant.

Counsel further submitted that it was trite law that a successful party is entitled to costs and the trial Judge having found that the appellant's application was partially successful, he was entitled to costs. Counsel added that there was no law that stipulated that all preliminary objections must be

raised at once but rather, the desired position is that preliminary objections should be raised early enough to save Court's time. In counsel's view, had the learned trial Judge judiciously considered the application, the appellant would have been entitled to costs. He prayed that the appeal be allowed and costs awarded to the appellant.

Counsel for the respondent opposed the appeal and submitted that the learned trial Judge did not find that the power of attorney was defective but only observed that the power of attorney had no legal effect. In counsel's view, this finding did not in any way mean that the power of attorney was a nullity. He added that by holding that the suit was instituted by the respondents and that the suit could therefore proceed without the Respondent's attorney meant that giving of the power of attorney by the respondents after the expiration of their lease was a mere irregularity and not a nullity. In counsel's view, the learned trial Judge correctly observed that the striking off of the power of attorney was not fatal to the Respondents' case as it had no bearing on their cause of action against the appellant. He relied on ***Biyinzika Enterprises Ltd & 2 Ors V Biyinzika Farmers Limited & Anor, Court of Appeal Civil Appeal No.0018 of 2017*** for the proposition that where it is proved that a person has done an illegal act, but he/she, can base his claim independently of the said illegal act, that Court may come to his/her aid.

Counsel contended that in the instant case, the respondents instituted the suit against the appellant and the Kabaka of Buganda and the appellant filed a written statement of defence upon which the suit was set for hearing.

The power of attorney was struck off the record as it had no legal effect and the striking off of the power of attorney did not in any way affect the jurisdiction of Court or cause injustice to the appellant as he still had a right to defend himself upon which Court would pronounce itself on the rights of the parties. He further submitted that the claim that the learned trial Judge contradicted himself was false and misleading because the learned trial Judge rightly found that the striking off of the power of attorney did not affect the respondent's suit as there was no contradiction. That an illegality which did not affect the respondent's cause of action could be treated as a mere irregularity.

On ground 2, counsel submitted that the respondents having appointed their father Dr. Muhammad Buwule Kasasa to act on their behalf as their agent, it could not be said that the suit was filed by the attorney who was merely an agent because he who acts through another does act himself. In counsel's view, the learned trial Judge was right in holding that it was the respondents who filed the suit and not the attorney. Further that striking off the power of attorney was not fatal to the respondents' case. He relied on ***Fredrick J.K Zaabwe V Orient Bank Ltd & 5 Others, Supreme Court Civil Appeal No.004 of 2006*** for the definition of power of attorney.

On ground 3, counsel for the respondent submitted that the appellant had failed to appreciate the fact that rejection of the plaint and dismissal of the suit are two different aspects. According to counsel, there is a difference between rejection of the plaint and dismissal of the suit. Further that the submission by the appellant that the cause of action was derived from the

power of attorney was misleading because the respondents' cause of action was derived from the terms of the expired lease and there were conditions precedent prior to the lessor making developments on the suit land. In counsel's view, the locus to institute a suit is vested in the plaintiff and not a mere agent, and the answer to the question whether the respondents could prosecute their suit without the aid of a power of attorney was yes.

On ground 4, counsel submitted that the award of costs is within the discretion of Court and the exercise of that discretion does not depend on decided cases. He relied on ***National Enterprises Corporation V Mukisa Foods Ltd, Court of Appeal, Civil Appeal No.42 of 1997*** to the effect that the Court cannot be bound by a previous decision to exercise its discretion in a particular way. He further submitted that the appellant first raised a preliminary objection to the effect that the suit was time barred but the same was overruled and when the suit was fixed for hearing, the appellant then raised another preliminary objection by formal application from which this appeal rises. In counsel's view, the appellant wasted Court's time by raising numerous preliminary objections.

Resolution by Court

I have carefully perused the record and considered the conferencing notes and submissions of both Counsel. I am alive to the fact that this Court has a duty as the first appellate Court to re-appraise the evidence and come up with its own conclusions. ***See: Rule 30(1) of the Rules of this Court.***

The duty of a first appellate court was laid out in the case of **Fr. *Narsensio Begumisa and 3 Others v Eric Kibebaga Supreme Court Civil Appeal No. 17 of 2002 (unreported)*** thus:

> *"The legal obligation of the 1st appellate court to reappraise the evidence is founded in the common law rather than rules of procedure. It is a well settled principle that on a 1st appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in case of conflicting evidence, the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses."*

I shall determine grounds in the order in which they were argued and responded to.

On ground 1, the learned trial Judge is faulted for contradicting himself by allowing Civil Suit No.36 of 2014 to proceed having found that the power of attorney used to institute the said suit was defective and had no legal effect. It was submitted for the appellant that Civil Suit No.36 of 2014 which was founded on a defective power of attorney was not only bad but incurably bad. According to counsel, the power of attorney did not in law exist and any suit founded on such power of attorney ought to have collapsed with the said power of attorney. In response, counsel for the respondent opposed the appeal and submitted that the learned trial Judge did not find that the power of attorney was defective but only observed that the power of attorney had no legal effect. In counsel's view, this finding did not in any way mean that the power of attorney was a nullity.

The learned trial Judge stated as follows;

> *"I also agree with the submission that on scrutiny of section 146 of the RTA, it only confers the right or power to appoint an Attorney via a power of attorney to a proprietor. I agree also with the holding in the case of Nuwe Amanya Mushega versus Charles Odere, H.C.C.S No.102 of 2012 that Section 146(1) of the Registration of Titles Act only authorises a proprietor of the land to give such a power of attorney to deal with the land.*
>
> *In the present case, the powers of attorney attached to the plaint were issued in 2005 at the time when the donors were no longer proprietors of the suit land and therefore had no capacity to grant powers of attorney as proprietors of the suit land. I also agree with the holding in the case of Paddy Musoke versus John Agard and 2 Others, H.C.C.A No.36 of 2012 where it was held that "The law under section 146(1) of the Registration of Titles Act is clear. It provides that a registered proprietor may give a power of attorney. So if the lease has expired, then one ceases to be a registered proprietor..."*
>
> *Therefore the respondents whose lease to the suit land had expired lacked the locus to issue powers of attorney in this case under the Registration of Titles Act Cap 230. The power of attorney therefore issued in respect of this case had no legal effect and will be struck off the record."*

A Power of Attorney is an instrument in writing whereby one person, as principal, appoints another as his agent and confers authority to perform

certain specified acts or kinds of act on behalf of principal.... An instrument authorising another to act as one's agent or attorney.....such power may be either general (full) or special (limited). See judgment of Katureebe, JSC (as he then was) in ***Fredick J.K Zaabwe V Orient Bank Ltd & 5 Ors, Supreme Court Civil Appeal No.04/2006.***

Section 146(1) of the Registration of Titles Act CAP 230 provides that the proprietor of any land under the operation of this Act or of any lease or mortgage may appoint any person to act for him or her in transferring that land, lease or mortgage or otherwise dealing with it by signing a power of attorney in the form in the Sixteenth Schedule to this Act.

Paragraph 7 of the plaint shows that the respondents' lease expired on 16th March, 1998. The learned trial Judge found that the powers of attorney on record were issued in 2005 at the time when the donors were no longer proprietors of the suit land and therefore had no capacity to grant powers of attorney as proprietors of the land.

The Learned Trial Judge rightly struck off the Power of attorney from the record because the said power of attorney had no legal effect having been granted in 2005, the time when the donors were no longer proprietors of the suit land. Surprisingly, the learned trial having struck off the power of attorney, allowed the suit to proceed.

O.7 R 14(1) of the Civil Procedure Act provides as follows;

> *"Where a plaintiff sues upon a document in his or her possession or power, he or she shall produce it in Court when the plaint is presented,*

and shall at the same time deliver the document or a copy of it to be filed with the plaint."

It is not in dispute that the Civil Suit No.36 of 2014 was commenced by the Powers of Attorney granted to Dr. Muhammad Buwule Kasasa by the respondents. However, the Learned Trial Judge having struck off the power of attorney erred in allowing the suit to proceed because in essence this meant that the plaint was unsupported hence contravening ***O.7 R14 (1) of the CPR.***

I am persuaded by the decision of Murangira, J in ***John Sebataana & 3 Ors V Abanenamar Yorokam & Anor, Civil Suit No.99 of 2005***, where the learned Judge held that;

"In the instant suit, the powers of attorney which gives the plaintiff the basis to sue the defendants is not annexed to the plaint. Counsel for the plaintiffs was graceful enough when he recognized that the power of attorney which was missing would have been the basis to sue the defendants. I, therefore, hold that the attorneys have no authority to sue the defendants. The attorneys, further, have no cause of action against the defendant. Wherefore, the attorneys instituted a suit against the defendants unlawfully. Thus, the plaint without plaintiffs cannot be sustained in law and that the same cannot be amended."

The respondents' act of giving powers of attorney to deal with the suit land yet they were not the registered proprietors including the power of commencing a suit by their attorney was void and hence a nullity. Lord

Denning in ***Benjamin Leonard MacFoy V United Africa Co. Limited (1961) 3 ALLER 1169*** stated as follows;

> *"If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse."*

I therefore find that Civil Suit No.36 of 2014 having commenced on the basis of a power of attorney which was a nullity for reasons stated above, the learned trial Judge erred in allowing the said suit to proceed. The suit ought to have collapsed with the said power of attorney.

Ground 1 of the appeal succeeds and this finding would dispose of the Appeal and render it unnecessary to delve into the other grounds of Appeal but for completeness I will deal with the grounds.

In ground 2, the learned trial Judge is faulted for holding that Civil Suit No.36 of 2014 was instituted by the respondents as opposed to the purported attorney. Counsel for the appellant submitted that Civil Suit No.36 of 2014 was instituted by the respondents' purported attorney who had no locus to institute the suit using a void power of attorney because a donee can only institute a suit on behalf of a donor only for as long as the power of attorney is a valid instrument. In reply, counsel for the respondent submitted that the respondents having appointed their father Dr.

Muhammad Buwule Kasasa to act on their behalf as their agent, it could not be said that the suit was filed by the attorney who was merely an agent.

Having nullified the powers of attorney, the learned trial Judge allowed the case to proceed and held thus;

> "The above notwithstanding, the suit was instituted by the plaintiffs/respondents. The case can therefore proceed without their attorney or they can still appoint him their attorney differently. The striking off of the power of attorney is not fatal to their case. They are only faulted for having issued a power of attorney illegally. This has no bearing on their cause of action against the applicants/defendants."

I have looked at the plaint at page 319 of the Record of Appeal and it is evident that the said suit was instituted by Dr. Muhammad Buwule Kasasa as the respondents' attorney. The said plaint states as follows;

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL SUIT NO.036 OF 2014

1. SARAH NABUWULE
2. JANNETH NAKAWUNDE::PLAINTIFFS
3. FARIDA ZABALI (Suing through attorney
   Dr. Mohammed Buwule Kasasa)

VERSUS

1. PRINCE DAVID KINTU WASAJJA

2. THE KABAKA OF BUGANDA::::::::::::::::::::::::::::::::::::RESPONDENTS

PLAINT

1. The plaintiffs are Ugandan female adults living in the United Kingdom and pursuing studies there in various fields while also working. Suing through an attorney who is at the same time their father, Dr. Mohammed Buwule Kasasa, to whom they have given a joint power of attorney for the suit purpose and a copy of which is hereto attached and marked "A1".

Clause (d) of the Power of Attorney grants the donor the power to bring or defend or continue any legal proceedings relating to or touching the property, investments and interests of Janet Nakawunde, Sarah Nabuwule & Farida Zabali.

I do not agree with the learned trial Judge that the suit was instituted by the respondents in light of the evidence above which shows that the respondents reside, work and study in the United Kingdom. The plaint on the face of it indicates that the respondents were suing through Dr. Mohammed Buwule Kasasa their attorney. In any case if I am to suggest that the respondents were instituting the suit by themselves, there was no justification for issuing Powers of Attorney. In my view, the powers of attorney were issued to enable the donor commence the suit within the meaning of clause (d) of the Power of Attorney.

O.3 R1 of the CPR provides for appearances in person, recognized agent or an advocate duly appointed. The said rule states that any application to or appearance or act in any Court required or authorised 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 behalf; except that any such appearance shall, if the Court so directs, be made by the party in person.

O.3 R 2 (a) of the CPR further provides for persons holding powers of attorney authorising them to make such appearances and applications and do such acts on behalf of parties.

Section 146(1) of the Registration of Titles Act CAP 230 provides that the proprietor of any land under the operation of this Act or of any lease or mortgage may appoint any person to act for him or her in transferring that land, lease or mortgage or otherwise dealing with it by signing a power of attorney in the form in the Sixteenth Schedule to this Act.

Attached to the plaint at page 323 of the Record of Appeal is a power of attorney by the respondents appointing Dr. Mohammed Buwule Kasasa as their personal attorney representative and trustee of all their personal moveable and immovable properties in Uganda. The said power of attorney under section (d) grants the done, Dr. Mohammed Buwule the power to bring or defend or continue any legal proceedings relating to or touching the property, investments and interests of Janet Nakawunde, Sarah Nabuwule and Farida Zabali.

It is thus clear that Civil Suit No.36 of 2014 was commenced by Dr. Mohammed Buwule by virtue of a power of attorney by the respondents. This explains why the plaint makes reference to the power of attorney and the same is attached thereto. It also explains why the plaint bears the

names of the plaintiffs, the respondents herein suing through attorney Dr, Mohammed Buwule Kasasa.

I do not agree with the learned trial Judge that Civil Suit No.36 of 2014 was instituted by the respondents as opposed to the purported attorney.

The Supreme Court in ***Civil Application No.23 of 2014, Muhamad Kasasa v Jaspha Buyonga Sirasi Bwogi & Anor*** was invited to determine whether the 2nd respondent had locus to institute an appeal in the Supreme Court. The Court held that;

> *"Although the letter and power of attorney on record show that the 2nd respondent was granted authority to represent the 1st respondent in Court, with respect to land comprised in Kibuye Block 10 Plot 147, this did not grant the 2nd respondent locus to institute an appeal in this Court even after the demise of the done. The Rules of this Court specifically stipulate the legal representative as the only person entitled to institute an appeal on behalf of a deceased litigant. Such a "legal" representative acquires the locus to pursue the appeal through the force of law obtained by grant of probate or letters of administration. Needless to say that the power of attorney donated to someone during the life of the donor is not donated in perpetuity for the donee to continue acting as if the donor is alive.*
>
> *We therefore find that the 2nd respondent did not have the locus standi to institute the appeal in this Court."*

I therefore find that the respondents instituted this suit through their attorney, Dr. Mohammed Buwule Kasasa although the said attorney did not have the locus standi to institute the said suit on behalf of the respondents.

Ground 2 of the appeal succeeds.

The learned trial Judge is faulted in ground 3 of the appeal for holding that Miscellaneous Application No.1432 of 2018 partially succeeded and did not cause the rejection of the plaint as envisaged under O.7 R11 of the CPR. Counsel for the appellant submitted that HCMA No.1432 of 2018 was brought under the provisions of O.7 Rules 11(a) & (d) of the CPR and the said application sought for orders that the plaint in Civil Suit No.36 of 2014 be rejected for being barred in law and the suit be dismissed and an order for costs. The trial Judge declined to dismiss the suit and did not award costs to the appellant but instead held that the application had partially succeeded yet both prayers sought in the application were rejected. In response, it was submitted for the respondent that the submission by counsel for the appellant that the cause of action was derived from the power of attorney was misleading because the respondents' cause of action was derived from the terms of the expired lease and there were conditions precedent prior to the lessor taking developments on the suit land.

Under O. 7 R 11 of the CPR, a plaint shall be rejected inter alia where it does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law.

The learned trial Judge struck off the power of attorney from record because the respondents whose lease had expired lacked the locus to issue powers of attorney under section 146(1) of the Registration of Titles Act.

I found in ground 1 of the appeal that the learned trial Judge having struck off the power of attorney which was used to institute Civil Suit No.36 of 2014 in essence meant that the plaint was unsupported hence contravening O.7 R 14 (1) of the CPR which requires a plaintiff suing upon a document in his or her possession or power to produce it in Court when the plaint is presented and at the same time deliver the document or a copy of it to be filed with the plaint.

Having earlier found that the attorney, Dr. Mohammed Buwule Kasasa did not have locus standi to institute Civil Suit No.36 of 2014, the plaint in Civil Suit No.36 of 2014 is therefore rejected for being barred by O.7 R 11 (d) of the CPR and accordingly the suit is struck out.

Ground 3 of the appeal succeeds.

The trial Judge was faulted for not awarding costs to the appellant. Counsel for the appellant submitted that the trial Judge made an order denying the appellant costs of the application because the application partially succeeded and it did not successfully cause the rejection of the plaint as envisaged under O.7 R11 of the CPR and secondly that the appellant had raised a number of preliminary objections piecemeal instead of raising the same at ago. In reply, counsel for the respondent submitted that the award of costs was within the discretion of Court and the exercise of that discretion does not depend on decided cases.

While dealing with the issue of costs, the learned trial Judge held that it was advisable that all objections are raised at ago so that they are all determined at once instead of bringing them up piecemeal as had been done in this case which made the case more protracted causing backlog. That this was another reason why the applicant was denied costs in the application.

It is trite law that costs follow the event and a successful party is entitled to costs. Section 27 of the Civil Procedure Act, CAP 71 provides that provided that the costs of any action, cause or other matter shall follow the event unless the Court or the Judge shall for good reason otherwise order.

The appellant being a successful party was entitled to the costs of this appeal and the Court below.

Ground 4 of the appeal succeeds.

For the aforementioned reasons, I find merit in the appeal and make the following orders;

1. The Appeal is allowed.
2. The Ruling of the lower Court in Miscellaneous Application No.1432 of 2018 delivered on 31st December, 2020 is hereby set aside.
3. The plaint in Civil Suit No.36 of 2014 is hereby rejected and the suit is accordingly struck out.
4. The appellant is awarded costs in this Court and the Court below.

I so order

Dated at Kampala this ..... day of .....2022.

Cheborion Barishaki
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(CORAM: CHEBORION, MADRAMA AND MULYAGONJA, JJA)

CIVIL APPEAL NO 370 OF 2021

PRINCE DAVID KINTU WASAJJA} ..... APPELLANT

VERSUS

1. SARAH NABAWULE}
2. JANETH NAKAWUNDE}
3. FARIDA ZABALI} Suing through their attorney
   DR. MUHAMMAD BUWULE KASASA} .....RESPONDENT

(*Appeal against the ruling and orders of the High Court of Uganda (Land Division) delivered on 31st of December, 2021 by Hon. Justice John Eudes Keitirima in High Court Miscellaneous Application No 1432 of 2018 arising from HCCS No 36 of 2014*)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

I have had the benefit of reading in draft the judgment of my learned brother Hon. Justice Cheborion Barishaki, JA.

I concur with the decision that the appeal be allowed with the orders he has proposed and wish to add a few words to emphasise that I would allow the appeal on ground 1 of the appeal only.

Order 7 rule 4 of the Civil Procedure Rules requires a plaintiff who sues in a representative capacity to show the steps taken to institute the suit in that capacity. It provides that:

> 4. When plaintiff sues as representative.
>
> Where the plaintiff sues in a representative character, the plaint shall show not only that he or she has an actual existing interest in the subject matter but that

he or she has taken the steps, if any, necessary to enable him or her to institute a suit concerning it.

The plaint was filed in a representative character and discloses that the plaintiff held powers of attorney from the principals who are residents of the United Kingdom authorising him to institute the suit on their behalf. To that end the plaintiff who is the attorney pleaded that he had brought the suit by virtue of powers of attorney. Once the power of attorney was struck out by the learned trial judge, the suit was rendered a nullity thereby and it was erroneous for him to proceed with the hearing of the suit as if the suit had been validly filed by the principals of the attorney. Further and for emphasis I note that the respondents never cross appealed against the decision of the learned trial judge striking out their power of attorney. This appeal can therefore properly be confined to the issue of proceeding with the hearing of the suit when there was an order striking out the power of attorney from the court record.

In the premises, I do not need to consider the merits of that decision striking out the respondents' power of attorney but note that in general, a power of attorney can be issued just to confer a right to sue on behalf of the principal such as a right to sue anybody any cause of action, such as the non-renewal of the lease or on some other ground to be considered by the court. It is up to the court to determine whether there is a cause of action disclosed in the plaint or whether the suit has merit.

Such power of attorney issued in a foreign country such as the UK would have to be authenticated by a notary public and registered in Uganda under the Registration of Documents Act Cap 81 before it can be admitted in Uganda for purposes of proving the representative character of plaintiff in the suit filed on behalf of a person resident outside Uganda and which plaintiff complies with the requirements of Order 7 rule 4 of the Civil Procedure Rules. The law on admission of documents executed outside Uganda in court proceedings is inter alia found under section 84 of the Evidence Act cap 6 which provides that:

84. Presumption as to private documents executed outside Uganda.

The court shall presume that private documents purporting to be executed out of Uganda were so executed and were duly authenticated if—

(a) in the case of such a document executed in the United Kingdom, it purports to be authenticated by a notary public under his or her signature and seal of office;

(b) in the case of such a document ...

I would in the circumstances allow ground 1 of the appeal which is to the effect that having struck out the power of the attorney, the result is that the suit was rendered a nullity on that ground alone because it rendered the suit as having been lodged in Uganda without the requisite authority of the principals who are resident outside Uganda.

For the above reasons, I find no need to consider the other grounds of appeal and I concur with the orders issued by my learned brother Hon. Justice Cheborion Barishaki, JA that the appeal be allowed with costs in this court and in the High Court.

Dated at Kampala the 25th day of Nov 2022

Christopher Madrama Izama

Justice of Appeal