

THE REPUBLIC OF UGANDA

IN THE HIGH COURT AT KAMPALA

(COMMERCIAL DIVISION)

HIGH COURT MISCELLANEOUS APPLICATION NO. 264 OF 2015

(ARISING OUT OF CIVIL SUIT NO. 163 OF 2015)

- 1. RECONCILING GOSPEL WORLDWIDE LTD**
- 2. PROPHET AMOS BETUNGURA**
- :.....:APPLICANTS
- 3. RITAH KIBEDI**
- 4. FLORENCE SSEPUYA**

VERSUS

- 1. DOUGLAS ATALEYEBA**
- 2. ROGERS MUHANGI**
- :.....:RESPONDENTS

BEFORE THE HON. JUSTICE HENRY PETER ADONYO

RULING

This is a ruling on the three preliminary objections raised by the Respondents namely;

- a. The application is not properly before court since the Applicants did not pay court fees.
- b. The application is not supported by a proper affidavit since the affidavit is deponed by one of the Applicants without the authority of the other two Applicants

1. Ruling on preliminary objections on issues of nonpayment of court fees, parties swearing affidavit in support of the application yet not authorised to do so in a suit where there are many parties and court being "functus officio" by Hon. Justice Henry Peter Adonyo: June 2015.

- c. The court was *functus officio* and could not again hear the matter where the Deputy Registrar had entered a default judgment and later recalled his Order.

In raising these objections, the Respondents informed the court that the Applicants had not paid the court fees as required thus making their application to not be properly laid before the court.

Further the Respondents contended that the affidavit in support of the application was deposed by the second Applicant without the authority of the other Applicants and that is not the procedure provided for under Order 1 Rule 12(2) of the Civil Procedure Rules thus making it incompetent.

On top of the above objections, the Respondents contended that this court should consider itself as *functus officio* since there is a default judgment on record which was entered on the 14th day April 2015 but later set aside by the Deputy Registrar of this court; an act which was carried out without any application on record making the application to be of no merit in the default judgment had not been set aside in the first place.

To reinforce the above submissions the applicants relied on the several authorities which included that of **A.K.P.M Lutaaya v AG Civil Ref. No. 1 of 2007, Alcon International Ltd v The Standard Chartered Bank of Uganda & 2 others Taxation Cause No. 1 of 2012, Mukuye Steven & 106 others v Madhvani Group Ltd High Court Miscellaneous Application No. 0821 of 2013** and the holding in the case of **M/S Simon Tendo Kabenge & Another v Mineral Access Systems Ltd Misc. Application 570 of 2011** .

In response to the preliminary objections raised by the respondents, the Applicants through their counsel, negated the contention that the fees had not been paid then the court registry would not have received the document and had filed and allocated for disposal the Application.

And in regards to the issue of the affidavit on record having been deposed by only the Second Applicant, the Applicants argued that this should not be taken in regard for the matter before the court is not in any representative capacity to require any written and signed authority since Order 19 rule 3 of the Civil Procedure Rules left room for any party who makes such an affidavit to be cross examined on the same if the need arose to verify the facts on it.

2. Ruling on preliminary objections on issues of nonpayment of court fees, parties swearing affidavit in support of the application yet not authorised to do so in a suit where there are many parties and court being "functus officio" by Hon. Justice Henry Peter Adonyo: June 2015.

Lastly in regards to the preliminary objection which was to the effect that this court should find itself *functus officio* for when the Deputy Registrar of this court recalled his orders after finding that there was no application pending for the default judgment by the Respondents/plaintiffs he could not do so leaving the default judgment to a matter pending thus reclusing this court from further handling the same. In regard to this contention, the Applicant reiterated that in order for a party to appeal the Order of a Registrar this has to be done by way of notice of motion as provided for under Order 50 of the Civil Procedure Rules not on a preliminary objection that the matter *res judicata* for the matter could only be appealed against.

The resolution of the preliminary objections raised is on the basis of the flow of the submissions as follows;

On the objection raised in regards to the fact that the application is not properly before court since the Applicants did not pay court fees, this principle laid down in many authorities such as **UNTA Exports v East African Customs and Management Authority [1970] EA** and that of **M/S Simon Tendo Kabenge & another vs. Mineral Access Systems Ltd Miscellaneous Application 570 of 2011** that a party who does not pay fees cannot be seen by any court is educative.

Relating this principle to the instant issue, I note from the record, there is indeed a stamp showing fees paid but there is no fees paid receipt number. Though this could be an omission on the part of the receipting officer, it is the duty of the Applicants to ensure that the records reflect correctly what has been done and in this respect should have ensured that the fees receipt number is indicated if indeed the fees had been well knowing that courts do not take lightly the issue of a party not paying the court dues where required. In this respect since there was an attempt to show that fees was paid I would find that the most suitable and judicious thing to do would be to order the Applicants to ensure that the fees are either paid or if it was paid the the proper receipt number is indicated on record and upon doing so produce evidence of such payments before any other hearing of this matter can be proceeded with.

The second preliminary objection was that that the application is not supported by a proper affidavit since the affidavit is deponed by one of the Applicants without the authority of the other

3. *Ruling on preliminary objections on issues of nonpayment of court fees, parties swearing affidavit in support of the application yet not authorised to do so in a suit where there are many parties and court being "functus officio" by Hon. Justice Henry Peter Adonyo: June 2015.*

two Applicants contrary to Order 1 Rule 12 of the Civil Procedure Rules. According to that order it is provided as follows;

Order 1 Rule 12:

“(1) where there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead for that other in any proceeding and in like manner, where there more defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for that other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in the case.”

The reading of the rule show that in its two aspects it is a requirement that where there is a party who is stated to be representing another then such party must have authority to do so from such other party (ies) and that this must be in writing and this would appear to be the holding in the case of **Mukuye Steven & 106 others v Madhvani Group Ltd Miscellaneous Application No. 821 of 2013**. Thus that being so, I would respectfully disagree with the Applicants submission that it is only where there is in a representative suit that such writing is necessary for the above law appears not restrict such requirements to only representative suits but provides for instances of all suits where there is more than one plaintiff or defendant and this provision of the law is mandatory since the word “shall” is used.

Apparently, this is the situation lacking in either case for I also note even as far as the Respondents are concerned , there is also only a single affidavit in reply which apparently is deposed by the second Respondent meaning that the first Respondent is also not party to these proceedings since he did not file his affidavit in reply. But noting that this could have been as a result of non proper legal interpretation of the law and not the problem of the parties but legal counsel, I would in the interest of justice direct that much as the applicants should individually file their affidavits in support of the application even the Respondents should equally do so

*4. Ruling on preliminary objections on issues of nonpayment of court fees, parties swearing affidavit in support of the application yet not authorised to do so in a suit where there are many parties and court being “**functus officio**” by Hon. Justice Henry Peter Adonyo: June 2015.*

unless any of them has been granted the authority to depose the same on behalf of the other and as such that would conclude proper pleadings in this matter.

On the issue that this court apparently was *functus officio* and could therefore not again hear a matter where the Deputy Registrar of the court had entered a default judgment and then later recalled the same, I note from the pleadings that on the 14th April 2015, the Deputy Registrar entered a default judgment against the Applicants but later went ahead and declared that he had set aside the same based on the fact that the Respondents/ plaintiffs had not made the proper application before him for the earlier action he had taken. This is the situation being raised here to state that this court is *functus officio*. A look at the relevant provisions of the law would help clarify this point.

My reading of Order 50 of the Civil Procedure Rules show that the Registrar of a court has the powers to enter a default judgment but does not have powers to set it aside. Meaning that where a registrar has made such orders he or she becomes *functus officio* and thus cannot review own order or set it aside since such jurisdiction would have expired and therefore a registrar who purports to set own orders would be doing so under a wrong premise of the law which would make any default judgment entered against a party to continue to persist and in relations to the instant matter that would be the correct position but that would not mean that this court itself is *functus officio* for orders of the Registrar can be appealed to a judge under Order 50 Rule 8 of the same rules making this court to still the appropriate court where a party is aggrieved by the orders of a registrar contrary to what has been pondered by the Respondents.

From the above therefore it is the finding of this court that while the instant application is not the proper one to be handled and considered by this Honourable Court this court, it would appear to me that the Applicants can still make the proper application in order this court set aside the default judgment and thereafter would proceed to apply to court to be granted leave to appear and defend where necessary and so in the premises while I would seem to consider some of the aspects of the preliminary objection are not founded in law , in general I would find that the instant application is not the proper one before this court and thus I would be constrained to dismiss it at this preliminary point and order that the appropriate applications be filed and that in respect of this matter each party would bear own costs.

5. *Ruling on preliminary objections on issues of nonpayment of court fees, parties swearing affidavit in support of the application yet not authorised to do so in a suit where there are many parties and court being "functus officio" by Hon. Justice Henry Peter Adonyo: June 2015.*

Orders:

I do therefore make the following orders:

- a. The Applicants are directed to file for consideration the proper application to set aside the default judgment entered on the 14th April 2015 by the registrar of this court and thereafter were the same is granted to proceed to file another application apply for the necessary leave to appear and defend the head suit.
- b. In respect of this application each party is to bear own costs.
- c. The Applicants must ensure that the court fees for this dismissed application is paid and proof produced before hearing any other application in relation to this matter in future is allowed.

HENRY PETER ADONYO

JUDGE

10TH JUNE, 2015

*6. Ruling on preliminary objections on issues of nonpayment of court fees, parties swearing affidavit in support of the application yet not authorised to do so in a suit where there are many parties and court being "**functus officio**" by Hon. Justice Henry Peter Adonyo: June 2015.*