

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION 320 OF 2015

5 **(ARISING OUT OF MISC. APPLCN. 46 OF 2015)**

(ALL ARISING OUT OF CIVIL SUIT 633 OF 2014)

DAV ALI AND CO. ASSOCIATES ----- APPLICANT

VS

SAI ENGINEERS SYNDICATE LIMITED ----- RESPONDENT

10 **BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

RULING

This application was made under SS. 82 &98 of the Civil Procedure Act, and O. 46 r.r. 1 & 8 of the Civil Procedure Rules, seeking the following orders:

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- i. The ruling and decree in HCMA 46 of 2015 be reviewed and set side.
 - ii. Execution of HCMA 46 of 2015 be stayed.
 - iii. Civil suit 633 of 2014 be reinstated and heard on its merits; and
 - iv. Costs of the application be provided for.

The application is supported by the affidavit of Mudoola Babolana, which sets out four grounds to wit:

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- 25
- After a long and thorough search, the Applicant found the original copies of the certificate and partnership deed which was not available at the time the ruling in HCMA 46 of 2015 was made.
 - The Applicant has duly certified copies of the of the certificate and partnership deed which were not available at the time of the ruling due to the delayed and poor certification in the Companies Registry.
 - It is in the interests of justice and equity that the application be allowed so that the Applicant does not suffer injustice due to acts of Government Officers; and that

- The application is made without undue delay.

There is an affidavit in reply deponed by Orach Sebastian Marry an Advocate in the Law Firm representing the Respondent.

When the application was called for hearing, the certificates were tendered in court for
5 identification and it was prayed that the application be allowed. Section 82 of the CPA was cited in support.

It was then submitted for the Respondent that the main suit was dismissed under O.7 r. 11 (d) CPR. Relying on paragraphs 3,4,5,6 & 7 of the affidavit in reply, Counsel stated that the evidence on record is unchallenged. The documents tendered in court for identification were
10 contested as a creation of the Applicant on the ground that they were not served on the Registrar General so that another letter could be issued.

Counsel argued that the suit was properly dismissed and that the application is misconceived and therefore the ruling should be upheld and the application dismissed with costs.

In rejoinder, Counsel for the Applicant submitted that no affidavit in rejoinder was filed by
15 the Applicant as the affidavit in reply was served upon them late, but that the issues raised in the affidavit in reply were covered in the supporting affidavit. Further that, the authenticity of the documents can only be determined at trial after evidence has been led and not by preliminary objection. He reiterated earlier prayers.

The issue is **whether the application should be allowed.**

20 S. 82 of the CPA and O. 46 CPR empower court to review a decree or order made on account of some mistake or error apparent on the face of the record or for any sufficient reason and to make such order on the decree or order made as it thinks fit.

The ruling of the court sought to be reviewed in this application struck out the suit filed by the Applicant on the grounds that the suit appeared to be barred by law as the
25 Applicant/Plaintiff according to the Registrar General, was not registered as a partnership and therefore could neither sue or be sued as it had no legal existence.

The documents presented by the Applicant to court then were rejected by court as there was doubt as to their authenticity, because while they bore a stamp, signature and name of the person certifying the certificate and partnership deed, there was no date upon which the

alleged certification was done. And the certificate of registration did not bear the stamp, name of the person certifying it or date of certification.

Be that as it may, it is contended that the Applicant had registered a partnership with the Registrar of Documents and a certificate of Registration of a Business Name was issued on 5 20th March, 2003, by the Registrar of Business Names. The documents were certified true copies, signed but not dated.

Under S. 78 (1) of the Evidence Act, **court is obliged to presume every document purporting to be a certificate, certified copy or other document, which is by law declared o be admissible as evidence of any particular fact, and which purports to be 10 duly certified by any officer in Uganda, to be genuine if the document is substantially in the form and purports to be executed in the manner directed by law in that behalf.**

(2) The Court shall also presume that any officer by whom any such document purports to be signed or certified or held, when he or she signed it, the official character which he or she claims in that paper.

15 And under S. 17 (1) of the Registration of Documents Act **“every certified copy of any registered document purporting to be signed by the Registrar shall be admissible in evidence in any civil case without proof of the correctness of the copy or the genuineness of the signature, unless it is alleged either that the original is a forgery or that the copy purporting to be signed by the Registrar is a forgery or incorrect”.**

20 (2) The party proposing to use it in evidence **“shall deliver a copy of such certified copy to the opposite party, and that copy shall be received in evidence if the court is of the opinion that the copy of it was delivered in sufficient time before the hearing to enable the opposite to inspect the original register from which the copy has been taken”.**

25 In the present case, the documents were attached to the court documents that were served on the Respondent.

On the basis of the above cited provisions of the law, it was an error for court to hold that the documents appeared not to be authentic. Lack of date on the certified copy should have been treated as a technicality under Article 126 (2) (e) of the Constitution and the Respondent would have had a chance to bring evidence at the hearing to challenge the documents.

Failure to date the certified copies was an error on the part of the officials certifying the documents. And Court should have borne in mind the principle established by decided cases that *“the administration of justice should normally require that the substance of the disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from pursuit of their rights”*. – Refer to **Re Christine Namatovu Tibajukira [1992 – 93] HCB 85 SCCA 02 of 1989**.

And while the Registrar General indicated that that the Applicant’s name was not reflected in their system *“any other information would enable them to do a further and better search”*.
10 The Registrar’s letter was therefore not conclusive evidence that the applicant was not registered.

As regards the legal existence of a partnership firm, under S.2 (1) of the Partnership Act, a partnership is nothing more than a contractual and fiduciary relationship between two or more persons who have agreed to engage in a business with a view to making a profit. It has
15 been held that “members of a partnership do not have any personality that is legal existence. The partners carry on business both as principals and as agents of each other within the scope of the partnership business; and the firm name is a mere expression, not a legal entity”. – See the case of **Sadler Vs Whiteman [1910] 1 K.B. 868,889 (CA)** Farwell L.J

According to the case of **Western National Bank of New York Vs Perez [1891] 1 QB 304**
20 **at 314**, *“the use of partnership name is merely a convenience denoting that each partner is sued as though their names were all set out”*.

For all the reasons set out in this ruling, this court finds that it was an error to strike out the plaint on the basis that the Plaintiff/Applicant had no legal capacity to sue and that the documents presented by the Applicant were suspicious for lack of date for certification. The
25 application is accordingly allowed and the order dismissing the suit set aside. Refer also to S.33 of the Judicature Act.

Execution if any, arising out of is also set aside.

The suit to be reinstated on the register

Costs will abide the outcome of the main suit.

FLAVIA SENOGA ANGLIN

JUDGE

5 14.03.16