

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(COMMERCIAL DIVISION)**

**ARISING OUT OF HCCS NO. 480 OF 2022**

## VERSUS

**T/A SEKABANJA AND CO ADVOCATES :::::::::::::::::::: RESPONDENT**

## RULING

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5 ***Division HCCS 0672 of 2001: Shandong Industrial (U) Limited versus Esibuko Enterprises (EA) Limited & 2 Others.***

The Affidavit in Reply was deposed by Mr. Sekabanja Kato SE. He admitted that the WSD was filed out of time. He further stated that the Applicant had no *locus standi* to file the Application and that the said application was misconceived.

- 10 In rejoinder, the Applicant stated that his application was competent. That upon the Respondent admitting that the WSD was filed out of time, he cannot be heard in court. As such, he was entitled to an interlocutory judgment in the sum of USD \$ 86,924.

**Representation**

- 15 The Applicant was represented by Mr. Geoffrey Mutaawe of M/s The Law Associates Advocates and the Respondent was represented by Mr. Moses Opio of M/s Sekabanja & Co. Advocates.

**Hearing**

- 20 When the matter was called for mention on the 1<sup>st</sup> March 2023, Court invited the Parties to consider an out of court settlement in respect of the Applicant's claim in the main suit. If considered, a settlement in the main suit would render this application over taken by events.

However, in the interest of time, the Parties were given schedules within which to file their written submissions.

25 **Preliminary objection**

The Respondent raised a preliminary objection that has a bearing on the Application and Main Suit. That is, that the Applicant / Plaintiff had no *locus standi* to file the suit and this application. As such, the suit is incompetent in as far as it does not disclose a cause of action against the Respondent/Defendant.

- 30 The preliminary objection raised can only be appreciated if I gave it context. The Parties in ***HCCS No. 0672 OF 2001: Shandong Industrial (U) Ltd. Versus Esibuko Enterprises (EA) Ltd. & 2 Others*** executed a consent judgement on the 20<sup>th</sup> February 2019. The Defendants agreed to pay the Plaintiff USD \$ 1,500,000. USD \$ 500,000 was paid upon execution of the Consent and the balance was to be paid



5 over a period of twelve (12) months with a monthly instalment of USD \$ 87,916. The Applicant, as a duly authorized attorney of the Plaintiff executed/ signed the Consent Judgment on their behalf. The Respondent and M/s Nyanzi, Kiboneka & Mbabazi Advocates jointly represented the Plaintiff in HCCS No. 0672 of 2001. According to the Applicant's affidavit in support of the Application, the  
10 Respondent would receive the monthly installment payments from the Defendant and he would in turn issue a cheque to the Applicant corresponding with the amount sent to the Respondent by the Defendant.

That on or before 03/02/2020, the Respondent issued the Applicant a cheque no. 000017 drawn against Exim Bank Uganda Limited in the sum of USD \$ 86,924. The  
15 said cheque was presented twice by the Applicant to his bank and the same was dishonored due to insufficient funds on the Respondent's bank account. The Respondent was notified that the cheque had been dishonored. This prompted the Applicant to file HCCS No. 0480 OF 2022.

Paragraph 1 of the Plaint in HCCS 0480 of 2022 reads in part that:

20 *"The Plaintiff ... is an adult male Ugandan of sound mind and the registered attorney of Shandong Industrial (U) Ltd by power of attorney registered as instrument number 6636 of 20/02/2019". (Emphasis is mine)*

I have perused the court record and established that whereas reference was made to a power of attorney, the same was not attached to the Plaintiff's pleadings.

25 Regarding this Application, paragraph 1 of the Applicant's affidavit in support states in part that:

*"I am an adult male Ugandan of sound mind. The registered attorney for Shandong Industrial (U) Ltd. (a photocopy of the power of attorney in that regard is attached hereto and marked as "PA") ..." (Emphasis is mine)*

30 The Applicant despite making reference to the power of attorney he did not attach it as an annexure to his affidavit in support of the Application.

### **Respondent's submission**

Learned Counsel for the Respondent cited and relied on the case of **Ayiguhugu & Co. Advocates – vs – Munyankindi Muteeri [1990-1992] KALR 80** where Teskooko,  
35 J (as he then was) held that a plaintiff who holds a power of attorney did not have

*K. Nyanzi*

5 a cause of action and could not institute a suit in his own name. He was an agent and could only sue in the name of the principal.

He submitted that in the absence of a power of attorney on the court record both in respect of the Complaint and the Application, determining both matters would be an academic exercise. The Respondent summed up his submission by stating that  
10 the suit should be dismissed and since the written statement was filed out of time, no order as to costs should be made.

### **Applicant's submission**

In reply, the Applicant submitted that his claim in the main suit was based on a cheque issued by the Respondent that was dishonored. He cited and relied on the  
15 section 37 (a) of the Bills of Exchange Act, Cap 68 which empowers the Applicant to sue in his own name and section 46(2) which is to the effect that when a bill of exchange is dishonored, an immediate right of recourse against the drawer accrues to the holder.

### **Determination**

20 **The Black's Law Dictionary 11<sup>th</sup> Edition at page 1128** defines *locus standi* as:

*"place of standing- The right to bring an action or to be heard in a given forum".*

**Halsbury's Laws of England, 4<sup>th</sup> Edition Volume 1 at pages 447** as cited and relied on by the Respondent states that:

25 *"An agent acting under a power of attorney should, as a general rule act in the name of the principal. If he is authorized to sue on the principal's behalf, the action should be brought in the principal's name. A deed executed in pursuance of such a power is properly executed in the name of the principal or with words to show that the agent is signing for him...".*

30 *Locus standi* is the legal capacity of a person that enables him or her to invoke the jurisdiction of the court in order to be granted a remedy. The requirement is that the *locus standi* to institute a suit must be established at the time of filing the suit. This is done by expressly pleading facts which give rise to the legal standing to institute the suit. It should not be left to court to guess where one derives the

*Meenaghar*

5 authority from. (See **Fakrudin Vallibhai Kapasi & Anor versus Kampala District Land Board & Anor, HCCS 0570 of 2015**).

As earlier stated in the background to the Application above, the Applicant/Plaintiff emphasizes that he is suing as a lawful attorney of M/s Shandong Industrial (U) Ltd. This is information contained in the first paragraphs  
10 of the Plaint and Affidavit in Support of this Application (emphasis is mine). A person suing as a lawful attorney of a party must have a document, that is a power of attorney granting that individual the authority to institute or defend the action being raised against the donor. In the case before court, the Applicant ought to have attached an executed and registered power of attorney on the  
15 Plaint and the Application as proof that he was authorized to file the suit on behalf of M/s Shandong Industrial (U) Limited. The party (plaintiff) bringing the Suit and Application should therefore have been written as ***“Shandong Industrial (U) Limited suing through Samuel Mubiru Kizito”***. In the case of ***M/s Ayiguhugu and Co. Advocates Versus Munyankindi Mary Muteteri (1988-1990) 161***, it was  
20 observed that a holder of power of attorney ought to take proceedings in the name of the owner of the property(donor). In the absence of such a document, it simply means that he did not have the *locus standi* to file the suit and this application.

Whereas I am in agreement with the Applicant that his claim against the  
25 Respondent/Defendant is founded on sections 37(a) and 46(2) of the Bills of Exchange Act, the pleadings were not properly drafted to reflect this. To illustrate my point, in my considered opinion, the facts giving rise to the cause of action in the plaint should have first taken us back to the consent judgement and how it was being implemented without making any mention of the Applicant/ Plaintiff  
30 being a registered attorney of M/s Shandong Industrial (U) Ltd. This would then lead us to how the Respondent issued a cheque to the Applicant that was dishonored upon the Applicant cashing it and so on and so forth.

In conclusion, in the absence of an executed and registered power of attorney, I find that the main suit was illegally commenced by the Applicant. He did not have  
35 the *locus standi* and therefore no cause of action against the Defendant. The main suit is hereby struck out and the Application dismissed. No order shall be made as to costs in respect of both the Main Suit and the Application. Each party shall bear their own costs.



5 Before I take leave of this matter I would like to state that in many instances  
where matters are dismissed or struck out on preliminary objections does not  
necessarily mean that a party does not have a cause of action against another  
person. But this happens as a result of inadequate preparation and / or failure to  
pay attention to detail when drafting pleadings. However, the silver lining the  
10 cloud is that a party may have an opportunity to file a fresh suit if they are not  
time barred in addition to other factors being taken into consideration.

Dated at Kampala this **31<sup>st</sup>** day of **January 2024**.



**Harriet Grace MAGALA**

15 **Judge**

Delivered online (ECCMIS) this **01**.....day of **FEBRUARY**..... 2024.