

1. KATO LABAN SSERWADDA
2. GLADYS NAKIBUULE KISEKKA
3. LILLIAN SAGALA ABI APPLICANTS

CHINA STATE CONSTRUCTION ENGINEERING CORPORATION LTD ::::::::::::::::::::::::::::::: RESPONDENT

RULING

1. Daniel Kisekka, Peter Katalaga, Kato Laban Sserwadda, Gladys Nakibuule Kisekka and Lillian Sagala Abi are beneficiaries to the estates of the late Edward Mutelenga Mucumbiro Kisekka, the late Alfred Tucker Katalaga, the late Samuel Nyika Kayombya, the late Elizabeth Kayogoma and the late Namuli Eliyosi, respectively.
2. The 1st and 2nd plaintiffs have at all material times represented to the applicants and counsel in personal conduct that they wished to institute a suit against the defendant for breach of their tenancy agreement, and thus, reason to bring this suit.
3. However, to the applicants' dismay, after filing and serving the specially-endorsed plaint, the 1st and 2nd plaintiff made supplementary affidavits

opposing the plaint and supporting the respondent's application for leave to appear and defend.

4. Striking off the 1st and 2nd plaintiffs is necessary in order to enable Court to effectually and completely settle all questions in the suit.
5. It would be in the interest of justice if this application is allowed.

The application is supported by the affidavit of the 1st applicant. He stated that he, together with the other plaintiffs in Civil Suit No. 0059 of 2023 (hereinafter "the main suit"), filed the same seeking to recover UGX 60,000,000 in rent arrears from the respondent. He stated that although Daniel Kisekka and Peter Katalaga ("the 1st and 2nd plaintiffs") had always represented that they wished to be part of the action, they subsequently filed supplementary affidavits supporting respondent's application for leave to appear and defend it. He concluded that it is only fair that the 1st and 2nd plaintiffs are struck off the plaint in the main suit since they no longer support the claim therein.

The respondent opposed the application through an affidavit in reply sworn by Jiang Bo, its project director. He recounted the history of the tenancy between the respondent and the applicants' family. He stated that in November 2019, the applicants' family made a change in the rent collection bank accounts. He confirmed that all due rent has been paid into the new account as confirmed by the family. He also confirmed that the 1st and 2nd plaintiffs have previously sworn affidavits supporting the respondent's case.

Issues arising

1. Whether the affidavit in support of the application is competent.
2. Whether the 1st and 2nd plaintiffs should be struck off the plaint.

Representation

The applicants were represented by Ms. Namanda Iridah of M/S Sekidde Associated Advocates while the respondent was represented by Mr. Ilukor Emmanuel of M/S Ilukor Advocates and Solicitors. I have considered all the materials on record, the submissions of counsel and the laws and authorities they cited.

Determination of the issues

Issue 1: Whether the affidavit in support of the application is competent.

Counsel for the respondent averred that the 1st applicant deponed the affidavit in support of this application claiming that the main suit has merit and yet he later filed a supplementary affidavit in support of the respondent's pending Misc. Application No. 3065 of 2023 confirming that the main suit holds no merit. Counsel submitted that this is a major contradiction in the applicants' evidence which cannot be overlooked.

I have examined the affidavit in support sworn by the 1st applicant before a commissioner of oaths on 26th September 2023 and the supplementary affidavit in Misc. Application No. 3065 of 2023 sworn by the same 1st applicant on 8th November 2023 also before a commissioner for oaths. The two affidavits are so inconsistent with each other that it is hard for anyone to believe that they were not sworn by two different people.

In the affidavit in support, the 1st applicant insinuated that the 1st and 2nd plaintiffs in the main suit have colluded with the respondent and have sworn affidavits supporting the respondent's application for leave to appear and defend the main suit. He requested the Court to strike the 1st and 2nd plaintiff's off the plaint because they are no longer interested in the claim therein. He also stated that the claim in the main suit is a genuine claim for non-payment of UGX 60,000,000 being rent arrears.

Nearly two months later, he filed a supplementary affidavit supporting the respondent's pending Misc. Application No. 3065 of 2023 which seeks to strike out the plaint in the main suit. In the latter affidavit, he explained that in presenting the main suit, the plaintiffs were simply expressing their bitterness after the family resolved to appoint a new account for rent collection. He also confirmed that there are no rent arrears due from the respondent.

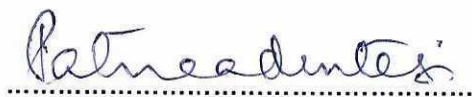
It is settled law that factual contradictions in affidavits cannot be ignored, however minor, since a sworn affidavit is not a document to be treated lightly (See **Sirasi Bitaitana & 4 Ors v Emmanuel Kananura [1977] HCB 37 at 38**). I am mindful that not every contradiction in evidence results into that evidence being rejected. Nonetheless, grave contradictions in evidence will, unless satisfactorily explained, usually result in that evidence being rejected. (See **Sarapio Tinkamalirwe v Uganda, SC Criminal Appeal No. 27 of 1989.**)

I have no doubt that there are grave contradictions between the 1st applicant's evidence in the affidavit in support of this application and his evidence in the supplementary affidavit supporting the respondent's pending Misc. Application No. 3065 of 2023. In one breath, he states that the debt claimed in the main suit is outstanding and in the very next breath, he states that that debt was paid in full even before he and the other plaintiffs filed the main suit. He claims that the main suit presents a valid claim and then confirms that the main suit holds no merit and is improperly before the Court. The 2nd and 3rd applicants did not swear their own affidavits in this application. The application is based solely on the 1st applicant's affidavit in support.

In view of the said grave contradictions, the affidavit in support of the application is rejected and expunged from the court record. Having expunged its affidavit in support, the application now stands unsupported by any affidavit evidence and must, at once, fail. There is no need for me to delve into the merits of the application. Court cannot start analysing whether or not a plaint should be amended when the person presenting that request has filed another affidavit on Court record confirming that the claim in that plaint was already settled.

Consequently, I make the following orders:

- i. This application is struck off the court record.
- ii. Costs of this application shall abide by the outcome of the main suit.



Patricia Mutesi

JUDGE

(30/01/2024)