

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA, AT MBARARA

HIGH COURT REVISION NO. 42 OF 1998

NATHAN KATAMBA..... APPLICANT

VS

STEPHEN KABIGYEMA..... RESPONDENT

BEFORE: THE HON. MR. JUSTICE V. F. MUSOKE—KIBUUKA

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RULING

This is a ruling on three preliminary objections raised by learned counsel, Mr. Zehurikize, when the motion for a revisional order came up for hearing.

The first is that the application for revision did not comply with the new procedure set out in rule 1(b) of Order 6, of the Civil Procedure rules. Rule 1(b) of Order 6 reads as below:

“(b) Every pleading shall be accompanied by a brief summary to be adduced, a list of witnesses; a list of documents and a list of authorities to be relied on except that an additional list of authorities may be provided later with leave of court.”

The second objection was that the application was not competent owing to the fact that the various annexures which were appended to the affidavit, in support of the motion, were not authenticated or verified in accordance with rule 8 of the Commissioner for Oaths Rules, contained in the first schedule to the Commissioner for Oaths Act, cap. 53. Learned counsel relied upon two decisions of this court, namely, Faraz Kassam vs. Commissioner For Land Registration And Meera Investments Ltd. Misc. Appl. No. 24 of 1996 (unreported) and

Intraship

(U) Ltd. vs. Trans-Africa Insurance Co. Ltd., Misc. Application No. 298 of 1999, also unreported.

The third objection was that the affidavit in support contained a falsehood and ought to be struck out in accordance with the authority provided in Bitaitana vs. Kananura (1977) HCB 34.

In reply to the three objections, learned counsel Mr. Dhabangi, for the applicant stated that he did not have much to say. In respect of the first objection, he asked this court to ascertain the date when the amendments to the Civil Procedure Rules came into force and compare it with the date of filing the instant application.

Of course, if it is true that the instant application is caught by Order 6 rule 1 (b), the result would be that the application is incompetent and it would be struck out, see Dr. Menge Stephen vs. Dr. C. B. Musinguzi Misc. Appl. 0077/2000 (at Mbarara) and Henry Ssebunya vs. Kenfreight (U) Ltd., Civil Suit No. 988 of 1998 (HC at Kampala) Also see James Matsiko, Advocate vs Uganda Railways Corporation, H Misc. App. No. 826 of 1998 (also at Kampala)

For the instant application, I find that it was filed in this court on 1st July, 1998. The amendment to the Civil Procedure Rules, under Statutory Instrument No. 26 of 1998, was signed by the Chief Justice of Uganda, on 8th May, 1998. However, the Rules were not published in the Uganda Gazette until 24th July, 1998, vide Uganda Gazette No. 47 volume XCI of that date. Since Statutory Instrument No. 26 of 1998, did not provide for a date of the coming into force of the amendment rules, resort has to be made to the provisions of section 17(1)(a) of the Interpretation Decree, 1976, Decree No. 18 of 1976. The provision reads as follows:

“(a) the commencement of a statutory instrument shall be such date as is provided in or under the Instrument or, where no date is so provided, the date of its publication as notified in the Gazette.”

In the light of the above provision of the law, it is clear that Statutory Instrument No. 26 of 1998, came into force on 24th July, 1998. It is also clear that the instant application, which was filed in this court on 1st July, 1998, could therefore, not have been required to comply

with the provisions of Order 6 rule 1(b), as amended by S.1. No.26 of 1998. That amendment was not in force at the time when the application was filed in this court. Accordingly, the first objection is misconceived and must fail.

The second objection, in my view, must also fail. The two decisions of this court relied upon by learned counsel, Mr. Zehurikize in presenting the second objection, that is to say Feroz Kassam vs Commissioner of Land Registration And era Investment Ltd. (Supra) and Intraship (U) Ltd. vs Trans-Africa Insurance Co. Ltd. (also supra) appear to me to be in direct conflict with the decision of the Court of Appeal of Uganda in Uganda Corp. Creameries Ltd. And Henry Kawalya vs Reamation Civil Appl. No. 44 of 1998 (of the Court of App.) That decision

is directly on the same point. The court of Appeal did not think that an omission, by a Commissioner for Oaths, to verify and seal annexures to an affidavit which itself in properly commissioned should have the effect of invalidating the affidavit itself. That decision has a binding effect on this court and I cannot depart from it. The second objection also fails.

The third objection, in my view, should be upheld by this court. I have examined the documents referred to me by learned counsel Mr. Zehurikize with regard to this particular objection. I am satisfied that in paragraph 6 of his affidavit in support of the motion, the applicant seeks to rely on Annexure “C” to support the contention that the LC I Court never held a trial or passed any judgment regarding the land in dispute between the parties. It is clear to me, and I duly agree with Mr. Zehurikize, that the signature on Annexure “C” is a forgery. It is certainly not that of Mr. Edson Nuwabine who is purported to have signed it. It is clear to me the applicant intended to take this court for a ride by presenting before it documents which he has clearly manufactured in order to support his application. He is a canning and obviously a very crafty man indeed.

In the circumstances, I agree with learned counsel, Mr. Zehurikize that the rule in Bitaitana’s case should, indeed, apply. For affidavits are very serious documents once one contains a falsehood in one part, the whole becomes suspect. An application supported by a false affidavit is bound to fail.

The applicant has not come to this court with clean hands. The affidavit in support is struck out. The motion remains unsupported by any evidence and is, therefore valueless. The application is dismissed with costs to the Respondent.

V. F.Musoke Kibuuka

Judge

20/1 2/2000

Respondent in court

Mr. Zehurikize - counsel for respondent

Mr.Dhabangi - counsel for applicant

Mr. Tumwine — Court clerk

Court: Ruling read and signed.

V. F.Musoke Kibuuka

Judge