

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-MA-0143-2000
(From HCT-CA-038- 1996)

J. B. MAGARA..... **APPLICANT**

VS

KATEHANGWA.....**RESPONDENT**

BEFORE: THE HON. MR. JUSTICE P.K.MUGAMBA.

RULING

A preliminary objection was raised by Mr. Tumwesigye, counsel for the respondent, against the affidavit in support of the applicant's notice of motion. It was his view that the application as a whole must be defective by reason of the defect in the affidavit. Counsel noted that while section 6 of the Oaths Act. Cap 19 of the Laws of Uganda requires inter alia that the place where an affidavit is made should be stated in the jurat. This was not the case in the affidavit before court. He submitted that the defect was incurable and that the application should be struck out.

On his part Mr.Bwengye, counsel for the applicant, submitted that the objection was misdirected. He stated that the Oaths Act relates to oaths of office and that its subjects are indicated in the First Schedule to the Act. He submitted that it does not apply in the instant case. He referred to Section 5 of the Commissioner of Oaths (Advocates) Act and stated that under the provision the place and date in the jurat should be stated by the Commissioner of Oaths. He was satisfied this had been done by the Commissioner of Oaths in the affidavit before court. It was his view that even if there was an omission court should ignore it as long as statements found in the jurat are truthful. He invoked Article 126 (2) (e) of the Constitution saying court should administer substantive justice.

Section 6 of the Oaths Act, cap 19, states:

“Every Commissioner for Oaths or notary public before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made’.

The Emphasis above is mine.

From the above it is obvious that the requirement is mandatory and that not only the date but also the place must be stated. I am not persuaded by the argument of counsel for the applicant that the provision is limited to oaths of office indicated in the First Schedule. The Second Schedule to the Act reveals that affidavits are also considered. The affidavit in question does bear a date in the jurat. It also contains the stamp of the Commissioner for Oaths Zagyenda Joseph of some post office number K’la. To my mind that is no indicator of where the affidavit was sworn. The same Commissioner for Oaths would obviously use the same stamp if the affidavit was sworn in Kisoro because all he could be showing would be his identity rather than the place where the affidavit was sworn. I agree with counsel for the respondent that the affidavit offends against Section 6 of the Oaths Act and is therefore defective. I must refer also to Section 43 of the Interpretation Act which states:

‘Where any form is prescribed by any Act, an instrument or document which purports to be in such form shall not be void by reason of any deviation from that form which does not affect the substance of the instrument or document or which is not calculated to mislead’.

The emphasis above is added.

Allen J (as he then was) in *Katondwaki vs Biraro* [1977] HCB 33 held inter alia that when dealing with rules of procedure it is no longer necessary to follow the strict requirement concerning form. The irregularities of form may be ignored or cured by

amendment they have occasioned no prejudice. I am at one with that proposition but must note that the requirement for noting the date and the place where the affidavit was sworn are matters not of form per se but of substance. An affidavit like a testamentary disposition document is self evident. Hence the statutory inclusion of details such as dates, names of persons and names of places if the document has to qualify for what it is intended to be. Neither Article 126 2) (e) of the Constitution nor any authority for the time being can be used to wish away the statutory requirement because it is of substance rather than form. See In the matter of the Estate of Lokana Okoth and In the matter of an application for Management of missing Persons by Tom Toya [1975] HCB 204.

Having found the affidavit which is pivotal to this application defective, the application must be incompetent. It is accordingly struck out with Costs.

P.K.Mugamba

Judge

27th April 2005

27th April 2005

Both parties in court

Mr. Tumwesigye for respondent

Mr. Kahungu-Tibayeita holding brief for Mr. Bwengye for applicant

Ms Tushemereirwe court clerk/interpreter

Court:

Ruling delivered in court.