

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]

MISCELLANEOUS APPLICATION NO. 1112 OF 2008
(Arising Out Of Civil Suit No. 726 of 2006)

HELGE ANGSTROM RUDOLF ::::::::::::::: APPLICANT/PLAINTIFF

VERSUS

HENRY COLLINS MASAABA)

ANNET NAMUBIRU) ::::::::::::::: RESPONDENTS/DEFENDANTS

BEFORE: HON. JUSTICE RUBBY AWERI OPIO

RULING

This application was brought by notice of motion under **Section 98 of the Civil Procedure Act** and **Order 52 of the Civil procedure Rules**. The application was brought for orders that:

- (a) The High Court Civil Suit No. 726 of 2006 be reinstated and determined on its merits.
- (b) Costs of this application be provided for.

The application was based on the grounds contained in the affidavit of MR. HELGE ANGSTROM RUDOLF, the Plaintiff in the aforementioned Civil Suit but briefly were:

- (1) That the Applicant had obtained an interlocutory judgment against the Respondent and the suit was to be set down for formal proof.
- (2) That the purported withdrawal of the suit by the Plaintiff was tainted with fraud and illegality because the alleged signature of the Plaintiff on the withdrawal document was a forgery.

- (3) That the Plaintiff was very and is still interested in the suit property as the lawful registered proprietor.
- (4) That it was in the interest of justice and equity that this matter be reinstated, heard and determined on its merits.

The application was further supported by supplementary affidavit of Samuel Ezati, Forensic Handwriting Expert.

According to the Applicant's affidavit, on 13/2/2002 he purchased the suit land comprised in Plot No. 304 Block 255 situate at Gaba which he had intended to co-own with his daughter, Irene Argstrom. After purchasing the suit property, he occupied it and developed it by constructing a residential premises therein. Sometime in January 2005, the 2nd Respondent stole the original documents pertaining to the suit land. Thereafter, on 24th November 2005 the 2nd Respondent allegedly on behalf of the Applicant's daughter Irene agreed to sell the suit premises to the 1st Respondent. On 4/5/2006 the Applicant's tenants were shocked to see Court Bailiffs coming to evict them with a warrant purportedly from court. On getting the above information, the Applicant rushed to Uganda and discovered that all his households property including all documents for the suit property had been stolen. On 17th November 2006 the Applicant instituted a suit against the Respondents vide HCCS No.726 of 2006. On 3/1/2007 he discovered that the lawyer who was handling his case had withdrawn the above suit without his knowledge or authority and under suspicious circumstances.

Subsequently, the applicant discovered that the signature purportedly withdrawing the suit was not his but was a forgery. The above forgery was confirmed by Ezati Samuel, a forensic examiner of questioned documents. Hence the application to reinstate the withdrawn suit.

This application was brought under **Section 98** of the **Civil Procedure Rules** which states that nothing in this act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The above provisions of the law has always been invoked by clients while challenging the instructions or authority of their Counsel while conducting their matters. The procedure under **Section 98** of the **Civil Procedure Act** is normally by notice

of motion under **Order 52 Rule 1 of the Civil Procedure Rules**. See **B. M. Technical Services vs Francis Rugunda [1999] KALR 821**.

In this application authority of Counsel in withdrawing a suit is being challenged for lack of authority. In **B. M. Technical Services (supra)** it was observed inter alia, that once Counsel's instructions from client have not been terminated he or she has full control over the conduct of the trial and has apparent authority to compromise all matters connected with the action including entering consent judgment.

In the instant case, it was contended that the authority to withdraw was illegal in that Counsel purportedly forged the applicant's signature culminating into the alleged withdrawal. Such an act cannot be said to be with client's instructions or authority because it involved forgery. The forgery was confirmed by the supplementary affidavit of Mr. Ezati Samuel. Forgery is an illegality that the court cannot turn a blind eye to, especially where it leads one to loose real property: See **Zaabwe v Orient Bank & Others, Supreme Court Civil Appeal No. 4 of 2006**.

For the above reasons, I find that this is a proper matter where the Applicant's suit should be reinstated. I so order. Costs of the application shall be in the cause.

HON. JUSTICE RUBBY AWERI OPIO
JUDGE

1/2/2010

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Mr. Ndyagambaki for the Applicant present holding brief for Verma for the Applicant.

Ruling read in Chambers.

**HON. JUSTICE RUBBY AWERI OPIO
JUDGE**

1/2/2010.