

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT JINJA  
CIVIL APPEAL NO. 115 OF 2015  
[ARISING OUT OF THE DECISION OF THE COMMISSIONER LAND  
REGISTRATION]**

**HARD ROCK QUARRY (U) LIMITED:.....APPELLANT**

**VERSUS**

- 1. COMMISSIONER LAND REGISTRATON**
- 2. STEEL ROLLING MILLS LTD:.....RESPONDENTS**

**RULING**

**BEFORE: HON. LADY JUSTICE EVA K. LUSWATA**

**Background and brief facts**

- 1] This action is an application by motion in which Hard Rock Quarry (U) Ltd the applicant, seeks to set aside the decision of the Commissioner Land Registration, the 1<sup>st</sup> respondent dated 16/9/2015, and have them reinstated as registered proprietor of land comprised in LRV JJ/0346 volume JJA74 Folio 7 Plot 68-72 Jinja Municipality (hereinafter referred to as the suit land). The 1<sup>st</sup> respondent was jointly sued with M/s Steel Rolling Mills (U) Ltd, the 2<sup>nd</sup> respondentThe matter is proceeding *ex parte* against the 1<sup>st</sup> respondent.
- 2] At the hearing of 29/5/2019, Juma Kinyeri Malinga counsel for the applicant raised a preliminary objection. He submitted that Abid Alam's affidavit in reply to the application was commissioned by A. Semakula an advocate who was barred

from practice since 2014 and has never been reinstated. Citing statute and authority, he argued that such an affidavit is a nullity. He argued further that since the 1<sup>st</sup> respondent had filed no response to the application, the facts of the application are unchallenged and thus admitted. He invited court to allow the application under Order 13 rr. 6 CPR.

- 3] Counsel Esarait represented the 2<sup>nd</sup> respondent. Quoting Section 13(b) of the Advocate's Amendment Act, he argued that Semakula's disqualification should not invalidate the 2<sup>nd</sup> respondent's pleadings. He made an alternative prayer that in the event the affidavit is struck out, time should be enlarged to permit the 2<sup>nd</sup> respondent file a fresh affidavit as a way of exercising his rights under Article 28 of the Constitution. In reply, Malinga argued that Section 13B is restricted to those advocates who are licenced to practice but have not renewed their practicing certificates. He argued further that authority supported the argument that faulty affidavit evidence cannot be cured by exercise of Court discretion also that evidence having been filed way back in 2016 it would be injudicious to allow enlargement of time.

### **The Law**

- 4] The Chief Justice is empowered under Section 1(1) of the Commissioners for Oaths (Advocates) Act Cap 5 LOU (hereinafter referred to as the Act), to appoint persons being practising advocates (of at least two years standing), to be commissioners for oaths. Each appointed commissioner signs a roll and is thereby authorised to administer any oath or take any affidavit

or statutory declaration for the purpose of any court or matter in Uganda.

- 5] On the other hand, it is provided in Section 14 (1) of the Advocate's Act that:

*Whenever an advocate's name is removed or struck off from the roll for any cause, his or her practising certificate shall immediately be deemed to be cancelled, and he or she shall return it to the registrar,*

According to Section 14(1)(a) of the of the Advocates (Amendment) Act 2002, where an advocate practises as an advocate contrary to Section 14() of the Advocate's Act; or

*(b) In any proceedings for any reason an advocate is lawfully denied audience or authority to represent a party by any court or tribunal, then no pleading...or other document made or action taken by the advocate on behalf of any client shall be invalidated by any such event and in the case of any proceedings, the case of the client shall not be dismissed by reason of such event.*

- 6] There is provision in Section 14A(ii) to permit a party affected by the above provision to engage another advocate or otherwise make good any defects arising out of any such event.

**This is my decision**

- 7] With respect, counsel Esarait misconstrued the provisions of the two Acts above. The Advocates Act and its amendment was enacted to consolidate the law relating to advocates and make provisions for purposes connected to the legal profession in

general. Under section 11 Advocates Act, an advocate is allowed to practice only if they have a valid practising certificate. My understanding of section 14(1) (b) Advocates (Amm) Act is that there may well be circumstances where an advocate with a valid licence acts contrary to his station or is denied in audience in Court. The affected client will not be penalized and the proceedings of such an advocate will be maintained on the record with opportunity being given to their client to instruct a new lawyer.

- 8] The situation in this case is that following disciplinary proceedings, counsel Augustine Ssemakula was barred from practice and by the time he took Mr. Alam's oath, he had no practicing certificate. That fact was confirmed by the Chief Registrar of the Courts of Judicature in his communication of 14/8/2017. He was succinct that Ssemakula was barred from practice and from then on, he could not renew his practicing certificate nor act as a commissioner for oaths. There was no serious contest by Mr. Esarait on that point.
- 9] I believe the issue before me was well addressed by the Supreme Court in their decision in **Prof. Syed Huq Vrs The Islamic University in Uganda SCCA 47/1995**. Wambuzi CJ (as he then was) agreed with the decision of the Court of Appeal that *".... a practising certificate is issued for a particular year and if the advocate is suspended from practice, his commission to practice as a Commissioner for Oaths would be terminated when he is suspended..."*. The Court went on to interpret the provisions of Section 2 the Act to conclude that *"...the commission is granted*

*to an advocate under the Act goes with the practising certificate. Once an advocate has ceased to practice, the commission also goes”*

- 10] I am bound by the above judgment and its clear interpretation of the legal provisions binding commissioners for oaths. Mr AbidAlam took the oath before counsel Augustine Ssemakula on 17/8/2016, well after he had been barred from active practice. It is a pity and infact criminal that Ssemakula continued and probably continues to hold out as a commissioner for oaths. His actions have inevitably resulted into much loss and embarrassment to many innocent litigants such as this one. On the other hand, practising advocates are cautioned to be on the look out and avoid such rogues in this noble profession. It is useful to keep one abreast of the developments in the Law Council and office of the Chief Regisgtrar with regard to the status of the roll. By doing so, the 2<sup>nd</sup> respondent’s advocates would have avoided this catastrophe of presenting their client before an advocate and commissioner for oaths who was struck off the roll.
- 11] I accordingly find that Mr.Alam’s affidavit is incompetent and cannot constitute his evidence in reply to the application. I would move to strike it off the record. I am convinced that he was an innocent party who instructed and believed his lawyers contest the application using the right procedures. Nothing has been shown that he was negligent or acquiesced in seeking the services of a non practicing lawyer, one who I know (having been a long serving member of the Disciplinary Committee of the Law

Council) to having been disbarred in disgrace. I am therefore prepared to exercise my discretion to award no costs on account of my order to strike off Mr. Alam's affidavit.

12] As pointed out by counsel Malinga the application is uncontested. On 29/5/2019 I was satisfied that the 1<sup>st</sup> respondent was served but did not file any response. On the same date I set down the hearing of the application *ex parte* against the 1<sup>st</sup> respondent. With regard to my findings herein, the end result is that neither respondent has a response to the application on file. However, I am not persuaded that this amounts to an admission of the facts in the application to entitle the applicant to a judgment by admission that is envisaged under by Order 13 rr 6 CPR.

13] It is already my order and I do prefer to consider this application to be one proceeding *ex parte* against both respondents. The applicant is thereby invited to make brief written submissions to be filed within 21 days from today together with any authorities to be relied on. My ruling shall be delivered within 30 days after filing of submissions.

I so order

Signed

**Eva K. Luswata**  
**Judge**  
**11/12/2019**