THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUKONO

MISCELLANEOUS APPLICATION NO.130 OF 2021

[ARISNG FROM MISCELLANEOUS APPLICATION NO. 108 OF 2021]

[ARISING FROM ORIGINTING SUMMONS NO.002 OF 2020)

AL SHAFI INVESTMENT GROUP LCC :: APPLICANT

VERSUS

1. **ABU DHABI ISLAMIC BANK**
2. **ABERDEEN REAL ESTATES LIMITED**
3. **EMIRATES AFRICA LINK LIMITED** :: **RESPONDENTS**

BEFORE: HON JUSTICE DR. FLAVIAN ZEIJA

RULING

This is an application brought under section 98 of the Civil Procedure Act and Order 44 Rule 2 and 4 of the Civil Procedure Rules for leave to appeal the ruling and orders of the Hon. N.D.A Batema in miscellaneous application No. 108 of 2021arising from origination summons No. 2 of 2020.

The grounds upon which this application is hinged are briefly that;

1. *The Applicant attached the shares in the 2nd and 3rd Respondents to recover the decretal sum in Civil Suit No. 695 of 2017*

2. The 1st Respondent filed Originating Summons No. 2 of 2020 seeking to foreclose on various pieces of land allegedly mortgaged to it by the 2nd & 3rd Respondents.
3. The foreclosure on the aforementioned properties has a direct effect on the value of the shares already attached by the Applicant.
4. The Applicant filed Miscellaneous Application No. 108 of 2021 before this Honorable Court seeking to be added as a party to Originating Summons No. 2 of 2020.
5. The Applicant had a number of illegalities it intended to bring to the attention of court upon being added as a party to the suit.
6. On the 14th day of December, despite the various evidence apparent on the record, the trial judge made a ruling dismissing the Applicant's application to be added as a party to Originating Summons No. 2 of 2020.
7. The dismissal of application to be added as a party is unfair to the Applicant who attached shares in the 2nd & 3rd Respondents to recover a decretal sum of $40,000,000 (United States Dollars Forty Million only)
8. That it is just and fair that the application is granted to allow the Applicant appeal against the ruling of the learned judge.
9. The Applicant has filed a Notice of Appeal and Letter requesting for a certified record of proceedings.
10. The intended appeal arising from the ruling and orders of the High Court in Miscellaneous Application No. 108 of 2021 is of merit and has high chances of success.
11. The Applicant is not guilty of dilatory conduct in instituting this application.

12. *It is in the interest of justice that leave to appeal is granted to the Applicant to appeal against the ruling in Miscellaneous Application No. 108 of 2021.*

In reply, it was deponed for the 1st Respondent that the Applicant has failed to demonstrate how the foreclosure on the 2nd & 3rd Respondents' right to redeem the mortgaged properties will dilute or diminish their shares and the applicant therefore has no chance of success on appeal. Secondly, that the Applicant does not prove to the required standards allegations of forgery, fraud and collusion highlighted in the affidavit in support of the application. Thirdly, the Applicant's intended appeal is incompetent and does not stand any chances of success because of procedural impropriety and failure to take the appropriate steps required to commence an Appeal to the Court of Appeal. Fourthly, that the Applicant is not a recognized entity under the laws of Uganda and therefore the intended appeal has no chances to succeed because the Applicant is not an existing party in law.

On behalf of the 2nd & 3rd Respondents, Counsel Nicholas Mwasame deponed an affidavit in reply basically stating that the Applicant was not privy to the loan agreement / mortgage deed that was entered into between the 1st Respondent and the 2nd and 3rd Respondents and the Applicant could not have been added as a party to the Originating Summons. That the justifications pleaded by the Applicant in its affidavit in support of the application for leave to appeal do not merit serious judicial consideration since the Applicant was not privy to the mortgage deed

between the 1st Respondent and the 2nd& 3rd Respondents. That the 2nd & 3rd Respondents have no knowledge of the Notice of Appeal or Letter requesting for certified record of proceedings as the same has never been served on their lawyers.

Representation

The application proceeded by way of written submissions. The Applicant was represented by Katende, Ssempebwa & Co. Advocates. The 1st Respondent was represented by M/S Lawgic Advocates. The 2nd & 3rd Respondents were represented by Shonubi, Musoke & Co. Advocates.

Brief Background

The Applicant is the decree holder in Civil Suit No. 695 of 2017 having obtained judgment against a one Ahmed Darwish Dagher Darwish Al Marar who happens to have shares in the 2nd & 3rd Respondent Companies. In the bid to execute the judgment decree in Civil Suit No. 695 of 2017 therefore, the Applicant attached the judgment debtor's shares in the 2nd & 3rd Respondent Companies by court's order of attachment of shares dated 18th February 2020.

Meanwhile, it is alleged for the Respondents that sometime in 2012, the 2nd and 3rd Respondents applied for and obtained a loan from the 1st Respondent in the sum of AED 49,104,156.48 (Forty Nine Million One Hundred and Four Thousand One Hundred Fifty Six Dirhams and Forty Eight Fils). As security for the said facility, a mortgage deed was executed on 2nd

April 2012 between the 1st Respondent and the 2nd and 3rd Respondents for various properties situate in Mukono registered in the names of the 2nd and 3rd Respondents. It so happens that the 2nd and 3rd Respondents defaulted on their loan obligations which prompted the 1st Respondent to commence the recovery process resulting into filing of Originating Summons No. 2 of 2020 seeking to foreclose on the properties allegedly mortgaged to the 1st Respondent by the 2nd and 3rd Respondents. It is these same properties in which the Applicant claims interest as a judgment creditor by reason of the order of attachment of shares which the judgment debtor in Civil Suit No. 695 of 2017 owned in the 2nd and 3rd Respondent Companies.

However, the genesis of this application is rooted in the trial court's dismissal of the Applicant's Miscellaneous Application No. 108 of 2021 in which the Applicant sought to be added as a party to the originating summons with the view that the outcome of the originating summons would have an effect on its interest in the properties which the 1st Respondent was seeking to foreclose.

Preliminary points of law

Counsel for the 1st Respondent submitted that this application was filed in the High Court in Mukono on 20th December 2021. The summons were signed and issued by the learned Deputy Registrar on the same day 20th December 2021 and yet service on the Respondents was done on 9th February 2022 in contravention of Order 5 rule 1(2) of the Civil Procedure Rules SI 71-1 which requires that summons are served within 21 days from the date of issue. Counsel vehemently argued that the Applicant was

required to serve the instant application on or by 12th January 2022 failure whereof the Applicant was required to file an application for extension /enlargement of time on or before 25th January 2022. That non-compliance in his view should render this application a non-starter for being fundamentally defective. In the same vein Counsel for the 2nd & 3rd Respondents submitted that the application was served on them on 11th February 2022 in contravention of the mandatory period of 21 days within which to serve summonses. As such, Counsel for the 2nd & 3rd Respondents equally prayed that the application be dismissed for being a non-starter.

In response, Counsel for the Applicant noted that when the matter first came up for hearing on 18th February 2022 court issued timelines within which the 2nd and 3rd Respondents would file and serve their affidavits in reply upon the Applicant i.e. by 24th February 2022. On 2nd March 2022, the Applicant filed its affidavit in rejoinder to the 1st Respondent's affidavit in reply having not been served with the 2nd & 3rd Respondents' affidavits in reply. That on 9th March 2022, the Applicant filed submissions on the assumption that the 2nd and 3rd Respondents did not intend to oppose the application having failed to file and serve the Applicant with affidavit(s) in reply within the timelines prescribed by court. That to-date, the Applicant has not been served with the 2nd and 3rd Respondent's affidavit (s) in Reply but were rather served with their submissions on 21st March 2022. Counsel for the Applicant further noted that despite court having ordered the 1st Respondent to have filed and served their submissions upon the Applicant by 18th March 2022, the 1st Respondent has deliberately failed to do so. As such Counsel for the Applicant prayed that this court considers the Applicant's submissions dated and filed on 9th March 2022 and grant the

orders sought therein. He further reiterated that this application be set down for hearing ex-parte as against the 2nd and 3rd Respondents pursuant to Order 9 Rule 11(2) of the Civil Procedure Rules on grounds of their failure to file affidavits in reply within the prescribed time prescribed by the rules.

Counsel for all parties in this application are accusing each other of dilatory conduct in as far as filing of their respective pleadings is concerned. I will first deal with the argument by Counsel for the 1st Respondent that this application suffers from a fatal defect by reason of the Applicant's omission to file for extension /enlargement of time within which to serve the summonses. Order 5 rules 1 (2) of The Civil Procedure Rules provides as follows;

> ***Service of summons issued under sub-rule (1) of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after the expiration of the twenty-one days, showing sufficient reasons for the extension.***

Counsel for the 1st Respondent submitted that service was effected on him on 9th February 2022 while Counsel for the 2nd & 3rd Respondents submitted that service was effected on them on 11th February 2022. Although I see no affidavits of service on record in respect to these dates, Counsel for the Applicant does not dispute them as being the correct dates on which service of the application was effected on the Respondents. The question that arises then is on what date did the time within which to serve the summonses expire given the varying opinions of Counsels for the

Respondents? Counsel for the 1st Respondent contends that the Applicant was required to serve the instant application on the 1st Respondent on or by 12th January 2022. Counsel for the 2nd & 3rd Respondent on the other hand contends that in regard to his clients, service of the application should have been effected on 4th February 2022. Having recourse to Order 51 of the Civil Procedure Rules resolves this disparity of opinion. I will reproduce the relevant provisions here below;

ORDER LI—TIME.

4. Time expiring between 24th December and 15th January.

Unless otherwise directed by the court, the period between the 24th day of December in any year and the 15th day of January in the year following, <u>both days inclusive</u>, shall not be reckoned in the computation of the time appointed or allowed by these Rules for amending, delivering or filing any pleading or for doing any other act; except that this rule shall not apply to any application for an interim injunction, or to any business classified by the registrar or by a magistrate's court as urgent.

8. Number of days—how computed.

In any case in which any particular number of days not expressed to be clear days is prescribed under these Rules or by an order or direction of the court, the days shall be reckoned exclusively of the first day and inclusively of the last day.

Order 5 rules 1 (2) of the Civil Procedure Rules provides that summons shall be served within 21 days from the date of issue. As I have already noted

above as a question of fact summons were issued on 20th December 2021. By the 24th of December 2021, at least 3 days had passed mindful that the day of issuance of summons is excluded as much as the 24th day of December which according to Order 51 Rule 4 is not reckoned in the computation of time prescribed by the rules for amending, delivering or filing any pleading. The 4th day in this computation would therefore resume with 16th of January 2022. Order 51 rule 4 of the Civil Procedure Rules provides that the time between the 24th of December of any year and the 15th of January of the year following shall not be reckoned in the computation of the timelines and as such they should be excluded. Going by this understanding therefore, the application ought to have been served on the Respondents by 2nd February 2022 and not 12th January 2022 as submitted by Counsel for the 1st Respondent or 4th February 2022 as Counsel for the 2nd & 3rd Respondents would like this court to believe.

Be that as it may, this application having been served on Counsel for the 1st Respondent on 9th February 2022 and then on Counsel for the 2nd & 3rd Respondents on 11th February 2022 was clearly out of time in both instances. What then is the effect? Counsel for all Respondents were of the same mind that the application is a non-starter and it did not deserve to live to see another day in court. The question has often been whether the use of the word "shall" in the wording of Order 5 rules 1 (2) of The Civil Procedure Rules is mandatory or directory.

A host of cases such as ***Utex Industries Ltd vs. Attorney General, SCCA No. 52 of 1997; and Horizon Coaches vs. Edward Rurangaranga, SCCA No. 18 of 2009*** are to the effect that Article 126 (2) (e) has not done away with the

requirement that litigants must comply with the Rules of procedure in litigation. The Article merely gives Constitutional force to the well settled common law principle that rules of procedure act as handmaidens of justice. The framers of the Constitution were alive to this fact. That is why they provided that the principles in Article 126 including administering substantive justice without undue regard to technicalities, must be applied "subject to the law." Such laws include the Rules of procedure. Particularly in the case of Utex Industries Ltd (supra), the Court had this to say:

> ***"... we are not persuaded that the Constituent Assembly Delegates intended to wipe out the rules of procedure of courts by enacting Articles 126 (2) (e). Paragraph (e) contains a caution against undue regard to technicalities. We think that the article appears to be a reflection of the saying that rules of procedure are handmaidens to justice - meaning that they should be applied with due regard to the circumstances of each case. We cannot see how in this case Article 126 (2) (e) can assist the respondent who sat on his rights since 18/8/95 without seeking leave to appeal out of time... Thus to avoid delays rules of court provide a time table within which certain steps ought to be taken. "***

Relatedly in ***Horizon Coaches vs. Edward Rurangaranga and Mbarara Municipal Council*** (supra), Katureebe JSC, as he then was, held as follows:

> ***"Article 126 (2) (e) of the Constitution enjoins Courts to do substantive justice without undue regard to technicalities. This does not mean that courts should not have regard to technicalities. But where the effect of adherence to technicalities may have the effect of denying a party***

substantive justice, the Court should endeavor to invoke that provision of the Constitution."

In view of the above cited authorities, the guiding factor is therefore, whether the Applicant's non-compliance with Order 5 of the Civil Procedure Rules may be regarded as a mere technicality or it goes to the substance of the case and has the consequence of rendering the instant application a non-starter.

From the onset, let me emphasize that amendments to *The Civil Procedure Rules* introduced on 24th July 1998 were part of measures taken to allow for more expedient justice for those with legitimate claims.

The use of the word "shall" prima facie makes the above requirement in O.5 r 2 of the CPR mandatory. Consequently, provision automatically invalidates summonses to file a defence/reply which may have been issued and are not served within twenty-one days of issuance. It is meant to eradicate suits which are filed for the sake of achieving collateral objectives other than the genuine determination of justiciable disputes and as a means of expeditiously disposing of frivolous, vexatious or speculative suits. It is thus settled law that the provisions of Order 5 of *The Civil Procedure Rules* are mandatory and should be complied with (see **Kanyabwera v. Tumwebaze [2005] 2 EA 86 at 93).**

However, a plaintiff/applicant, who fails to serve summons within the required twenty one days from the date of issuance of the summons upon him or her for service, will not *prima facie* lose the right to do so beyond that period, provided the Court permits him or her to do so for reasons which it must state in writing. Extension of the time within which to serve the

summons must be sought "within fifteen days following expiration of the twenty-one days. The procedure for an application for extension of time is by way of summons in chambers (see Order 5 rule 32 of *The Civil Procedure Rules)*. The requirement of a formal application showing sufficient grounds for the extension of time to serve summons out of time imposes a duty on the Court to apply its mind to the reasons advanced by the plaintiff/applicant for his or her failure to serve within the twenty one days and to record the *reasons for extending the time*. The implication is that, there is no mechanical extension of time for serving summons to file a defence/reply. The Court must be satisfied by evidence on record and state the exact grounds for permitting a party to do so beyond the stipulated period. An application for extending the validity of summons which have not been served must be made, by filing an affidavit setting out the attempts made at service and their result, for which court shall base on to make appropriate orders

However, in the instant case, no formal application was made for extension of time following the expiry of the 21 days. In fact no reasons were given whatsoever, for serving the instant application out of time without authorization by the court to do so. When the issue was raised by the Respondents, counsel for the applicant argued in his written submissions that court by giving schedules for filing written submissions had by implication allowed service out of summons out time. With due respect, I disagree with counsel for the Applicant, for the reasons I have already given above to wit; there is no mechanical extensions of time. Extensions of time must be applied for and Court must give reasons for so doing, which in the instant case was not done. At least, I expected that having appeared

before me, counsel for the applicant should have laid bare orally the need for extension of time to serve this application out of time. This was not done.

It is argued by counsel for the applicant that the court should in the interests of justice disregard irregularities. That submission is apparently inspired by the general principle that the rules of procedure are intended to serve as the hand-maidens of justice, not to defeat it. And indeed, I agree with this principle. In deserving cases, the court may rightfully exercise its discretion to overlook the failure to comply with rules of procedure, upon such conditions as it may deem fit intended to guard against the abuse of its process. *Article 126 (2) (e) of The Constitution, 1995, enjoins courts to administer substantive justice without undue regard to technicalities.*

However, each case is to be decided on its facts. In **Kasirye Byaruhanga and Company Advocates v. Uganda Development Bank, S.C.C.A No. 2 of 2007**, *(unreported)* it was left to the discretion of the trial judge to decide whether in the circumstances of an individual case and the commands of justice, a strict application of the laws of procedure, should be avoided. The Supreme Court decided in that case that;

> *"A litigant who relies on the provisions of article 126 (2) (e) must satisfy the court that in the circumstances of the particular case before the court it was not desirable to have undue regard to a relevant technicality. Article 126 (2) (e) is not a magical wand in the hands of defaulting litigants".* (Underlined emphasis is mine)

The court is mindful of the mischief sought to be cured by the requirement for strict compliance with the periods of time stipulated in Order 5 of *the Civil Procedure Rules*. The entire scheme of that Order aims at only one thing; to obtain the presence of the defendant to a claim and to provide full information about the nature of the claim made against him or her expeditiously without undue delay. This is consistent with the requirement of Article 28 (1) of *The Constitution of the Republic of Uganda, 1995,* to the effect that in the determination of civil rights and obligations, a person shall be entitled to a fair, speedy and public hearing. This is achieved by effecting personal service failure of which substituted service may be allowed in such situations as the rules permit. Therefore, if the defendant/respondent appears before the Court after the filing of the suit against him or her, before summons have expired, and he or she is informed about the nature of the claim and the date fixed for reply thereto, it must be deemed that the defendant has waived the right to have a summons served on him if such a defendant goes ahead to file a defence/reply to the suit before he or she is formally served in accordance with the rules of service of summons. I hasten to add that this position is valid where the suit has not become stale for want of appropriate procedure/process.

Nevertheless, it is not sufficient for a plaintiff/applicant to institute suit against a party and not take appropriate steps to effect service of summons. A defendant/respondent must be invited to submit to the authority of the court in order for the legal process of setting down the suit for trial to commence. Until a defendant/respondent is served with

summons to file a defence/reply, there is no basis for him or her to answer to the suit.

The other question which arises is whether failure to adhere to such clear and elaborate procedural requirements of Order 5 of *the Civil Procedure Rules* on the validity of and service of summons outside the stipulated time frame is a mere procedural technicality that can be sacrificed in favour of substantive justice. I take the view that summons to file a defence/reply is a judicial document calling upon the defendant/respondent to submit to the jurisdiction of the court and if the party is not given that opportunity to so appear and either defend or admit the claim, there is no other way he or she will submit to the jurisdiction of the court. Similarly, where the time stipulated to serve that document has expired, then that document lacks the authority of court, in the absence of permission from the court to serve the same out of time. The rule therefore, cannot be a mere procedural technicality. It goes to the substance of the case. A court has no jurisdiction to deal with a filed plaint/motion until a summons to file a defence has been served and a return of service filed, which step alone will activate further proceedings in the suit. Until summons have been issued and duly served, the suit is redundant.

Article 126 (2) (e) of The Constitution of the Republic of Uganda, 1995, is not a magic wand for all ills and in appropriate cases the court will still strike out pleadings such as this, considering that one of the aims and overriding objective of the amendment of Order 5 of *The Civil Procedure* Rules was to

enhance expeditious hearing and disposal of suits and curtail the abuse of court process for ulterior motives. Therefore, a suit/application would be liable for striking out at any stage upon expiry of the stipulated periods before the summons/application duly issued is served. The timelines in the rules are intended to make the process of judicial adjudication and determination swift, fair, just, certain and even-handed. Public policy demands that court cases be heard and determined expeditiously since delay defeats equity, and denies the parties legitimate expectations (**see *Fitzpatrick v. Batger & Co. Ltd [1967] 2 All ER 657***). It is for these reasons that non-compliance with the requirements of renewal of summons to file a defence/affidavit in reply is considered a fundamental defect rather than a mere technicality and it cannot be cured by inherent powers since issuance and service of summons to file a defence goes to the jurisdiction of the court (**see *Mobile Kitale Station v. Mobil Kenya Limited & Another [2004] 1 KLR 1*; *Orient Bank Limited v. Avi Enterprises Ltd., H.C. Civil Appeal No. 002 of 2013*; *Western Uganda Cotton Company Limited v. Dr. George Asaba and three others, H.C. Civil suit No. 353 of 2009***).

In the instant case, application was signed on by the Deputy Registrar on December 20, 2021. The twenty-one days within which the applicant should have served the application lapsed/expired on 2nd February 2022. Counsel for the applicant did not take any action to validate/extend time to serve the application out of time. Even if court was inclined in to exercise its inherent powers and discretion to ratify service out of time, there is no good reason whatsoever, that court would base on to validate service out of time since no justifiable reasons whatsoever was raised by the Applicant on oath

in pleadings justifying failure to serve the application within the time prescribed by the Rules even when the Applicant was clearly put on notice that the Applicant's Application was barred by law for want of service and or service was effected pursuant to expired summons. Doing otherwise would be encouraging extension of time mechanically which does not serve the interest of justice. It therefore, follows that at the time the Applicants served the application on the respondents out of time to wit on February 9 and 11 of 2022, respectively, and without leave of court to do so, the application was stale and a non-starter for non-compliance with the requirements of Order 5 r 1 (2) of *The Civil Procedure Rules*. Consequently this preliminary objection is upheld.

Counsel for the Applicant in rejoinder invited this court to strike out the 2nd & 3rd Respondent's affidavit in reply filed in this court on 9th March 2022 out of time given that court had directed that affidavits in reply be filed by 24th February 2022. Counsel submitted that when he checked the court record and found that the 2nd & 3rd Respondents had not filed affidavits in reply, he proceeded to file written submissions on 9th March 2022 on the assumption that the 2nd & 3rd Respondents did not intend to oppose the application. That the Applicant having not been served with any affidavit in reply, the 2nd & 3rd Respondents instead opted to serve the Applicant with written submissions on 21st March 2022.

Accompanying the 2nd & 3rd Respondent's affidavit in reply is a letter dated 9th March 2022 the same date of filing the affidavit in reply. In this letter, Counsel for the 2nd & 3rd Respondents explained that beyond their

control, the officer who had been identified as the deponent for the 2nd & 3rd Respondent failed to get audience before the Ugandan Ambassador in Abu Dhabi for purposes of attestation and that is why the 2nd & 3rd Respondents were unable to meet the timelines set by court. Counsel sought court's indulgence to instead validate Counsel Nicholas Mwasame's affidavit and accept the same on court record. Looking at the said affidavit in reply, Counsel Nicholas Mwasame did not attach any evidence authorizing him to depone the said affidavit on behalf of the 2nd & 3rd Respondents. He instead purports to depone in the capacity of one who is well conversant with the facts of this application. The law governing affidavits sworn by Advocates is now trite that except in formal and non-contentious matters, an Advocate cannot act as Counsel and a Witness at the same time as this would contravene regulation 9 of the Advocates (Professional Conduct) Regulations. See; ***Uganda Development Bank versus Kasirye Byaruhanga & Co. Advocates; SCCA No. 35/1994***, and ***Yunusu Ismail T/A Bombo City Store V. Alex Kamukamu & Others T/A Ok Bazari (1992) 3 Kalr 113 (Scu)***. Although this is not the case in this application, given that Counsel Nicholas Mwasame although an Advocate in the Firm representing the 2nd & 3rd Respondents is not directly prosecuting the matter.

However, the Law relating to swearing Affidavits has been tested by Courts in a number of cases. The principle is that save in representative suits where the party who obtains the Order to file the suit can swear affidavits binding on others on whose behalf the suit is brought, it does not apply otherwise. Where an Affidavit is sworn on one's behalf and on behalf of others, there

is need to prove that the others authorized the deponent to swear on their behalf. Proof of such authorization is by a written document attached to the Affidavit. This irregularity renders the Affidavit defective and the Application incompetent. (**See. Taremwa Kamishani &Ors V Attorney General M.A 0038/2012;Makerere University V St. Mark Educations Institute HCCS No.378/1993;Kaingana V Dabo Boubon[1986]HCB 59).**

However, the question that still remains is whether an Advocate can casually swear an affidavit on behalf of his Firm's client without formal instructions to do so. It is my considered view that being conversant with facts of a given application alone does not cloth one with the authority to swear evidence on behalf of another. There must be some form of authorization in writing giving the deponent such authority and to hold otherwise would tantamount to giving a leeway to all and sundry to casually purport to bind persons who may not have given them express instructions to do so. There are situations where an advocate can depone affidavits on behalf of his client especially if the matters are non-contentious. However, to allow advocates to become substitutes for their clients just because they have knowledge of the subject matter as well as instructions would be chaotic. The requirement for formal authorization should even be stricter where the persons purportedly represented are Companies as it is in this application. Instructions given to a Firm to represent a client do not automatically include instructions to depone affidavits on behalf of the same clients and the two ought to be separated. Accordingly, the affidavit in reply deponed by Counsel Nicholas Mwesame purportedly on behalf of the 2nd & 3rd Respondents is struck out for the

reason that no such evidence of authorization has been brought to the attention of this court.

The affidavit sworn by Counsel Kirima Brian purportedly on behalf of the 1st Respondent suffers the same fate as it is clearly in respect of contentious issues between the parties. The objections raised by the Applicant in that respect is upheld. It should be noted however that the right to raise a point of law is not dependent on whether the respondent has filed an affidavit in reply or not.

Consequently, I do not need to delve into the merits or demerits of the instant application since my findings above have the effect of disposing of the entire application. Consequently, this application is dismissed. Since all parties had their own transgressions as indicated above, each party shall bear its own costs.

Dated at Kampala this ..... 14th ..... day of ..... June 2022

Flavian Zeija (PhD)

PRINCIPLE JUDGE