

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL  
MISC. CAUSE NO. 004 OF 2022**

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SSESANGA ROBERT ::::::::::::::::::::::::::::::::::: APPLICANT  
VERSUS  
ASABA PAUL ::::::::::::::::::::::::::::::::::: RESPONDENT

10           **BEFORE: HON JUSTICE VINCENT WAGONA**

**RULING**

**Introduction:**

The applicant brought this application under sections 98 and 92 of the Civil  
15 Procedure Act and Order 51 R 1-2 of the Civil Procedure Rules seeking:

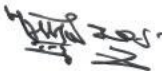
- (a) An order declaring illegal the powers of Attorney from the Applicant registered on 11/6/19 as being null and void in the mortgage transaction of 7/5/16 between the Respondent and Fr. Francis Muchocho.
- (b) An order setting aside all illegal encumbrances or purported liability of the  
20 said title deed to the land in FRV HQT77 Folio 1 at Kazizi, Mwenge Kyenjejo under the said illegal power of attorney of 11/6/19.
- (c) An order declaring illegal the respondent's suit in FP HCCS 10/2016 purporting to encroach the Applicant's title for non-compliance with the Mortgage Act.
- (d) An order for the Respondent to Return the Applicant's title deed to the land  
25 in FRV HQT77 Folio 1, at Kazizi, Mwenge Kyenjejo.



(e) An order for the Respondent to pay wide ranging restitution costs of this matter for his illegal, oppressive and high – handed actions.

**Background:**

- 5 1. The brief background as may be discerned from the pleadings is that applicant executed a power of attorney together with Maguma Joseph appointing and or nominating Fr. Muchocho Francis Acaali as their donee of powers of attorney over land comprised in HQT77 Folio 01, Block 151 Kyenjo. The donee was to take possession of said land and use the title to  
10 obtain a credit facility from Asaba Paul of UGX 100,000,000/=.
- 15 2. That the Respondent purporting to act on powers of attorney of 11/6/19 used the said land as security for a mortgage transaction of 7/5/16. That the suit filed by the Respondent that is FP HCCS 10/2016 has no merit since the Respondent did not demonstrate to Court whether he issued notices of default to the borrower Fr. Francis Muchocho nor inform him that he was going to Court.
- 20 3. That the Respondent under his defective suit tortured the late Fr. Francis Muchocho to death with over 5 arrests and illegal false imprisonment and after great sickness caused by many months in prison, Fr. Francis died. That the suit filed by the Respondent against Fr. Francis and the powers of attorney were defective and thus asked court to allow the application.
- 25 4. The respondent on the other hand opposed the application and stated that his lawyer was to raise points of law when the suit comes up for hearing. The points of law being that the application does not meet the test for the grant of the orders being sought, that it is not properly before court since the orders



sought require the applicant leading evidence. That further the application does not disclose a cause of action against the Respondent.

- 5 5. The Respondent also averred that on 7<sup>th</sup> May 2015, the late Fr. Francis Muchocho borrowed UGX 100,000,000/= from him. That after defaulting, the Respondent filed a suit Vide HCT 01 – CV – CS – 0010 of 2016 against the late to recover the money in default. That the suit was determined in his favour. That the Applicant was not a party to HCT – 01 – CV – CS – 010 of 2013 and the orders therein do not relate to any certificate of title or the mortgage.
- 10 6. That he was not a party to the powers of attorney whose legality and illegality the applicant seeks court to pronounce itself. That he has never put any encumbrance on the certificate of title for the land comprised in FRV HQT 77 Folio 1 at KaziziMwengeKyenjojo. That the applicant did not handover the title to the Respondent and thus he was wrongly sued for the certificate of title.
- 15 7. That the applicant was not a party to HCT – 01 – CV – CS – 010 of 2016 and the arrest of the judgment debtor was in accordance with the lawful orders of Court. That the application is intended to waste court's time and he thus asked court to dismiss the same.
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### **Representation:**

Ms. Ritah Kabagyenyi of M/s Justice Centers Uganda (Fort Portal branch) represented the Applicant while Mr. Wahinda Enock of M/s Ahabwe James & Co. Advocates represented the Respondent.

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**Submissions:**

The parties filed written submissions which have been considered together with the pleadings and the following issues arise there from:

1. Whether the applicant's application is properly before Court.
- 5 2. Whether the Applicant has a cause of action against the Respondent.
3. Whether the Applicant's application meets the criteria for grant.
4. Remedies available to the parties.

**Resolution:**

10 **Issue one: Whether the applicant's application is proper before Court**

It was contended by the Respondent that the application was wrongly brought by way of a Miscellaneous Cause. It was submitted that the claims by the applicant require adducing evidence to validate his claim and cannot be adequately determined by way of a Miscellaneous Cause. That the position of the law is that, 15 where the subject matter and the nature of the dispute require specific pleadings and requires evidence to prove it, the appropriate mode is a plaint (**Mugerwa & 4 others Vs. Gemstone International Ltd Misc. Application No. 17 of 2018**). That considering that the applicant alleges lodgment of encumbrances on the title to his land which is denied by the respondent, the proper procedure would have been a 20 plaint since the applicant must lead evidence of the existence of the alleged encumbrances to prove the allegations. Counsel thus asked Court to have the motion struck out with costs.

Counsel for the Applicant submitted in reply that the position of the law in 25 **Mugerwa and 4 others Vs. Gemstone International Ltd Misc. Cause No. 17 of 2018** does not apply to the instant application. That the court in the said case



upheld the preliminary objection as the Applicant had pleaded damages and omitted to prove the same. The Court stated that *"not every suit shall be commenced by way of a plaint but it implies that where the subject matter and the mode of evidence and the nature of the dispute ordinarily required specific pleading and proof, the appropriate procedure is a plaint."* That in **Mugerwa**, the Applicant had sued for damages and had omitted to prove the same. The Court stated that damages cannot be awarded in an Application brought by Notice of Motion. It was contended that the instant application does not raise matters that require specific pleadings and leading evidence.

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**Decision of Court:**

The Civil Procedure Act defines a suit to mean all civil proceedings commenced in any manner prescribed.<sup>1</sup> It thus follows that the manner or mode of institution of civil proceedings is contained in the Civil Procedure Rules and other legislations. In the event a statute does not prescribe the procedure or manner in which a suit is commenced, then reference is made to the Civil Procedure Rules. However, where a statute provides the manner or mode of institution of a claim in court, then the procedure therein should be followed.

20 The applicant relied on Sections 92 and 98 of the Civil Procedure Act which make reference to Civil Procedure Rules. Therefore, the applicant had to institute the matter at hand in the manner prescribed in the Civil Procedure Rules. Section 92 of the Civil Procedure Act provides for applications for restitution and states as follows:

<sup>1</sup> Section 2 of the Civil Procedure Act Cap. 71.



5 (1) Where and insofar as a decree is varied or reversed, the court of first instance shall, on the application of the party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position they would have occupied but for such decree or such part of it as has been varied or reversed; and for this purpose the court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on the variation or reversal.

10 (2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under subsection (1).

15 It is my understanding that applications for restitution are brought in circumstances where a prior existing decree is varied or reversed so as to place the parties in the position they would have occupied but for such decree or such part of it as has been varied or reversed. It implies a matter arising from a prior adjudicated suit. In this case there is no evidence that this application relates to, or arises from a prior existing decree that is varied or reversed. All the orders sought relate to a new suit.

20 Order 4 rule 1 of the Civil Procedure Rules stipulates that every suit shall be instituted by presenting a plaint in that court. It does not mean that every suit shall be commenced by way of a plaint. However, where the subject matter and the mode of evidence and the nature of the dispute ordinarily require specific pleadings and proof, the appropriate procedure is a plaint.<sup>2</sup>

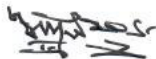
<sup>2</sup>Mugerwas Ahmed and 4 others Vs. Gemstone International Ltd and 4 others, Misc. Cause No. 17 of 2018.



In the current application, the applicant contends though in vague terms that he executed powers of attorney in favour of the late Fr. Francis Muchocho allowing him to pledge the suit land as security for a credit facility from the Respondent. That the Respondent falsely relying on the powers of attorney of 11<sup>th</sup> June 2019, used the suit land as security for the loan he gave to the late Fr. Francis Muchocho. He also contended that the powers of attorney were illegal and defective. He also averred under paragraphs 3,5 and 5 of the affidavit in support of the application that the suit filed by the Respondent against the late was wrong and had no merit and there was no evidence of service of the notice of default. That under the defective suit, the Respondent tortured the late Fr. Francis to death due to illegal and false imprisonment and the orders issued by court ordering for the imprisonment of the late were defective.

In my view the facts alleged and evidence cited to justify the orders sought, require specific pleadings and proof. For example, the applicant must prove: how the suit filed by the Respondent against the late Fr. Francis Muchocho that is HCT 01 – CV – CS- 0010 of 2016 was wrong and defective; how the late Fr Francis Muchocho was tortured and how his arrest and detention five times was illegal and amounted to torture and that the late passed on as a result of such torture of false imprisonment. In particular, in the circumstances of this case, it is my view, that the applicant must establish proper pleadings and evidence that must be tested at trial, to establish each of the orders sought.

I find that this claim and the reliefs sought by the applicant can be better investigated and determined by court in an ordinary suit as opposed to a Miscellaneous Application that is based on Sections 92 and 98 of the Civil



Procedure Act. This issue disposes of the matter. I will not delve into the other issues.

I thus uphold the objection and dismiss the application with costs awarded to the  
5 respondent.

I so order.



10 Vincent Wagona

High Court Judge

**FORT-PORTAL**

14.10.2022