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The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Application No. 0028 of 2023

(Arising from Civil Suit No. 0016 of 2018)

1. Hon. Ikojo John Bosco }
 10 2. Rosco (U) Limited } Applicants

Versus

Arrow Link (U) Limited Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

15

Ruling

1. Introduction.

The applicants brought this application by way of notice of motion under section 98 of the Civil Procedure Act, order 9 rule 20 (c) and order 52 rule 1 of the Civil Procedure Rules for orders that;

- 20 i. Order of court made on the 2nd day of March, 2023 proceeding *ex parte* be set aside.
- ii. Order to recall witnesses that appeared on 2nd March 2023 for cross-examination.
- iii. Order to present the defence evidence, already in court.
- 25 iv. Costs be in cause.



5 2. Grounds for and Against this Application:

The grounds of this application as set out in the application and affidavit sworn by Apio Pamela counsel for the applicant are that;

She was given brief to proceed with the defendants' case only to be informed that the matter had proceeded *ex parte* on 2nd March 2023.

10 That she was informed that the matter had proceeded *ex parte* on the 2nd day of March 2023.

That they received summons but mistakenly thought that the matter was for 3rd March as opposed to 2nd March when court proceeded.

15 That the matter is at advanced stages of hearing of the plaintiff's case and calling the applicant's witnesses Hon. Ikojo John Bosco and Ariko Silver.

That the defendants had for long complied with the directives to file their pre-trial pleadings to *wit* witness statements of Hon. Ikojo and Ariko.

That the case is highly contentious and has a counterclaim filed against the plaintiff and a one Odongo John James.

20 That this matter, if not traversed will not conclusively give a holistic picture of the matter.

That Counsel for the Applicant mistakenly recorded 3rd March 2023 as the date for the hearing of the said matter and the applicant was for sufficient cause unable to appear or cause appearance to be made on his or her behalf.

25 The respondent in an affidavit in reply sworn by Orianga Sam opposed the application stating that he instituted Civil Suit No. 016 of 2018 and it has dragged on for too long causing backlog because the applicants and their representatives have always found reason to miss court and cause unnecessary adjournments.

5 That all the numerous adjournments in this matter and its applications since 2018 have been granted in consultation with Counsel Emmanuel Wamimbi who has had personal conduct of the matter at all times.

That even the other lawyers who have come from the firm M/s E. Wamimbi & Co. Advocates specifically Ms. Imalingat and the deponent of the affidavit in
10 support of this application Ms. Apio Pamela have all appeared while holding brief for Counsel Emmanuel Wamimbi who has personal conduct of the matter.

That after several adjournments in favour of the Applicants in 2022, the matter came up for hearing on the 11th January 2023 and Counsel Wamimbi for the applicants said he never entered the date in his diary and the matter was
15 adjourned to 2nd March 2023 upon his request.

That as he spoke on hands free phone, he appeared to be consulting with his diary and agreed on the 2nd of March 2023 which was available to Court.

That the respondent's lawyers served counsel for the applicant with a hearing notice and there is no justifiable reason as to why they did not have the right date
20 for Court.

He further stated that it has been the habit of the applicants and their counsel to miss court and use the pretext of entering wrong dates in their diary and court should not find this as a justifiable excuse for missing court.

That the matter has been concluded and the Applicants want to deny the
25 respondent an end to this long litigation.

That the defendants/applicants have for long caused the adjournments and were never interested in the matter proceeding so that they prosecute their counter-claim. That since 27th January 2022, the suit has come up 9 times on the following dates: 10.02.2022, 19.04.2022, 20.04.2022, 17.05.2022, 07.08.2022, 08.09.2022,



5 06.10.2022, 11.01.2022 and 02.03.2022 but the Applicants did not appear in court for any of the hearings mentioned.

That counsel for the applicants have also been in habit of asking other lawyers to hold brief for them to seek adjournments and out of the 16 dates fixed (not considering the dates fixed for the applications before the Registrar), the
10 defendants/applicants appeared once and counsel appeared thrice, showing that court has been very accommodative of the applicants and their counsel and there is no justifiable cause to set aside the ex parte proceedings.

The respondent on the 1st of June 2023 filed a supplementary affidavit in reply sworn by Orianga Sam. Herein he states that he made a reply to Applicant's
15 affidavit in support of MA 028/2023 to set aside ex parte proceedings without knowledge of vital information on the status of the deponent of the affidavit Apio Pamela to appear in the High Court.

That when his Lawyers M/s Omara Atubo & Co. Advocates gave him a copy of the Applicants application, he read it and realised that the deponent of the affidavit
20 in support of the application Apio Pamela referred to herself as a 'Lawyer' instead of referring to herself as an Advocate of the High Court.

That he drew this to the attention of his lawyers who told him that if he doubted the deponent's capacity to appear in the High Court, then the Respondent could write a letter to the Chief Registrar of the Courts of Judicature to verify her status.

25 That on the 05th May 2023, the Respondent wrote to the Chief Registrar asking to know if the said Apio Pamela had the capacity to appear in the High Court or was an enrolled Advocate and could depone the affidavit she deponed in support of the application.



5 That on the 29th May 2023, the office of the Chief Registrar wrote back to the Respondent stating that their records do not have any Advocate by the name of Apio Pamela.

That Apio Pamela has therefore been appearing unlawfully in the Courts of Judicature, both lower and the High Court and by the applicants giving her
10 instructions they are bent on total abuse of court process and further delaying justice.

That the whole team comprising of the applicants and counsel are both engaging in fraudulent acts by sending to court someone holding out to be an Advocate of the High Court when she is not enrolled.

15 That the affidavit of the Applicants in support of the application is full of falsehoods since it is sworn by someone without capacity to swear such an affidavit and it is incurably defective. That Apio Pamela's affidavit in support of the application is a shame to this court an abuse of the court process and the application should be thrown out with the disgrace it deserves. That the
20 application is incurably defective and should be dismissed with costs to the Respondent.

3. Submissions:

The parties herein did not make any submissions on the substance of the application.

25 M/s E. Wamimbi Advocates & Solicitors for the applicants instead on the 14th of August 2023 wrote to the Deputy Registrar wherein they state that before this matter could be heard, the judge proceeded and heard the matter hence the subsequent judgement and going by this, the court is *functus officio* and such any subsequent application/ matter arising from the same is devoid of merit.

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5 In this letter, Counsel further states that they have opted to appeal against the decision to the Court of Appeal.

It is further stated that the inquiry into Apio Pamela is misplaced as she gave facts within her knowledge as a lawyer and not as an advocate.

4. Resolution:

10 Section 64 (1) of the Advocates Act Cap 267 provides for unqualified person not to practise, its states thus;

Any person other than an advocate who shall either directly or indirectly act as an advocate or agent for suitors, or as such sue out any summons or other process, or commence, carry on or defend any suit or other proceedings in any court, unless
15 **authorised to do so by any law, commits an offence.**

Section 65 further provides that;

- 1) No person, not being an advocate, shall pretend to be an advocate, or shall take or use any name, title, addition or description implying that he or she is qualified or recognised by law as being qualified to act as an advocate.
- 20 2) No person shall take or use any name, title, addition or description implying that he or she holds any legal qualification unless he or she in fact holds that legal qualification.
- 3) Any person who contravenes any of the provisions of this section commits an offence.

25 Also under Advocates Act Chapter 267 Section 1. Interpretation an “advocate” means any person whose name is duly entered upon the Roll.

By the above provisions of the law, not only is the legal profession a close shop but whoever purports to act as an advocate commits an offence.

5 In this case it is clearly on record that Apio Pamela was deponing the affidavit in support of the application as counsel for the applicant yet she bore no such qualifications.

Also is attached to the respondent's supplementary affidavit sworn by Orianga Sam, is annexure 'A' a copy of the letter dated 5th May 2023, addressed to the
10 Chief Registrar Courts of Judicature on the verification of the enrolment status and or capacity of Ms. Apio Pamela to appear as an advocate in the High Court.

The Chief Registrar on the 29th of May 2023 informed the respondent that the records in the chambers of the Chief Registrar did not have any advocate by the name Apio Pamela.

15 This letter of the Chief Registrar which confirms that there was no known any advocate by the name Apio Pamela is contrary to the representations made by Apio Pamela herself in the instant application wherein she supports this application by her affidavit in which indicates thus in paragraph 1 thus;

**"That I am a Female adult Ugandan of sound mind, Lawyer with E. Wamimbi
20 Advocates & Solicitors, counsel for the Applicant herein and I swear this affidavit in that capacity."**

The reading of the above shows that Apio Pamela not only states she is a lawyer as indicated in the letter from E. Wamimbi Advocates & Solicitors above but she categorically states that she is counsel for the Applicant. In both ordinary and
25 legal parlance, counsel means a lawyer engaged in the trial or management of a case in court and a lawyer appointed to advise and represent in legal matters an individual client or a corporate and especially a public body. This is synonymous with acting as advocate for the applicants which not only illegal but criminal.

5 Accordingly, given the illegal and criminal nature of the affidavit sworn by Apio Pamela in support of this application, the same cannot be relied on by this court as the same it is defective for lack of authority as an advocate or counsel for the applicants. It is thus accordingly expunged from the record.

10 The applicants by letter dated 14th of August 2023 state that this court is *functus officio* in this matter and should not handle the same, they also state that they have filed an appeal against the judgment in Civil Suit No. 16 of 2018, which statement seems to suggest that this court should abandon the hearing of this application.

15 I am mindful of the content of this letter, however, there is a proper legal process required for withdrawal of any suit or an application and this is Order 25 rule 1 of the Civil Procedure Rules. It provides thus;

1. Withdrawal of suit by plaintiff or defendant.

20 (1) The plaintiff may at any time before the delivery of the defendant's defence, or after the receipt of that defence before taking any other proceeding in the suit (except any application in chambers) by notice in writing wholly discontinue his or her suit against all or any of the defendants or withdraw any part or parts of his or her alleged cause of complaint, and thereupon he or she shall pay the defendant's costs of the suit, or if the suit is not wholly discontinued the costs occasioned by the matter so withdrawn. Upon the filing of the notice of discontinuance the costs
25 shall be taxed, but the discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action.

Order 25 rule 7 of the Civil Procedure Rules:

Rule 7: Procedure under this Order.

Applications under rule 1 of this Order shall be by summons in chambers.

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5 Under Order 25 rule 7 of the Civil Procedure Rules, it is a must that Applications
under rule 1 of Order 25 be by summons in chambers as the words used therein
is "SHALL" and thus is obligatory meaning that the provided process ought to be
followed. In this case that was not followed therefore the letter of M/s Wamimbi
& Co Advocates dated 14th of August 2023 alluding and is suggesting that this
10 court should abandon the hearing of this application as the court is *functus officio*
is taken to be of no consequence as the proper procedure has not been followed.

5. Conclusion:

In final result given the fact that the affidavit in support of the application has
been expunged, this application is left unsupported and it is thus bear with no
15 evidence to back it.

Accordingly, it is found to be unacceptable as not being supported by affidavit
evidence and thus is unconscionable and would accordingly be dismissed with
costs to the respondent.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

28th June 2024