

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

MISC.APPLICATION NO. 161 OF 2004

(Arising from Civil Suit No. 719 of 2003)

1. BALIKUDEMBE ERISHA
2. SEBULIBA BUSULWA SAM.....APPLICANTS/PLAINTIFFS
3. NAMIREMBE HARRIET
4. BUSULWA KAYONGO

Versus

NAKAMATE CURAIMETI.....RESPONDENT/DEFENDANT \

R U L I N G

This is an application for a temporary injunction brought under 0.37 rules 1 2 and 9 of the C.P.R. Although the application was filed by the Legal Aid on behalf of the applicants who are the plaintiff in Civil Suit No. 719/2003, the main suit, it was presented by the fourth respondent in person after the counsel who had handled his case in the Legal Aid Project had left that organisation for another employment.

When the application came for hearing counsel for the respondent raised a preliminary objection that the affidavit in support of the application was defective in that it did not conform to Jurat contained in the Commissioner's for Oaths (Advocate) (section 5 and j Rule 9 of Chapter 5 of Laws of Uganda.) The applicant in reply, prayed, court to proceed with the application despite the irregularity in his affidavit.

It has been said in several cases that an irregularity, once detected by the court, should not

ignored it.

See: Makula International vs. Cardinal Nsubuga - Civil Appeal 4/1981 (C.A.) (1982) HCB 11

I must add the defect in this affidavit is an irregularity and not an illegality. All the same, the court cannot close its eyes to it. The irregularity in this case arises from non-compliance with section 5 (formerly 6) which requires the affidavit “To state truly in the jurat or attestation, at what place and on what date the Oath or affidavit is taken or made”. The jurat under that section in the following form:-

Swom/Declared before me.....this.....day of.....year at.....

Commissioner for Oaths

I agree with the holding of my brother Aki-Kiiza J in Misc. Application. No.267/1998, arising from H.C.S.C. 529 OF 1994, where he held:

(iii) that section 8 (in the unrevised edition-) (now section 5) of the Oaths Act which provides that the name of the place where the affidavit was deposed from is mandatory. Failure to comply with the same renders the affidavit, incurably defective.

See also: (1) Teddy Namazzi vs. Sibbo (1986) HCB 58.

(2) Sembeguya vs. Reliable Trustees - H. C. Civil Suit 601 of 1992.

In the same way as my brother judges held in the above - cited cases; I also find the affidavit of the first applicant incurably defective.

The application of the applicants states “This application is supported by the affidavit of Busuulwa Kayongo which shall be read and relied upon at the hearing” The affidavit is therefore part and parcel of the application. Where an application is grounded on an affidavit which is declared to be defective, the application must also fail.

The affidavit in this application was evidence of the facts which the applicant intended to J
rely on in support of their application. Since the affidavit is now found to be defective,

the application it sought to support remains without the necessary facts/evidence to prove it. The application is similarly defective for lacking the evidence to substantiate the allegations raised in the application.

If the application were grounded on matters of law only, this affidavit could be ignored or dispensed with and the application would remain unaffected.

See: Odongokara vs. Kamanda (1968) EA 21. Also reported in (1971) HCB 156.

On the basis of what I have discussed above, and applying the law to the present case, the application is found to be defective. Consequently it (application) is struck out.

Although Counsel for the respondent asked me for costs. I shall not grant them to him for two reasons

- (a) the applicants are not blame able for filing a defective affidavit which has rendered the whole application defective and rejectable.
- (b) the blame for filing a defective affidavit lay with their Counsel from Legal Aid Project and the Commissioner for Oaths.
- (c) the suit is yet to be heard on merits.

V.a.r.Rwamisazi –Kagaba

Judge

2/4/2004