**THE REPUBLIC OF UGANDA**
**IN THE HIGH COURT OF UGANDA**
**HOLDEN AT SOROTI**

**MISCELLANEOUS APPEAL NO. 10 of 2014**
**(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 10 OF 2012)**

1. **EDITOR IN CHIEF ETOP RADIO**
2. **ETOP RADIO**
3. **NEW VISION PRINTING AND PUBLISHING CO. LTD.....APPELLANTS**

**VERSUS**

**OPIO BELMOS OGWANG.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This appeal arises out of the Ruling and Orders of the Ag. Registrar Soroti issued against the appellants arising out of Miscellaneous Cause No. 42 of 2012. The orders were that the Respondent produce a recording made on July 3 2012 within 12 hours from the date of receipt of the order; and do provide costs for the application.

The appellants brought this appeal and raised three issues for determination as here below in their submissions:

1. Whether the Registrar had the jurisdiction to grant the order.
2. Whether Exparte orders can be given in final matters without notice to the other party.
3. Whether the order against the appellants was legal and regular.

Before determining the appeal, the Respondents raised a preliminary objection which in their view could dispose off the matter.

Without divulging into the details of this preliminary objection, i have gone through the court record and have come across a Ruling signed and delivered by **Her Lordship J. Wolayo** dated 19th August 2013.

The ruling was in determination of the same preliminary objections having been raised before her court while starting the hearing of this appeal. The Judge considered the objections and made a ruling finally determining all issues raised in the objection. The same objections have now been repeated before me. I am not sitting as an appellate court, so I cannot rehear the said preliminary objection. To do so would violate section 7 of the Civil Procedure Act- which provides for the law on *res judicata*.

For reasons above I find that the preliminary objection is not sustainable; and do dismiss it accordingly.

I now turn to the Appeal.

**Issue 1: Whether the Registrar had the jurisdiction to grant the order.**

The Registrar acted under the provision of O.50 Civil Procedure Rules, and O.48 r.6, of the Civil Procedure Rules and section 5 of the access to Information Act-2005.

I have carefully considered all submissions as filed by both counsel. I thank them for the thorough research on the questions under controversy. Having done, my

conclusion and findings are that O.50 r.2 and r.3 of the Civil Procedure Rules clearly grant the Registrar power to "enter judgment in uncontested cases and consent judgments, and to deal with formal steps preliminary to the trial.

From that order it is clear that the Registrar under the provisions of O.50 r.2 only handles;

(i) Uncontested cases

(ii) Cases to which parties have consented that judgment be entered in agreed terms.

This is the position laid down in the case of ***A.G. & Uganda Lad Commission v. James Mark Kamoga and James Kamala CA No. 8 of 2004***.

Under O.50 r.3 of the Civil Procedure Rules the Registrar can also handle formal steps preliminary to the trial. What amounts to "formal steps preliminary to the trial?

In my view these are material (steps) taken in preparation of the case before it finally gets to the Judge for determination. This presupposes that a suit is filed or steps are taken to file one. See ***Dhanji v. Bhangwanji Sudenji & Co. (1932) 5 ULR.9***. I have seen on record a notice of intention to sue filed by respondents 4 days before they filed the notice of Motion (exparte) from which this appeal originates. Therefore can it be taken that this suit was brought as a preliminary step? In my view this suit (application) could not fall under the category "uncontested" because there is no indication on record that appellants failed to contest the application when served.

With the above observations I do not think that this application 42/2012 could fit in the type of matters that the provisions of O.50 r.2 of the Civil Procedure Rules was meant to take care of. It cannot fit either under O.50 r.3 of the Civil Procedure Rules. The Registrar obviously lacked the requisite jurisdiction necessary to hear the matter under O.50 r.2 and r.3 of the Civil Procedure Rules.

Did the Registrar possess jurisdiction under section 5 of the Access to Information Act?

I did not find any evidence on record to show that the Respondents followed the strict requirements as to 'notice' etc as required under that Act, before applying to the Registrar for the order. There is a problem with the procedure adopted to move the application using the provisions of the Civil Procedure Rules, in an attempt to fall back to the Access to Information Act. The Access to Information Act requires an applicant for information to comply with certain procedural requirements which was not done. The Registrar could not have sat and presided over the matter under the Access to Information Act without first satisfying herself that the applicants had complied with the strict requirements of that law for the applications for information.

I find therefore that the Registrar had no jurisdiction to grant the order.

2. **Whether exparte Orders can be given in final matters without notice to the other party.**

The law under O.9 r.11 of the Civil Procedure Rules, provides for exparte hearing of matters arising out of defendant's default to take steps under the law to be heard. O.9 r.12 of the Civil Procedure Rules, provides that such an exparte order can be

set aside. This is the spirit of the holding in ***Attorney General & Anor. V. James Mark Kamoga and Anor*** (Supra) that;

> "*Judgments entered by the Registrar under O.50 may be set aside under rule 12 of O.9, similar to those passed under rule 6, 7, and 8 of O.9 namely exparte judgments*."

Exparte judgments were discussed at length in the Nigerian case of Nathaniel ***Adedamola Kotoye v. Central Bank of Nigeria & Ors. (SC.118/1988***) which I find persuasive. **Hon. J. Karibi** stated thus;

> "*It seems to me from all authorities I have referred to above that where an application for interlocutory injunction is made exparte and court cannot see facts showing real urgency or desire to preserve a res from immediate destruction or that there is impossibility of service of the motion on the other party the court should either refuse it or order that the other party be put on notice and so served with all relevant papers*."

Though the case discusses injunctions, the principle on "exparte" applications is very instructive. Exparte applications have an element of surprise, and should not be entertained unless there is sufficient cause.

In this matter, why did the Respondent proceed exparte? I had read the affidavit by appellant in support of the application, and the affidavit in rejoinder. This is a matter that necessitated the presence of the respondent to ensure "fair play."

Guided by the reasoning above, the fact that there was no suit yet and nothing to show that the respondent failed to respond to summons so as to warrant an exparte hearing, the Registrar was wrong to proceed to hear the application exparte without notice to the appellants. This issue succeeds.

**3. Whether the Order was legal and regular.**

Having found as above on Ground 1 and Ground 2, I hold that the Registrar having acted without jurisdiction, and having found that the provisions of the Access to Information Act had been violated, the orders given were irregular. I therefore adopt appellant's arguments on this ground as I find them plausible.

The problem is compounded further by the fact that Respondent never gave the appellant chance to be heard. This violated the rules of natural justice as held in Mpungu & Sons v. Attorney General and Anor. Civil Appeal 17 (2001) [2006] S.C. that;

> "*No man should be condemned unheard*."

The same need for adherence to natural justice is found in the case of ***Ridge v. Baldwin (1963) 2 WLR 935 1964 AC 40*** that;

> "*A decision given without due regard to the principals of natural justice is void*."

In the final analysis, I find that the order was issued without jurisdiction, and condemned the appellants unheard for no justifiable reason. The order is to that extent illegal and as such cannot be allowed to stand. As held in ***Makula International v. Cardinal Nsubuga [1982] HCB 11*** – once an illegality is brought

to the attention of court it cannot be allowed to stand. This order is therefore found illegal and irregular. This issue is therefore proved.

All in all I find that the appeal has succeeded on all grounds. The orders sought for are hereby granted with costs to the appellants. I so order.

**Henry I. Kawesa**

**JUDGE**

**18.09.2014**