

**REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT NAKAWA**  
**MISCELLANEOUS APPLICATION NO. 333 OF 2014**  
**(ARISING OUT OF CIVIL SUIT NO. 178 OF 2014)**  
**(ARISING OUT OF MAKINDYE CHIEF MAGISTRATE’S COURT**  
**CIVIL SUIT NO. 0095 OF 2013)**

**RITA NANTAYI**.....  
**APPLICANT**

**VERSUS**

**ALI SEKANJAKO**.....  
**RESPONDENT**

**BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA**

**RULING**

The Applicant, through her Lawyers, Counsel Wanina Andrew of M/s Musika, Mugisha & Co. Advocates brought this Application by Notice of Motion against the Respondent. The Application was brought under Sections 33 of the Judicature Act Cap. 13 and Section 98 of the Civil Procedure Act Cap 71.

The Applicant seeks that;-

- 1. The Complaint in High Court Civil Suit No. 178 of 2014 formerly Makindye Chief Magistrate Court Civil Suit No. 95 of 2013 be struck out;**
- 2. Costs of the Application be provided for.**

The Application is supported by Affidavit deposed by Ms. **Rita Nantayi**, the Applicant dated 30<sup>th</sup> day of May, 2014. The grounds upon which the Application is based are particularized in the Affidavit set out above but for purposes of brevity are that; the ***Plaint in HCCS No. 178 of 2014 formerly Makindye Chief Magistrate's Court*** was filed by Messrs Ambrose Tebyasa & Co. Advocates. Ms. Nantayi deposed that on the 23<sup>rd</sup> July, 2013, the Respondent filed a suit at Makindye Chief Magistrate Court for trespass on ***Kibuga Block 14 Plot No. 1216 situate at Najjanankumbi-Kizito Zone***. Rita Nantayi deposed that her husband, Willington Walakira, is the registered proprietor of the suit land which also has their residential house in which the Applicant resides with her husband and their nine children.

The Deponent further avers that she was not served with the summons and the Complaint. Having perused through the Court record, I find that the Affidavit of service shows that the Applicant was served with the Court documents but she refused to acknowledge service thereof. In addition to presenting the Complaint, the aforementioned Law firm, M/s Musika, Mugisha & Co. Advocates, proceeded to file three Applications on the same day.

That is, a Certificate of Urgency, an Interim Order and a Temporary Injunction.

An Interim Order was obtained by the Respondent on the 24<sup>th</sup> July 2013, whereupon, the Respondent proceeded to evict the Applicant from the house although he was stopped by the Commandant, Police Land Protection unit. That the Respondent and his agents did not show any Court documents during the eviction process. The Deponent avers that she got wind of the proceedings before the Chief Magistrate Court at Makindye on 5<sup>th</sup> August 2013 when the Applicant was committed to civil prison for disobedience of Court Order and was detained until 16<sup>th</sup> August, 2013. Ms. Nantayi depones that her Lawyers, Messrs Musika, Mugisha & Co. Advocates made a complaint to the Principal Judge which was copied to the Inspectorate of Courts. The Inspector of Courts wrote a letter to Messrs Ambrose Tebyasa & Co. Advocates requesting for information relating to Fauzi Mukwaya who appeared in Court as Counsel for the Respondent.

According to a letter dated, 16<sup>th</sup> August, 2013, the aforementioned the Law firm, Messrs Ambrose Tebyasa & Co. Advocates denied having known the Respondent. The Messrs Ambrose Tebyasa & Co. Advocates also denied instructions in the matter and revealed that Fauzi Mukwaya who appeared before the Chief Magistrate at Makindye was not a member of their firm. Ms. Nantayi avers further that the Respondent's claim against her is untenable on the premise that the Respondent could not have

purchased a house where the Applicant and her children reside without her consent or approval. The Applicant avers that it is in the interests of justice that the Plaint be struck out with Costs.

The Application was opposed by the Respondent who filed an Affidavit in Reply deponed on the 8<sup>th</sup> day of October, 2014 by **Mr. Ali Sekanjako**, the Respondent through his Lawyers, Counsel Paul Mukiibi of M/s Mukiibi &, Kyeyune Advocates. The Applicant did not file in rejoinder. Both Counsel filed written submissions on the matter.

### **Submissions of the Parties**

Counsel Wanina Andrew, for the Applicant, submitted that Section 64(1) and 65(1) of the Advocates Act Cap 67 makes it an offence for a person to hold out as an Advocate and to falsely endorse any instrument. Counsel Wanina's contention is that proceedings filed by unqualified Advocate are invalid and should be struck out. Mr. Wanina relied on the case of ***Prof Syed Huq vs the Islamic University of Uganda Civil Appeal No. 47 of 1995***, where Court held that the documents prepared or filed by an Advocate whose practice is illegal, are invalid and of no legal effect on the principle that Courts will not condone or perpetuate illegalities.

Counsel Wanina prayed that this Honourable Court strikes out the Plaint with costs to the Applicant.

In Reply to the Applicant's submissions, Counsel Paul Mukiibi, who represented the Respondent, opposed this Application. He submitted that the case of ***Prof. Syed Huq Vs. The Islamic University of Uganda, supra***, cited by the Applicant in support of her Application is based on old law as it was decided in 1997. Counsel Mukiibi pointed out that **S.14A of the Advocates(Amendment) Act 2002 Act No. 27 of 2002** was passed which section saves documents that have been filed by a person who does not possess a valid practicing certificate or holding out to be an Advocate.

For purposes of clarity, I will reproduce Section 14A of the Advocates (Amendment) Act 2002. It states that;

14A (1) where—

- (a) An Advocate practices as an Advocate contrary to subsection (1) of section 14; or
- (b) In any proceedings, for any reason, an advocate is lawfully denied audience or authority to represent a party by any Court or tribunal; then-
  - (i) No pleading or contract or other document made or action taken by the Advocate on behalf of any client shall be invalidated by any such event; and in the case of any proceedings, the case of the client shall not be dismissed by reason of any such event;

Mr. Mukiibi relied on the case of **Attorney General & Hon. Nyombi Peter vs. Uganda Law Society, Misc. Cause No. 321 of 2013**, it was held;

*“I agree that the representation of the Attorney General by Kampala Associated Advocates does not affect the legality of the pleadings because under S. 14A of the Advocates (Amendment) Act:*

**“No pleadings, contract, or other document made or actions taken on behalf of a client shall be invalidated by disqualification of an Advocate** from representing a client for any reason.”

*Disqualification of an advocate, for example without a valid practicing certificate, or an Advocate whose conduct violates the law including client confidentiality and conflict of interest or any other legal matter **does not invalidate the proceedings.** The Courts are empowered to hear and determine the disputes between parties because an Applicant who believes he has been wronged comes to Court to seek relief. The administration of justice requires that the substance of disputes be investigated and decided on merits and lapses should not necessarily bar the litigant from pursuing his or her rights.*

It was Counsel Mukiibi’s submissions that Section 14A of the Advocates (Amendment) Act 2002 and the decision in the case of **Attorney General & Hon. Nyombi Peter V. Uganda Law**

***Society, supra***, the actions of Fauzi Mukwaya's of holding out as an Advocate or impersonating as an Advocate, filing and representing the Respondent in the Lower Court did not invalidate the Respondent's pleading.

In his closing submissions, Counsel Mukiibi implored Court to dismiss this Application with costs to the Respondent.

### **Resolution**

The Applicant raised one issue for Court's determination. For the purpose of disposal of this Application, I find that the issue for determination in this Application regards the legality of the pleadings filed by a person holding out as an Advocate.

I have carefully read the submissions of both parties and I appreciate them. I wish to distinguish the case of ***Prof Syed Huq vs. the Islamic University of Uganda Civil Appeal No. 47 of 1995***, cited by Counsel Wanina Andrew, who represents the Applicant and the case of ***Attorney General & Hon. Nyombi Peter V. Uganda Law Society, Misc. Cause No. 321 of 2013*** cited by Counsel Mukiibi Paul. The former was decided long ago in 1995 before the Amendment of the Advocates Act 2002 while the latter was decided recently in 2013, eleven (11) years after the said Amendment.

With due respect to Counsel Wanina, the case he has relied upon has been overtaken by the Amendment to the Advocates Act of 2002. The Amended Advocates' Act, in brief, saves documents

and or pleadings filed in Court by an Advocate without a valid practicing certificate. It is not in contention that one, Fauzi Mukwaya, who represented the Defendant in the Lower Court did so under the auspices that he is an Advocate practicing under the firm, Ambrose Tebyasa & Co. Advocates whereas not.

I agree with Counsel Mukiibi that Section 14 A of the Advocates Act as amended was intended to save the innocent litigants from unscrupulous persons who hold out as Advocates. In the case of ***Prof Syed Huq vs. the Islamic University of Uganda (supra)***, if the Judgment is read as a whole, this is the essence of what Tsekooko JSC, rendered:-

*“The provisions of the Advocates Act did not render the invalid pleadings drawn or prepared by an Advocate who did not have a valid practicing certificate. Deeming such pleadings or documents to be illegal would amount to a denial of justice to an innocent litigant who innocently engaged the services of an innocent party. The intention of the legislature appears to be aimed at punishing the errant advocate by denying him remuneration or having him prosecuted. I find nothing in the Provisions I have referred to which penalize an innocent litigant. That is why the Court would deny audience to an Advocate without a practicing certificate but should allow a litigant the opportunity to conduct hi case or engage another Advocate”*



This case which the Applicant relied on as her major authority, does not support her case. Additionally, in the common law case of ***Spirling vs. Breneton [1866]L.R 2 E.q (at page 67)***. In that case, a Plaintiff instituted a case. Then, A.B. a Solicitor for the Defendant entered appearance and filed other subsequent pleadings. Thereafter, there was a Chamber “*application on the part of the Plaintiff that appearance entered in this cause, and all subsequent proceedings by A.B., might be set aside, on the ground that at the time when the appearance was entered the said A.B. had not taken out an annual certificate entitling him to practice as Solicitor of (the Court)*”.

I share the same view with the Decision of Sir W. Page Wood V.C. He held that:

*“The cases at common law seem to show that although great difficulties are thrown in the way of any recovery of his costs by a Solicitor who acts for a client without being duly qualified, the proceedings themselves are not void. It would be most mischievous, indeed, if persons, without any power of informing themselves on the subject, should be held liable for the consequences of any irregularity in the qualification of their Solicitor. As against third parties the acts of such a person acting as a Solicitor are valid and binding upon the client on whose behalf they are done. A client who might ascertain by inquiry that his*

*Solicitor was on the roll, would have no means of finding out if his certificate was taken out and stamped at the proper time. I do not, therefore, think myself justified in interfering, because, at the time when the appearance which it is sought to vacate was entered, the Solicitor had no certificate. The result of the authorities is thus stated by Erle, J., in **Holgate vs. Slight 21 L.J. (Q.B.) 74** :— “It seems to me, therefore, that an attorney, though uncertificated, may do acts in his capacity of attorney, but that the result will be that he will, in such case, lose his fees.”*

A litigant would hardly inquire from an Advocate if the particular Advocate has a valid certificate. This is the business of the Courts and the Law Council. To say that litigants who engage Advocates without practicing certificate do so at their peril is harsh because the majority of our people would not know which Advocate i.e not entitled to practice. Therefore, documents drawn by an Advocate without a practicing certificate should not be regarded as illegal and invalid simply because the Advocate had no valid practicing certificate when he drew or signed such documents.

In my opinion Article 126(2) (e) of the Constitution would be infringed if a Pleading is declared invalid because it was signed by an advocate who does not possess a valid practicing certificate.

I am aware that it is a good policy that Courts enforce the law and avoid perpetuating acts of illegality. It can only effectively do so if acts done in pursuance of an illegality are deemed as being

invalid. The invalidating rule is meant for public good, more so in a country like ours, which has a predominantly illiterate or semi-illiterate population. There is a need to discourage the commission of such acts. Allowing such acts to stand is in effect a perpetuation of the illegality.

The interests of the innocent party should not be swept under the carpet in appropriate cases. However, it should not be lost sight of the fact that the innocent party has remedies against the guilty party to which he may have recourse. For that reason, it should not be argued that invalidating acts done by unqualified Advocates will leave them without any assistance of the law. I will proceed to hear civil suit No. 178 on merit.

**I HEREBY ORDER that:-**

- 1.** This Application is hereby **DISMISSED**.
- 2.** Civil Suit No. 178 shall be heard on merit.
- 3.** The Costs of this Application are awarded to the Respondent.

**SIGNED:.....**

**HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA**

**J U D G E**

**3<sup>rd</sup> November 2014**