

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

**MISC. APPLIC. 41 OF 2013**

**ARISING FROM CIVIL APPEAL 10 OF 2013**

**ARISING FROM SOROTI LAND CLAIM 28 OF 2008**

**1.OJANGOLE WILSON**

**2. DIFAS MUCHANAGANDI.....APPLICANTS**

**VERSUS**

**JEROME OTIM OULE.....RESPONDENT**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**RULING**

In this application, the applicants through their advocates Ms Isodo & Co. Advocates apply to be allowed to adduce additional evidence . The application is supported by affidavit of Ojangle Wilson . It is brought under section 80(1) (d) & 98 of the CPA, order 43 r 22 and order 52 rr 1 &2 of the CPR.

The main ground of the application is that the evidence could not be adduced at the trial due to the floods that had covered the graves on the 2<sup>nd</sup> applicant's relatives.

Mr. Otim for the respondent opposed the application . Counsel sought to rely to the affidavit in reply of Levi Otim. This affidavit was attacked by Mr. Isodo for being defective.

Counsel contends that the affidavit is thumb printed which implies the deponent is an illiterate and under sections 2 and 3 of the Illiterates Protection

Act, the person who prepared the affidavit is obligated to indicate that the affidavit has been read back to the illiterate.

Mr. Otim for the respondent submitted that the affidavit is sworn by a literate person.

I find it strange that a person who read and understood the affidavit thumb printed the affidavit instead of appending his signature. The presumption is that such a person is an illiterate and therefore the writer of the document must comply with sections 2 and 3 of the Illiterate Protection Act. Non-compliance renders the affidavit defective.

Counsel further submitted that the affidavit was sworn in Lira before an advocate based in Soroti. This anomaly renders the affidavit unreliable .

For the above reasons, there is no affidavit in reply.

Turning to the grounds of the application, the fact that the applicant affirms that graves of the applicants' relatives were not seen by the trial court is a legitimate reason to allow additional evidence to be adduced.

Consequently, the application to adduce additional evidence is allowed with costs in the cause.

**DATED THIS 15<sup>TH</sup> OF MARCH 2014.**

**HON. LADY JUSTICE H. WOLAYO**