

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
MISCELLANEOUS APPLICATION NO.082 OF 2017
(Arising from Civil Suit No.049/2016)

1. KAHERU YASIN

2. KABARAMBUZI BEN

APPLICANT

VERSUS

ZINORUMURI DAVID

RESPONDENT

BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI

RULING

This is an Application by Chamber Summons brought under Section 98 of the Civil Procedure Act and Order 10 Rule 14 of the Civil Procedure Rules. The Applicants seek the Orders of Court to inspect the Will of the late Rwababi and to subject it to examination by a hand writing expert for a report on its authenticity.

The Application is supported by an Affidavit sworn by the 1st Applicant with attachments including a copy of the Will in Runyakore Language which was not accompanied with a translated copy into English. At the hearing of the Application, Counsel for the Respondents raised a Preliminary Objection to the effect that the Affidavit in support of the Application was defective since it was purportedly sworn on behalf of both Applicants.

Counsel further objected to the lack of a translated copy of the Will as an attachment to the Affidavit. The argument raised was that the Language of Court is English hence the Will should have been translated and a copy attached to the Affidavit. I was invited to dismiss the Application on the basis of the Objections raised by Counsel.

It was submitted in response that the Affidavit relates to matters in the knowledge of both Applicants and hence it was not fatal for it to be sworn by one of them. In relation to the failure to file an English version of the Will, Counsel conceded and observed that it was an irregularity that could be cured by supplying a copy which in any case had been attached to the Pleadings in the main suit.

Mr.Muhurizi represents the Applicants while Mr.Beitwenda represents the Respondents.

The impugned Affidavit has paragraphs couched in the following words;

- i) “That I together with Karambuza Ben (2nd Plaintiff) contest the authenticity of the alleged will as the same was never read at the burial of our deceased father.”
- ii) “That our deceased father had thumb printed other documents in the possession of the Applicants.”

The Law relating to swearing Affidavits has been canvassed by Courts in a number of cases. The principle is that save in Representative suits where the party who obtains the Order to file the suit can swear Affidavits binding on others on whose behalf the suit is brought, it does not apply otherwise. Where an Affidavit is sworn on one's behalf and on behalf of others, there is need to prove that the others authorized the deponent to swear on their behalf. Proof of such authorization is by a written document attached to the Affidavit. This irregularity renders the Affidavit defective and the Application incompetent.

See. Taremwa Kamishani & Ors V Attorney General M.A 0038/2012; Makerere University V St. Mark Educations Institute HCCS No.378/1993; Kaingana V Dabo Boubon[1986]HCB 59.

The Objection relating to the Applicants' failure to attach a translated version of the Will to the Affidavit is a valid one. Section 88 of the Civil Procedure Act provides for the use of English in drafting pleadings and recording of evidence since it is the Language of Court. It therefore follows that all attachments to pleadings must be translated to the language of Court. As conceded by Counsel for the Applicants and in the interest of administering substantive justice as required by Article 126(2)(e) of the Constitution, this irregularity can be cured by filing an English version of the document. No injustice will have been occasioned to the Respondents since even a copy of the same document was attached to the Pleadings in the main suit.

All in all, the Application is dismissed for incompetence on account of the defective Affidavit. Costs will be in the cause.

Moses Kazibwe Kawumi

Judge

20th September 2017.