

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL APPLICATION No. 0028 OF 2017
(Arising from Application No. 003 of 2017 and Civil Suit No. 0016 of 2016)

**1. MAJI REAL ESTATES (U) LIMITED }
2. THE REGISTERED TRUSTEES OF ARUA DIOCESE }..... APPELLANTS**

VERSUS

**AULOGO COOPERATIVE SAVINGS AND }
CREDIT SOCIETY LIMITED, ADJUMANI } RESPONDENT**

Before: Hon Justice Stephen Mubiru

JUDGMENT

Although presented as an application under the provisions of section 14A of *The Advocates Act*, as amended, section 98 of *The Civil Procedure Act* and Order 50 rule 8 of *The Civil Procedure Rules*, this is in essence an appeal from an order of the Assistant Registrar of this court, made under rule 67 of Order 22 of *The Civil Procedure Rules*, setting aside a sale in execution of a decree, which under Order 44 rule 1 (h) of *The Civil Procedure Rules* is appealable as of right. It seeks to set aside orders of the Assistant Registrar of this court, and instead order that execution of the decree be restored, and award the applicants the costs of the appeal. It is supported by the Affidavit of a one Moses Adriko, a legal assistant with the applicant's advocate's law firm. In any event, appeals from orders of Registrars are ordinarily presented by Notice of Motion and this perhaps explains the misnomer in this case.

The background to the appeal as disclosed in that affidavit and the annexures thereto is that on 11th July 2016, the first appellant filed a suit under summary procedure against the respondent for the recovery of shs. 79,218,876/=. The respondent having failed to file an application for leave to appear and defend the suit within the time prescribed by the rules, a default judgment in that sum was entered against the respondent on 1st September 2016 and subsequently the first appellant's bill of costs was taxed and allowed at shs. 6,154,019/=. On 10th October 2010, an application was

filed for execution of the decree by way of attachment and sale of the respondent's real property comprised in an incomplete storied building at ground floor level on land measuring approximately 15 metres by 35 metres situated at Karoko village, Biyaya Ward, Adjumani Town Council in Adjumani District along the Gulu - Adjumani Road. A warrant of execution was issued to a bailiff on 11th October as a result of which the property was attached and sold to the second appellant on 28th November 2016. Upon filing a return of execution, the court issued an order to the bailiff to hand over vacant possession of the property sold to the second appellant. The respondent then on 19th January 2017 filed an application before the Assistant Registrar of this court by which he sought to have the sale in execution of the said property set aside, the property restored to the respondent and that the respondent be allowed instead to deposit part of the decretal sum in court. Upon hearing the application, the Assistant Registrar delivered his ruling on 22nd February 2017 by which he set aside the execution and sale on grounds that the application on basis of which execution of the decree was initiated was a nullity having been signed by a one Moses Adriko, a person who purported to be the judgment creditor's advocate whereas not, he being a Legal Assistant in a firm with a sole qualified legal practitioner. The applicant contends this decision was erroneous and ought to be set aside.

In his affidavit in reply, the respondent's Manager Mr. Denis Ambayo contends that the decision of the Assistant Registrar was correct and should be upheld since it is an undisputed fact that Mr. Moses Adriko signed the application for execution in the capacity of the judgment creditor's advocate whereas he was not qualified to practice law.

The appellants raised only one ground for challenging that decision, viz; that the Assistant Registrar failed to properly evaluate the evidence thereby coming to the wrong decision. Submitting in support of this ground, Mr. Odama Henry Counsel for the first appellant argued that on basis of Paragraph 7 of the affidavit in support of the appeal, his firm applied for execution of the decree and the application was signed by the legal assistant as a "person conversant with the facts of the case" under O 22 r 8 (2) of *The Civil Procedure Rules* and the court bailiff took the necessary steps to execute the decree but the learned Registrar who heard the application disregarded the fact that Mr. Moses Adriko signed the application for execution as a person conversant with the facts. He set aside the decree on grounds that Moses Adriko

signed the application for execution as an advocate whereas he is not an advocate. In his view, even a document signed by a non-advocate under O 22 r 8 (2) of *The Civil Procedure Rules* is valid for as long as that person is conversant with the facts of the case. The application for execution is proper and that omission on its own does not invalidate the pleadings. The main suit was already concluded and the court bailiff had already filed his returns following which an order for delivery of the property was signed by the Registrar and possession was handed over to the second appellant. Setting aside the orders was unfair. Even after the said orders in the main suit were set aside, to-date the respondent has not complied with the terms of the order. The decree arising from the application to set aside is annexure “B” of the affidavit in reply filed by the respondent. He submitted that the learned Assistant registrar of the High Court erred. The decision arrived at was wrong in law. He rely on the case of *Rita Nantale v. Ali Sekanjako H. C Misc. Apn 333 of 2014 arising from CS 178 2014* where at page 3 it was decided that pleadings filed by an unlicensed advocate are not invalidated by that fact. For that reason the order setting aside the execution was wrong under the law and he invited the court to set it aside and execution be restored. He left the question of costs to the discretion of court. Counsel for the second appellant, Mr. Madira Jimmy associated himself with the submissions of counsel for the first appellant and prayed that the costs of the second appellant should be provided for.

In response, Mr. Paul Manzi for the respondent submitted that the person who signed the application for execution was not an advocate and according to paragraph 8 of the affidavit he signed as counsel for the decree holder. He signed twice in that capacity and this was illegal. The Registrar properly considered this fact which amounted to an illegality and he made the right decision to set aside the execution obtained in those circumstances. It would have been different if the decree holder had signed or as a person conversant with the facts. The authority cited by counsel for the first appellant relates to advocates who sign documents without practicing certificates, it does not relate to persons who are not advocates. That lenience cannot be extended to all manner of persons and condoning an illegality. It is therefore distinguishable. The orders of the registrar should be maintained because they were made in accordance with the law. He prayed for costs of the appeal.

In reply Mr. Odama submitted that to the contrary, the authority cuts across, it covers advocates as well as impersonators of advocates. The application itself was signed with his permission since he was indisposed at the time. The stamp of his law firm was affixed with his permission. This is a sole practice and whatever happened was with his knowledge and consent and he has never disassociated himself from this. He invoked Order 9 r 27 and O 22 r 8 (2) of *The Civil Procedure Rules* as authorising him to do that. He prayed that the court decides that the decision of The Assistant Registrar was not correct. He reiterated his prayers made earlier.

Order 22 r 8 (2) of *The Civil Procedure Rules* requires every application for the execution of a decree to be in writing, signed and verified by the applicant or his or her advocate “or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.” Where it is signed by a person “acquainted with the facts of the case,” prudence would require that it is so indicated at the foot of the signature but the rule does not specifically demand that the application must indicate so, since it only requires the court to be satisfied that he or she is such a person. It therefore follows that this question of fact may be verified at a later stage after the application is filed but before a warrant of execution issues.

The purport of Order 22 r 8 (2) of *The Civil Procedure Rules* is to avoid impersonation and unauthorised persons initiating execution of the decree and cause confusion later on. In providing for a person “acquainted with the facts of the case,” it could therefore not have the intention that anybody who has nothing to do with the decree-holder, and has no authority whatsoever from him or her would under the provisions of the rule be entitled to sign such an application. The intention clearly is that such a person must be a recognised agent of the decree-holder. There can be no doubt that Moses Adriko, being a Legal Assistant with the firm of advocates representing the applicant at the time, if he was proved to the satisfaction of the Court to be acquainted with the facts of the case, and authorised either by the decree holder or its advocate, would be a person qualified to sign the application.

In any event, if at any material point in time and particularly when the judgment debtor raised a specific plea that the application for execution was not properly signed, the applicant would be required to produce evidence that satisfies the Court that the person who signed was authorised

by the decree holder or its counsel and was acquainted with the facts of the case, and then the principle and substance of Order 22 r 8 (2) of *The Civil Procedure Rules* would be satisfied. The case at that stage could alternatively be decided on the elementary principle of ratification of an act by a principal since an act done by one person on behalf of another, but without his or her knowledge or authority, may be ratified by that other and if that other so elects to ratify, the same, effect will follow as if the act was performed by that other. That the person who signed the application is a Legal Assistant in the law firm representing the applicant is not in dispute. In paragraph 4 of his affidavit in reply to Miscellaneous Application No. 0003 of 2017, on basis of which the execution was set aside, Mr. Moses Adriko expressly stated that he was acquainted with the facts of the case. In absence of evidence to the contrary, it can therefore be safely presumed that he is acquainted with the facts of the case.

There however is no evidence on record that the court made an inquiry into this aspect either before it issued the warrant of execution or after the judgment debtor raised it as a specific plea in seeking to set aside the attachment and sale of its property and as a result no express finding of fact is on record to show that the court was not satisfied that he was a person acquainted with the facts of the case. This was apparently because when he signed the application for execution, at the foot of his signature is typed the phrase “counsel for the decree holder.” The court therefore was misled into believing that the application was signed by a person representing the decree holder in that capacity and it is understandable as to why it did not seek to satisfy itself first whether or not the application was signed by a person acquainted with the facts of the case before it issued the warrant of execution. There however is no justification for the court’s failure to evaluate the evidence before it when the judgment debtor subsequently raised incompetence so to sign as a specific plea in Miscellaneous Application No. 0003 of 2017.

In setting aside the attachment and sale of the respondent’s property to the second applicant in execution of the decree of this court, the Assistant Registrar largely disregarded submissions made by counsel in respect of Order 22 r 8 (2) of *The Civil Procedure Rules* and relied exclusively on the provisions of sections 64 and 65 of *The Advocates Act*. Section 64 (1) provides as follows;

Any person other than an advocate who shall either directly or indirectly act as an advocate or agent for suitors, or as such sue out any summons or other process, or commence, carry on or defend any suit or other proceedings in any court, unless authorised to do so by any law, commits an offence.

Section 65 in essence provides that any person, who not being an advocate, pretends to be an advocate, or takes or uses any name, title, addition or description implying that he or she is qualified or recognised by law as being qualified to act as an advocate, or takes or uses any name, title, addition or description implying that he or she holds any legal qualification unless he or she in fact holds that legal qualification, commits an offence. In the same vein, section 71 of the Act prohibits advocates from knowingly allowing their names to be made use of by any person, other than an advocate in the performance of any act which, under the provisions of the Act or any other written law, may only be performed by an advocate.

The intention of Parliament in enacting the above mentioned provisions that restrict the right to practise law is not only to safeguard the rights, privileges and interests of advocates but also to protect clients and third parties. The Act sets up a framework for the regulation of professional legal practice in which the prescribeds of professional conduct and etiquette for advocates may be monitored through the creation and operation of a licensing system which is thus a matter of public policy. To the extent that it emanates from Parliament, it creates valuable rights directed towards the protection of vulnerable interests. The general public therefore has a vested interest in the ethical integrity of the legal profession. Sanctions for violating professional standards are ordinarily imposed within the context of a peer review mechanism, which by its very nature is somewhat delicate and uncomfortable for all concerned. It is at times appropriate that, in addition to the sanctions that might be so imposed, the lawyer found guilty of misconduct may also have to bear the costs of the investigation into his or her own questionable conduct as well as those involved in the underlying litigation. Factors to be considered by a judicial officer before directing the costs of any proceeding to be paid personally by counsel for conduct which is negligent, unreasonable, illegal, improper or lends his assistance to proceedings which are an abuse of the process of the court were suggested in *Ridehalgh v. Horsefield*; *Allen v. Unigate Dairies Ltd*, [1994] Ch 205, [1994] 3 All ER 848, [1994] 3 WLR 462 thus; he should ask three questions: did he act improperly, unreasonably or negligently? Did that conduct cause

unnecessary costs? Is it, in all the circumstances, just to make an order? There is a clear need for any court intending to exercise that jurisdiction to formulate carefully and concisely the complaint and ground upon which such an order may be made. Despite that somewhat wide range of available sanctions for professional misconduct, courts have time and again toyed with the question as to whether additional penalties within the litigation itself, ought to be imposed.

The general rule is that where a statute requires a particular act to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it must lead to that consequence and no other consequences. Apart from specific penalties of fines and terms of imprisonment imposed in respect of some of the offences stipulated by *The Advocates Act*, the general penalty provided by section 69 of the Act is that no costs are recoverable in any suit, proceeding or matter by any person in respect of anything done, the doing of which constitutes an offence under the Act, whether or not any prosecution has been instituted in respect of the offence. The question then is whether the law envisages other consequences where it is found that pleadings were signed in violation of any of the provisions of the Act.

In his ruling, the Assistant Registrar took the view that a pleading signed by a person unauthorised to practice law (in fact whose name is not on the roll of advocates) but who purports to be an advocate, is void *ab initio* and is of no legal consequence. He expressed his opinion in respect of sections 64 and 65 of *The Advocates Act* as follows;

The above sections of the law clearly declare the conduct of Mr. Adriko Moses criminal in describing himself as counsel for decree holder. Yes the criminal conduct is nothing less than being illegal. The application for execution is a major step in the execution process. I fail to believe and buy the Respondent's submission that it was a mere technicality which could be cured by invoking Article 126 of *The Constitution of Uganda*.....in the instant case it is clear that there has never been in law any application for execution leading to attachment and sale of the applicant's property above described..... in other words for the illegality of the acts of Mr. Adriko Moses in signing the application for execution contrary to section 64 and 65 of the *Advocates Act* and Order 22 rule 8 (2) of the CPR. The ultimate effect is that there has never been any application for execution in civil suit No. 0016 of 2016 hence no valid attendant attachment and sale of the applicant's property and the purported sale

arising there from can be set aside and is accordingly set aside and the property restored to the supplicant. (Emphasis added).

The pivotal point in the finding of the learned Assistant Registrar was his determination that by signing the application, Mr. Adriko Moses “described himself” as counsel for the decree holder. In effect he found that Mr. Adriko Moses held out as an advocate, which conduct constituted a violation of the specified provisions of *The Advocates Act*. The issue now is whether the finding of the learned Assistant Registrar that in signing the application Mr. Adriko Moses acted either directly or indirectly as an advocate, is supported by the evidence on record, this conclusion having reached based only on the fact that at the foot of Mr. Adriko Moses’ two signatures on the application is the phrase “counsel for the decree holder” alongside the stamp impression of the law firm. According to the Assistant Registrar, by presenting to court an application couched in those terms Mr. Adriko Moses “described himself” as an advocate.

In filing the application, Mr. Adriko Moses adopted the format prescribed by Form 5 under the title “Appendix D—Execution” of the appendices to *The Civil Procedure Rules*. Whereas Order 22 r 8 (2) of *The Civil Procedure Rules* permits such an application to be signed and verified by the decree holder or his or her advocate or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, in the prescribed provided in the appendix, the wording underneath the space reserved for the signature of the applicant prescribes “decree holder” only. The implication is that an applicant for execution of a decree is at liberty to modify the format to suit the factual circumstances of the situation in which the form is to be used. In the process of modification, inaccuracies are bound to occur and it is for that reason that section 43 of *The Interpretation Act* provides that where any form is prescribed by any Act, an instrument or document which purports to be in such form shall not be void by reason of any deviation from that form which does not affect the substance of the instrument or document or which is not calculated to mislead.

Modification of a prescribed form is generally inherently fact specific and understanding the implication of the modification will usually require an interpretation of the factual context in which the modification was made. It would be erroneous to take a modified form at face value without examining the circumstances of its execution. Interpretation of such documents involves

issues of mixed fact and law as it is an exercise in which the principles of interpretation are applied to the words of the actual document, considered in light of the factual matrix. Interpretation is not simply a question of ascribing an abstract legal meaning to the words, but rather of understanding those words in their full context. Words alone do not have an immutable or absolute meaning rather the meaning of words often turns on context, such as the purpose of the document and the skill of the person modifying it, hence the court must take into account the facts surrounding the modification in order to determine the modifier's objective intentions. There is need to avoid interpretations that would bring about an unrealistic result or a result that the modifier would not have contemplated at the time of the modification. Interpreting the document in a factual vacuum would undermine that goal.

Taking those sorts of contextual considerations into account, sometimes called the surrounding circumstances or the factual matrix, requires the court to understand the text of the document in light of them, not simply to ascribe purely legal meanings to the words taken in isolation. In coming to the conclusion he did, the learned Assistant Registrar did not allude at all to the context of the modification and therein lays the error or misdirection. Where by reason of either application of an incorrect principle, or failure to consider a required element of a legal test, or failure to consider a relevant factor, a judicial officer below comes to an erroneous conclusion, this court has the power to intervene and reverse the erroneous decision.

All prescribed forms contained in the appendices to *The Civil Procedure Rules* have certain clauses that are ever present subject to certain contextual changes. In some prescribed forms, where the rule or section of the Act from which they are derived provides for options, the form will by use of features such as asterisks, brackets, forward slashes, and so on, to reflect those options and by that way alert the modifier to the need to strike out whichever of the options is inapplicable to the purpose at hand (for example Form 9; "Affidavit of Process Server to accompany return of a summons or notice" uses a forward stroke for the choice between summons / notice, while Form 11; "Request for Service Abroad" uses brackets for the choice between I (or we) and so does Form 12; "Order to Bespeak Request for Substituted Service Abroad" in the choice between (*certificate, declaration, or as the case may be, describing it*) and

so does Form 9; “Notice to Admit Documents” under Order 23, rule 3 in the choice between the signature of an Advocate (*or agent*) for the plaintiff (*or defendant*).

When dealing with prescribed documents, knowing what changes to make, which clauses to include or delete, or modify, the circumstances under which to tinker and how to tinker is where the legal skill comes into play. When an unskilled person modifies a prescribed form therefore, there is often a danger of glossing over some details, seeing them as legal jargon and assuming it must be standard and unimportant. In the instant case, Form 5 under the title “Appendix D— Execution” of the appendices to *The Civil Procedure Rules* does not adopt asterisks, brackets, or forward slashes to reflect the three options prescribed by Order 22 r 8 (2) of the rules. It simply prescribes one of the three options as “Decree Holder.”

The modification of prescribed forms is not necessarily the preserve of advocates since it all depends on the purpose to which the modified document is to be put. For example Form 9; “Affidavit of Process Server to Accompany Return of a Summons or Notice” under Order 5, rule 16 of *The Civil Procedure rules* may be modified by a process server who may not necessarily be an advocate. Considering that modification of prescribed forms may be done both by skilled and unskilled persons, intention, not knowledge, should be the governing inquiry when interpreting the contents of a modified prescribed form. The meaning inferred from a particular phrase cannot control the meaning of the entire document if such an inference conflicts with document’s overall scheme or plan. The question before the Assistant Registrar was thus whether from the facts available, in signing the application form the way he did, Mr. Adriko Moses intended to present himself to court as an advocate. This question had to be answered from the perspective of one who has examined the context of modification of the entire document in its context. It is only after establishing that intent as a fact that his finding that Mr. Adriko Moses “described” himself as counsel would be justified.

Acting as or pretending to be an advocate when one is not qualified, being an offence under the provisions of sections 64 and 65 of *The Advocates Act*, and the offence not being one of strict liability, requires proof of criminal intent since *mens rea* is an element of almost all offences. The respondent had to show that by signing the application, Mr. Adriko Moses intended to

perform an act prohibited by law (acting as or pretending to be an advocate) i.e. that he intentionally engaged in the conduct knowingly, purposely with a conscious objective of creating such an impression and that he did not do so inadvertently or accidentally or on basis of a good faith belief.

Proving intent in either the civil or criminal context is inherently difficult. It requires proof of what was going on in a person's mind when performing an act or engaging in a course of conduct. The common scenario of proving intent is through circumstantial evidence and seldom by direct evidence. It is very often a matter of inference to be drawn from the facts and circumstances of each case. Courts are therefore not bound in law to infer that a person intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions but decide whether he or she did intend or foresaw that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances. Whereas an inference that a person knowingly, purposely and with a conscious objective of creating the impression that he or she is an advocate can be readily and easily drawn from signing pleadings that require extensive drafting more or less from scratch, that inference cannot be readily drawn from the mere signing of a modified prescribed form, especially one whose preparation is not exclusive to advocates, without considering the context.

The facts before the learned Assistant Registrar as contained in paragraph 4 of the affidavit in reply of Mr. Adriko Moses were that he signed the application on basis of a good faith belief that he was qualified to do so as a person "acquainted with the facts of the case" but not as an advocate. This averment was not met by evidence to the contrary from the respondent but only with the argument that Mr. Adriko Moses presented himself as an advocate simply because at the foot of his signatures on the application as filed in court is the phrase "counsel for the decree holder." In coming to the conclusion that Mr. Adriko Moses thereby acted as or pretended to be an advocate, the learned Assistant Registrar seems to have relied exclusively on that occurrence alone to draw the inference that Mr. Adriko Moses intended or foresaw that he was acting as or presenting himself as an advocate by reason only of its being a natural and probable consequence of that action. The learned Assistant Registrar took a very narrow approach in deciding whether Mr. Adriko Moses did intend or foresaw that result, without reference to the rest of the evidence,

drawing such inferences from the evidence as appears proper in the circumstances. Had he done so, he would have come to the conclusion, as I do now, that the facts before court do not irresistibly support the inference that when he signed the application, Mr. Adriko Moses did so knowingly, purposely and with a conscious objective of creating the impression that he was an advocate. There is no proof that he had the intention to bring about the prohibited consequence of creating in the mind of the court, or any other person, that he was an advocate.

The application filed in court appears on the face of it to be one generally modified by the law firm for applications filed on behalf of its clients, ordinarily signed by counsel for the applicant as a sole practitioner in his firm. It is contended by counsel for the respondent that Mr. Adriko Moses signed it with the intention of passing off as an advocate. This being an argument founded on circumstantial evidence only, the other co-existing plausible explanation is that this time round, an unskilled legal assistant in the law firm who did not subject it to further modification to suit the changed circumstances of it being signed on this occasion, not by counsel, but rather a person “acquainted with the facts of the case”, simply signed it inadvertently without considering the implications of the wording at the foot of his signature. In determining the meaning of a modified prescribed form, this Court will look to all corners of the document and the context in which it was modified rather than view sentences or clauses in isolation. Where the document lends itself to two interpretations, the court will not adopt an interpretation that leads to unreasonable results, but instead will adopt the construction that is reasonable. Having considered the content of the application and the facts surrounding its signing, I am unable to find from the circumstantial evidence, a deviation from the substance of the prescribed form or any act calculated to mislead or any deliberate criminal or mischievous intent on the part of Mr. Adriko Moses. Section 43 of *The Interpretation Act* requires that forms modified in compliance with prescribed forms should not be void by reason of any deviation from form which is not calculated to mislead.

By analogy, so far as the question of signing pleadings is concerned, when dealing with advocates who are otherwise professionally qualified, who have been admitted to the practice of law and have not been struck off the Roll of Advocates or suspended by the Disciplinary Committee of The Law Council but have only delayed to take out the annual practicing

certificates, the decisions of court are not uniform as to whether the defects are of substance or of procedure. For example in *Standard Chartered Bank v. Mechanical Engineering Plant Ltd & Others* [2009] EA 404, it was held that a practicing certificate cannot have retrospective effect and therefore the memorandum of appeal filed by an advocate without a practicing certificate at the time of signing it was incompetent as the advocate was unqualified. Similarly in *Delphis Bank Ltd v. Behal and others* [2003] 2 EA 412, it was held that it is public policy that courts should not aid in the perpetuation of illegalities. “Invalidating documents drawn by such advocates we come to the conclusion that will discourage excuses being given for justifying the illegality. A failure to invalidate the act by an unqualified advocate is likely to provide an incentive to repeat the illegal Act.” A similar holding is to be found in 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 (see also *Kabogere Coffee Factory v. Haji Twalibu Kigongo, S. C. Civil Appeal No. 10 of 1993* and *The Returning Officer, Iganga District and another v. Haji Muluya Mustaphar, C. A. Civil Appeal No 13 of 1997*).

On the other hand, in cases like that of *Attorney General and Hon. Nyombi Peter v. Uganda Law Society, Misc. Cause No. 321 of 2013*, it was held that though the advocate may be unqualified to practice, the legality of the pleadings signed and filed by such an advocate while so disqualified is not affected because of the provisions of section 14A of *The Advocates (Amendment) Act, 2002*. Before this, it had been decided in *Prof Syed Huq v. the Islamic University of Uganda, Civil Appeal No. 47 of 1995*, that 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 such an advocate. According to Tsekooko JSC, “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 his case or engage another Advocate.”

In coming to the conclusion that he did, the learned Assistant Registrar was clearly persuaded by the line of authorities to the effect that pleadings filed by persons who at the time of signing were

incompetent or unqualified as advocates, are void. Conversely, section 14A (1) of *The Advocates (Amendment) Act 2002* is to the effect that no pleading or other document made or action taken by the Advocate on behalf of any client shall be invalidated by any such event and that in the case of any proceedings, the case of the client shall not be dismissed by reason of any such event. I therefore take the view that non-compliance with any procedural requirement relating to a pleading or application for relief should not entail automatic nullification or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Rules of procedure, as handmaidens to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are:

- i. Where the statute or rule prescribing the procedure, also prescribes specifically the consequence of non-compliance;
- ii. Where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;
- iii. Where the non-compliance or violation is proved to be deliberate or mischievous;
- iv. Where the rectification of defect would affect the case on merits or will affect the jurisdiction of the Court;
- v. There is as a result complete absence of authority.

Despite the line of authorities to the effect that pleadings filed by persons who at the time of signing were incompetent or unqualified as advocates are void, the dominant view is that an irregularity in the signatures on a pleading is a mere defect of procedure and does not affect the jurisdiction of the Court. It is thus now well settled that any defect in signing a pleading or any defect in the authority of the person signing the pleading will not invalidate the pleading, if such omission or defect is not deliberately intended to mislead and the signing of the pleading or the presentation thereof before the Court was with the knowledge and authority of the party. Such omission or defect being one relating to procedure, can subsequently be corrected. I am inclined in this regard to invoke the provisions of section 70 of *The Civil Procedure Act* to the effect that no decree (which for this purpose includes orders that conclusively determine the rights of the parties with regard to any of the matters in controversy) may not be reversed or substantially

varied on account of any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the court.

The law saving documents filed by un-licensed advocates does not necessarily extend to those filed by persons who are not qualified at all to practice law. The rationale for the exception being the protection of an innocent litigant, the decision in cases of that nature will depend on whether or not the litigant was complicit in engaging a person he or she knew not to be qualified to practice law at all or whether he or she is an innocent victim of such a fraudster. In the instant case, even if the Registrar had rightly come to the conclusion that Mr. Adriko Moses signed the application as a person not qualified to practice law, he certainly misdirected himself when he failed to consider whether or not the decree holder was complicit in the criminal act. In the absence of evidence of such complicity, a decision invalidating the application is unfair and erroneous since it is against the principle that is protective of innocent litigants. Procedural, disciplinary and penal sanctions for such conduct are directed at the masquerading unqualified person rather than the innocent litigant.

Section 64 (1) of *The Advocates Act* prohibits persons who are not qualified as advocates from either directly or indirectly acting as advocates or agents of litigants, or taking out any summons or other process, or commencing, carrying on or defending any suit or other proceedings in any court, “unless authorised to do so by any law.” In a sense, Order 22 r 8 (2) of *The Civil Procedure Rules* provides such exception or authorisation in so far as it permits persons, other than the decree holder or his or her advocate, to sign an application for execution of a decree provided that such a person proves to the satisfaction of the court to be acquainted with the facts of the case. All in all, there is merit to the ground of appeal raised by the applicants. I find that the learned Assistant Registrar failed to properly appraise the evidence and thereby came to the wrong decision.

It is trite that any person whose immovable property has been attached and sold in execution of a decree of court may apply to the Court to set aside the sale on the ground of a material irregularity involved in the process leading to the sale (see *Allen Nsubuga Ntananga v. Micro Finance Ltd and others H. C. Misc. Civil Application No. 426 of 2006*). For that matter, a judicial

sale, unlike a private one, is not complete immediately it takes place. It is liable to be set aside on appropriate proceedings. If no such proceedings are taken or if taken and are not successful, the sale will then be made absolute (see *Lawrence Muwanga v. Stephen Kyeyune, S.C Civil Appeal 12 of 2001*). Whereas an absolute sale is one where no application to have the sale set aside is made and where if such an application is made, it has been disallowed (see *Bancroft and another v. City Council of Nairobi and Another [1971] 1 EA 151* and *Sam Kaggwa v. Beatrice Nakityo [2001- 2002] 2 HCB 120*), no irregularity in the process leading up to the sale should vitiate the sale unless the applicant proves to the satisfaction of the Court that he or she has sustained substantial injury by reason of such irregularity. This is more so in light of section 49 of *The Civil Procedure Act* to the effect that where immovable property is sold in execution of a decree, the sale becomes absolute on the payment of the full purchase price to the court, or to the officer appointed by the court to conduct the sale.

I have examined the nature of the irregularity alleged in these proceedings. It has not been demonstrated to me how such an irregularity, even if it had existed in fact, which as I have already found was not the case, has occasioned substantial injury to the respondent. The respondent is a judgment debtor against whom a decree of this court in summary suit was issued on 1st September 2016, against which he did not seek to offer any defence and neither has the respondent indicated in any of the subsequent proceedings that such a defence exists in fact. Furthermore, to-date the respondent has not adduced any evidence of payment of any part of the decretal sum despite the sale it sought to set aside having taken place on 28th November 2016. Reliance on an irregularity of the nature alleged herein, in absence of proof of substantial injury occasioned to the respondent, will not suffice to have the sale set aside. There is nothing to be achieved in setting aside the sale and insisting that the application for execution be signed instead by the decree holder or its counsel, except to unfairly buy time for the respondent. Defects and irregularities which are curable, where they exist, should not be allowed to defeat substantive rights or to cause injustice. Litigation must come to an end and the successful party enabled to secure the fruits thereof.

In the result, the order of the Assistant Registrar of this court made on 23rd February 2017 in Miscellaneous Application No. 0003 of 2017, setting aside the execution of the decree in Civil

Suit No. 0016 of 2016 and revoking the sale of respondent's real property comprising an incomplete storied building at ground floor level on land measuring approximately 15 metres by 35 metres situated at Karoko village, Biyaya Ward, Adjumani Town Council in Adjumani District along the Gulu - Adjumani Road, to the second applicant is hereby set aside. The proceedings and orders made by court prior to that order are restored and the said property should revert to the second appellant whose possession must be restored forthwith. Consequently, the costs of this appeal and those of Miscellaneous Application No. 0003 of 2017 are awarded to the appellants herein.

Delivered at Arua this 15th day of June 2017.

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Stephen Mubiru
Judge
15th June 2017.