

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 733 OF 2018
(ARISING OUT OF CIVIL SUIT NO. 113 OF 2008)

- 1. MUGISA M ABRAHAM**
- 2. MUSASIZI JAMES**
- 3. BAMUTAZE JOSEPH**
- 4. BWAMBALE SIBENDA**
- 5. APIKO SAMUEL----- APPLICANTS**

VERSUS

RWAMBUKA & CO ADVOCATES----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application brought under Section 64 and 98 of the Civil Procedure Act, Section 17 of the Advocates Act , Order 41 r 2 (1) & 9 of the Civil Procedure rules and Rule 2 of the Advocates (Professional Conduct) Regulations by chamber summons for the following orders;

- (1) A declaration that Rwambuka & Co. Advocates are not duly appointed/instructed to act as advocates of the parties in Civil Suit No. 113 of 2008 and accordingly do not represent the parties in the suit.
- (2) A declaration that Rwambuka & Co advocates have acted in violation of the Advocates (Professional Conduct) Regulations and Advocates Act and are therefore barred from appearing in Civil Suit No. 113 of 2008 or any matter related thereto.

(3) An Injunction against Rwambuka & Co Advocates restraining them from appearing or acting as counsel for the plaintiff/applicants in Civil Suit No. 113 of 2008.

(4) That the costs of the application be provided for.

The grounds upon which this application is based are set out in the affidavit in support of Musasizi James briefly as hereunder;

(a) That on 28th day of March 2008 the parties appointed the applicants as their recognised agents by way of a power of attorney to conduct the suit on their behalf.

(b) That the applicants instructed Mukuve & Co Advocates to conduct the suit as advocates of the applicants/plaintiffs. They conducted the suit and it is only left with the defence witness to close the matter.

(c) That another Advocate appeared when the matter came up for hearing on 22nd November 2018 and claimed to have been instructed to handle the matter.

(d) That Rwambuka & Co Advocates filed a notice of Change on the 15th November 2018 and claimed to have been instructed by 126 plaintiffs/applicants.

(e) That the parties and their recognised agents have never instructed Rwambuka & Co Advocates to be their agents and neither have they withdrawn the instructions.

The respondent opposed the application through an Affidavit in reply filed by Obonyo Peter and a supplementary affidavit of Okwalinga Malinga Peter who stated that;

(1) That on 22nd October 2018, himself and 125 others withdrew instructions from Mukuve & Co Advocates and duly filed a Notice of Withdrawal in court.

(2) That on 25th October 2018, when the matter came up for mention before the trial judge, they were advised to harmonize with Mukuve & Co. Advocates and all attempts failed.

- (3) That on 14th November 2018 126 plaintiffs appointed the respondents and the respondent accepted the instructions and on 15th November 2018, the said new advocates filed the Notice of Change of advocates of 126 plaintiffs.
- (4) That the trial court directed that the respondents and Mukuve & Co Advocates should prepare a list indicating the names and signatures of the plaintiffs each firm represents and that they should attach signed copies of identity cards of each plaintiffs.
- (5) That the reason the plaintiffs withdrew the instructions from the former lawyers Mukuve & Co. Advocates is that Mr. Mukuve Mugaga connived with the applicants and another vendor in town and deducted a sum of equivalent to 33.3% from the payments which had been awarded in Labour Dispute Appeal No. 22 of 2017 which caused some of the plaintiffs to lose confidence in his professional dealings and on 17th May, 2019 Mr Kalemire Mugagga Mukuve of Mukuve and Co Advocates was found to have a case to answer and was asked to file a defence before 23rd July 2019.
- (6) That about 75 plaintiffs formally revoked the powers of attorney which had been given to the applicants. The power of Attorney have been registered with the registrar of Documents on 17th January 2019 and filed in Court on 19th January 2019.

The applicants were represented by *Mukuve Mugagga* and the respondent was represented by *Nuwandida Johnan Rwambuka*. In the interest of time court directed the counsel for both parties to file written submissions. However, by the time of writing this ruling, the applicant's counsel had not filed the submissions but the respondent filed their submissions.

The main ground for this application is that the respondent should not represent the plaintiffs or part of the plaintiffs because he has not been instructed by the applicants who are holders of the powers of attorney.

According to the plaints in this matter, the plaintiff filed their suits in an individual capacity through their then advocates of Muwema & Mugerwa & Co Advocates and all their names appear as such.

It appears they had a private arrangement outside court where they instructed the applicants in a power of attorney drafted by Rwakafuuzi & Co Advocates to represent all the plaintiffs in this matter.

The plaintiffs had another labour dispute in the Industrial Court where they were given an award but according to some of them they never received all their entitlements/money out of the Industrial Court Award from their lawyer-Mukuve & Co Advocates.

It is this disagreement that sparked off the withdrawal of instruction from the said Mukuve & Co Advocates and the holders of the powers of attorney for personal reasons are opposed to the instruction of the new advocates in this matter and this is why this application has been filed to restrain the new advocate appearing as counsel for some of the plaintiffs.

This court had earlier directed that each of the two counsel should present a list of plaintiffs they claim to represent so that the same could be verified in open court in presence of all the rest of the parties. The respondent presented a list of people he claims to represent who indeed gave him instructions together with the national identity cards.

However, the applicants' Counsel Mukuve Mugagga did not or refused to avail the list of the plaintiffs he claimed to represent although some of them appeared in court during the verification exercise. About 53 of those present confirmed to court that their lawyer was M/s Rwambuka & Co Advocates while 21 of those who appeared confirmed that their lawyer was M/s Mukuve & Co Advocates.

It is also clear from the original plaint filed by the representative on 22nd May 2008, they attached a power of attorney which gave them power to sue with a list of people who had instructed them. The plaintiffs are supposed to be 153 in number but the people who signed on the power of attorney are about 105.

In another suit HCCS No. 269 of 2007 which was consolidated with the present suit there were only 11 plaintiffs. This implies that out of all the plaintiffs 105 plaintiff gave a power of attorney and the 11 plaintiffs who had sued in their original capacity.

Sometime on 10th October 2008 the applicants purported to have added to the list of claimants by an addendum to the original list of an extra 31 names of persons who had instructed them to be joined to the power of attorney. The applicants have been using the case to add parties as when they wish which is irregular and causes the disparity in the true number of plaintiffs.

Indeed, during the proceedings before the Principal judge on 14th April 2009 counsel for the defendant-Akora stated that they had identified 164 former employees and contended that the list call for further vetting of the details-that they shall pay them their entitlements upon proof of their identity.

It is the view of this court after the whole exercise of verification that there could be some 'ghost' plaintiffs who do not exist or if they exist they are not former workers/employees of G4S Security Services Limited. The list of plaintiffs should be investigated by police and properly be verified by the defendant in order to be sure that the court is dealing with the proper persons named in the complaints.

The applicants' counsel after the verification exercise insisted that the application be heard on its merits and determined.

Regulation 2(1) of the Advocates (Professional Conduct) Regulations provides that;

“No advocate shall act for any person unless he /she has received instructions from that person or his or her authorized agent”

The respondent has been authorised by some of the plaintiffs who have a disagreement against their former lawyers- M/s Mukuve & Co Advocates who had earlier on been instructed by the agents of those plaintiffs under a power of Attorney of 2008.

The respondents have been instructed by a group of plaintiffs who have revoked their instructions/powers to represent them in presentation of their case under power of attorney dated 28th March 2008.

The applicants cannot claim that they have never instructed the respondent since the respondents have been duly instructed by a group who have properly revoked the power of attorney to them.

They are at liberty to instruct another lawyer of their choice and it would very wrong for them to insist that they should be represented by M/s Mukuve & Co Advocates and yet they have lost professional confidence in his services.

The insistence on representations smucks of some sinister motive behind the same by the applicants. Some of these plaintiffs have indeed dragged their former lawyer to the Law Council. It is clear that the relationship too sour that they cannot be seen to be in harmony.

In a perfect world, every matter a lawyer handles for a client would come to a timely, successful, and profitable conclusion. Sometimes, however, it becomes necessary to withdraw from an engagement before the work is done or the matter comes to an end. Withdrawing from an engagement that has become problematic can be an effective risk control measure, eliminating an impermissible conflict or neutralizing a dispute with a client before it takes on a life of its own.

The lawyer currently representing the plaintiffs for whose benefit this application is being made in court M/s Mukuve & Co. Advocates was instructed on the 11th day of March 2016 and filed a Notice of Change of Advocates on the same date in court.

It appears from the allegations made by Okwalinga Malinga Peter, there is some undisclosed Champertous agreement entered between the applicants and a stranger to the suit whom he has called a vendor in town which is causing some of the plaintiffs discomfort after a percentage of 33.3% was deducted from the Industrial Court award in Labour Dispute Appeal No. 22 of 2017.

The case of *Elizabeth Kobusingye vs Annet Zimbiha HCCS No. 395 of 2014* defined Champerty as a bargain between a stranger and a party to a suit by which the stranger pursues a party's claim in consideration of receiving part of the judgement proceeds. In “*Tritel on The Law of Contract*” 12th edition. Thomson Sweet and Maxwell-champerty agreements are classified as illegal contracts. According to the authors, champerty is a contract by which one person agrees to finance another's litigation in return for a share in the proceeds, the former having no genuine or substantial interest in the outcome.

In the recent decision of *Shell (U) Ltd & 9 Others vs Rock Petroleum & 2 Others HCMA No. 645 of 2010*; the High Court held that champertous agreements and maintenance as is known among lay persons as buying another's law suit and also means sharing in the spoils of litigation. The law and courts have always declared champerty unlawful and prohibited.

If the applicants are worried that the champarty agreement will be rendered unenforceable with the change of advocates, the same is illegal and can not be enforced by any court of law.

The respondent is at liberty to represent plaintiffs who have revoked the powers of Attorney to the applicants and that a party to litigation has a right to decide which lawyers to represent them in court. See *Nareeba Dan & 5 Others vs Joseph Bamwebeheire & 4 Others HCMA No 45 of 2009*

The application was a wastage of time and an abuse of court process intended to intimidate some of the plaintiffs who wished to instruct the respondent.

Abuse of Court Process was defined in Black's Law dictionary (6th Ed) as

“A malicious abuse of the legal process occurs when the party employs it for some unlawful object, not the purpose which it is intended by the law to effect, in other words a perversion of it.”

Parties and their respective counsel should take the necessary steps to safeguard the integrity of the judiciary and to obviate actions likely to abuse its process. See *Caneland Ltd & Others vs Delphis Bank Ltd Civil Application No. 344 of 1999 (Kenya Court of Appeal)*

Similarly, in the case of; **Benkay Nigeria Limited vs Cadbury Nigeria Limited No. 29 of 2006** (*Supreme Court of Nigeria*), their Lordships held:

“In Seraki vs Kotoye (1992) 9 NWLR (pt 264) 156 at 188, this court on abuse of court process held....the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issue.

This application fails and the same is dismissed with costs to the respondent

It is so ordered.

SSEKAANA MUSA

JUDGE

12th/07/2019