

5 ***area dismissing Miscellaneous Application No. 62 of 2019
be revised and set aside.***

***2. the judgment and decree of the trial court in Civil Suit No:
105 of 2017, be set aside.***

10 ***3. The Applicants be allowed to file their written statement of
defence out of time.***

4. The case be remitted to the trial court for trial.

5. Costs of the application be provided for.

The grounds of the application are briefly that the Applicants are
aggrieved by the decision of the trial court in that it failed to
15 exercise jurisdiction vested in it to entertain the application to set
aside the *ex parte* judgment. Also, that the Applicants were not
served with court summons, and that they have a good defence to
the Respondent's claim in the suit. That it is just and equitable and
in the interest of justice that this application is granted.

20 The application is supported by the respective affidavits sworn by
each of the Applicants and opposed by the Respondent in his
affidavit in reply. The content of all the respective affidavits is on
court record and needs not to be reproduced in detail, but will be

5 referred to, where relevant, in the evaluation along with the resolution of issues of this application.

Background:

The brief background is that the Respondent sued the Applicants in the trial court vide; Civil Suit No: 105 of 2017. The Respondent
10 obtained an *ex parte* judgment basing on what the Applicants allege to be a false affidavit of service. The Applicants were subsequently arrested and committed to a civil prison in execution of the *ex parte* decree. The Applicants then filed Misc. Application No. 62 of 2019 to set aside the *ex parte* judgment. The application was also
15 dismissed by the trial court. The Applicants have now brought this application for revision on the ground that that the trial court failed to exercise jurisdiction vested in it to entertain the application to set aside the *ex parte* judgment.

The Respondent opposed this application and stated that the
20 application is frivolous, vexatious and a mere delaying tactic and an abuse of court process. That even then, the Applicants adamantly sat on this application and failed to effect service upon him for

5 three months. In addition, that this application brought after two
years to challenge the *ex parte* judgement is an afterthought.
Further, that this application is improperly before court and does
not meet the grounds for revision and the complaints raised by the
Applicants lack merit. The Respondent insists that the Applicants
10 were duly served with summons and hearing notices and instructed
their clerk to serve their lawyers who declined service of the trial
court and they are only conveniently denying the said person to
avoid paying the judgment. The Respondent prayed for dismissal of
the application with costs.

15 At the hearing of this application, *M/s. Jjingo Ssempijja & Co
Advocates* represented the Applicants while *M/s. Ibaale, Nakato &
Co Advocates* represented the Respondent. Both counsel filed
written submissions to argue the application which court has
appreciated. The issues for determination are as follows;

- 20 ***1. Whether the trial court failed to exercise jurisdiction vested
in her in Miscellaneous Application No. 62 of 2019.***
- 2. What remedies are available to the parties?***

5 Before delving into the issues framed above, it is necessary to first
determine a preliminary objection on a point of law that was raised
by counsel for the Applicants in their submissions. They started by
what the termed as “illegality”, and argued that the said illegality in
this case overrides all questions concerning the handling of the
10 main suit in the trial court vide; Civil Suit No.105 of 2017 and
Miscellaneous Application No. 62 of 2019.
They fortified their argument, with the case of ***Makula
International Ltd vs. His Eminance Cardinal Nsubuga& A’nor
(1982) HCB 11.***

15 Counsel went on to submit that in the trial court, the Respondent
was represented in in both Civil Suit No. 105 of 2017 and Misc.
Application No. 62 of 2019, by Mr. Oriokot Emmanuel, whose name
is sometimes spelt as Oryokot Emmanuel. That, however, while the
said person appears in the proceedings of the trial court in both
20 suits, he is not an Advocate as provided for under Section 64 (1) of
the Advocates Act Cap. 267. Counsel also referred to paragraph 3 to
7 of the affidavit in rejoinder, where the Applicants aver that the
Respondent, in both the said main suit and miscellaneous

5 application; was represented by the said Mr. Oriokot Emmanuel,
who is not an Advocate and not authorized to prepare and sign any
pleadings and also not authorized to appear in a court of law to
represent anybody. Counsel relied on a letter dated 06/05/2019
from the Chief Registrar of the Courts of Judicature, stating that
10 the said Mr. Oriokot Emmanuel not on the Roll of Advocates.
Counsel argued that as such, all the documents prepared and
signed by Mr. Oriokot Emmanuel are null and void starting with the
plaint, because there is no notice of instruction filed to show that
Mr. Oriokot Emmanuel joined the case after the plaint had been
15 filed. Counsel prayed that the main suit and the application be
struck off for being illegally filed by a person who is not an Advocate,
with costs.

In reply, counsel for the Respondent submitted that the same
preliminary objection was raised during the hearing on 21/10/2019,
20 and that this court directed that parties abandon the objection and
focus on the merits of the application. That as such, only one issue
remained as to whether the trial court failed to exercise jurisdiction
vested in it. Counsel argued that the above notwithstanding, there

5 is no proof that the person who represented the Respondent at the trial court was not an Advocate. That this is a mere allegation without proof. Further, that the *Annextures* to the affidavit in rejoinder of the Applicants relied on to support the objection, cannot stand alone to nullify the Respondent's judgement which
10 was proved to the satisfaction of the trial court. Counsel argued that proof that the person who prepared the pleadings was unqualified would require cogent evidence to establish this as a fact, including a handwriting expert to confirm the author, which evidence/proof the Applicants have not presented. That a criminal
15 conviction would be the best evidence in the circumstances. Furthermore, that it is clear that the Respondent was formerly represented by *M/s. Katuntu & Co. Advocates* which has several lawyers. That without proof connecting the said pleadings to a person who was not an Advocate, this court is not been presented
20 with sufficient evidence to make such finding. That there is no evidence to prove the Applicants' claim, and the objection should be dismissed with cost.

Opinion:

5 The starting point in resolving this issue is the recognition that this
court was seized with the very objection at the commencement of
the hearing of this application. Counsel for the Applicants sought to
raise the preliminary objection at that stage. This court, however,
directed that since hearing was by way of affidavit evidence, the
10 same could be raised be argued along with the other issues on
merits of the case in the submissions of the respective counsel. This
was so as to prevent waste of time in the event that the objection
was found not upheld. Court did not in any way order that the
Applicants were precluded from raising the same issue or should
15 not raise it in their submissions. Quite on the contrary, this court
was cognizant of the fact that issues of law could be raised at any
time and in this case, the objection on a point of law could be raised
in the submissions and court would determine it pursuant to Order
15 r.2 CPR which provides as follows;

20 ***“Where issues both of law and of fact arise in the same
suit, and the court is of opinion that the case or any part
of it may be disposed of on the issues of law only, it shall
try those issues first, and for that purpose may, if it***

5 ***thinks fit, postpone the settlement of the issues of fact
until after the issues of law have been determined.”***

Therefore, the preliminary objection on a point of law shall be resolved first pursuant to the above rule.

10 Court has had the occasion to peruse the affidavit in rejoinder in which the issue was brought up. In paragraph 3 thereof, the deponent brought to the attention of this court an alleged illegality that Mr. Oriokot Emmanuel who prepared pleadings and appeared in the main suit and the miscellaneous application in the trial court, is not an enrolled Advocate and has no Practicing Certificate. On
15 that account, the Applicants seek the orders of this court to strike off the pleadings in both matters. In paragraph 4, thereof, the deponent further states that throughout the conduct of the main suit and the application in the trial court, the Respondent was represented by the said Mr. Oriokot Emmanuel. In paragraph 5
20 (supra) he states that they wrote to the Chief Registrar of the Courts of Judicature to find out if Mr. Oriokot Emmanuel was indeed an enrolled Advocate and with a valid Practicing Certificate. Copy of the letter is attached thereto as *Annexure “A”*. In paragraph

5 6(supra) the deponent states that the Chief Registrar of the Courts of Judicature replied confirming that the said Mr. Oriokot Emmanuel is not on the Roll of Advocates. They attached the copy of the letter as *Annexure "B"*.

Court has perused the said letter from the Chief Registrar dated 10 06/05/2019. It is in respect of "ORIOKOT EMMANUEL" and states in the relevant part as follows;

"I refer to your letter dated 30th April 2019 concerning the above subject....Mr. Oriokot Emmanuel is not on the roll of Advocates."

15 The Chief Registrar of the Courts of Judicature is the custodian the Roll of advocates which contains names of all the enrolled Advocates authorized to practice in courts in Uganda. The very same office of the Chief Registrar issues Practicing Certificates to eligible Advocates to practice for any given period of time prescribed 20 by law. Therefore, what the above letter means is that the said Mr. Oriokot Emmanuel is not an Advocate within the meaning of the Advocates Act (supra). He is not on the Roll of Advocates, and

5 therefore, not authorized to practice or represent any person in any
court of law, as such. The existence of the letter confirming that fact
in issue also means that it is not true, as was submitted by counsel
for the Respondent, that there is no evidenced or proof, that the
said Mr. Oriokot Emmanuel is not an enrolled Advocate. Whereas
10 the pleadings in both matters in the trial court indicate that they
were drawn and filed by *M/s Katuntu & Co. Advocates*, there is
ample proof on the proceedings of the trial court that the person
who appeared and prosecuted both matters as the Advocate was
not authorized as such person was not legally authorized to do so
15 since he was not on the Roll of Advocates.

Further perusal of the proceedings of the trial court, in both
matters, reveals that Mr. Oriokot Emmanuel appeared as counsel
for the plaintiff. He is even named the judgment of the trial court in
the main suit. The same Mr. Oriokot also appeared in the
20 application and was mentioned in ruling in MA No.62 of 2019 as
counsel for the Respondent. The ruling shows that he even made
submissions and raised preliminary objections in that application.
Ultimately, in all the proceedings in the trial court, Mr. Oriokot

5 Emmanuel is the person who appeared as the Advocate for the Respondent.

Given the above findings, it is quite puzzling as to why counsel for the Respondent in the instant application would submit that there is no proof that the person who appeared for the Respondent in the
10 trial court is not an enrolled Advocate. Proceedings, judgements and rulings of court are proof of the matter. Such material as proceedings, judgments and rulings of court issued under the seal of court are, pursuant to Section 56 of the Evidence Act, taken
15 judicial notice of. Section 55 (supra) also provides to the effect that no fact of which the court will take judicial notice of need to be proved. Therefore, the Applicants were not required to go beyond pointing out the issue of the illegality and the court would investigate it, as it had done. Proof that Mr. Oriokot Emmanuel is not on the Roll of Advocates is sufficiently glaring on the court
20 record and in the supporting letter from the Chief Registrar of the Courts of Judicature.

Based on the above, the fact that person who represented the Respondent at the trial was not even on the Roll of Advocates,

5 renders the proceedings illegal. It is the established position of the law that an illegality can be raised at any time before a court of law and it shall be investigated. In ***Makula International Ltd vs. His Eminence Cardinal Nsubuga & Anor*** (supra) it was held that;

10 ***"A court of law cannot sanction what is illegal and illegality once brought to the attention of court overrides all questions of pleading, including any admission made thereon."***

Also important to note are provisions of Section 64 (1) of the Advocates Act (supra) which provide that;

15 ***"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 authorized to do so by any law commits an offence under that subsection."***

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The effect of the above provisions is that Mr. Oriokot Emmanuel was illegally conducting the proceedings before the trial court. That is inherently fatal to the proceedings. It is an offence against the law

5 for such a person to conduct proceedings before any court of law.
The Respondent ought to have known better than to engage a
person who is not authorized to appear in court as an Advocate.
Therefore, the Respondent cannot be excused in the category of
persons who would not be blamed for the mistakes of their counsel,
10 because the person he engaged is not even counsel on the Roll of
Advocates. The Respondent has only himself to blame for engaging
a person who was just holding out as an Advocate whereas not;
which is an offence under the law. Such a person is prohibited by
the provisions of Section 65(1) of The Advocates Act (supra) which
15 provide that;

***“No person, not being an advocate, shall pretend to be an
advocate, or shall take or use any names, title, addition
or description implying that he or she is qualified or
recognized by law as being qualified to act as an
20 advocate.”***

On basis of the above reasons, the proceedings of the trial court
and the subsequent judgment, ruling and orders, are null and void.
They are of no legal consequence and cannot be sustained. The

objection is sustained with costs of this application. The judgment and orders of the trial court are set aside each with costs to the Applicants. Since the illegality supersedes everything, including pleadings or admission made thereon, the merits of the issues of the application need not be inquired into as they arise from a nullity. Equally, the orders sought by the Applicants herein that to be allowed to file a defense in the trial court would not arise against proceedings that are null and void. All the orders sought in respect of the proceedings in the trial court are effectively overtaken the findings herein pertaining to the preliminary objection.

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BASHAIJA K. ANDREW

JUDGE

15/05/2020