THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO. 234 OF 2019

ISINGOMA MICHAEL ::

APPLICANT

VERSUS

LAW DEVELOPMENT CENTRE ::::::::::::::::::::::::::::

RESPONDENT

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

RULING:

Isingoma Michael *(hereinafter referred to as the "Applicant)* bought this application against the Law Development Centre *(hereinafter referred to as the "Respondent")* by way of Judicial Review proceedings citing a plethora of the enabling provisions of the law. The Applicant seeks various remedies mainly in form of declarations and some attendant orders.

At the commencement of the hearing, Mr. John Musiime, learned counsel for the Respondent, raised preliminary objections; all to the effect that the application is incompetent. The first one is that the Notice of Motion filed by the Applicant is neither endorsed by the Registrar of Court nor does it bear the Seal of Court. That the Notice of Motion is stamped and signed by a Commissioner for Oaths who is not the appointed officer of Court for that purpose and as such it contravenes Order 5 r.1 (5) of the Civil Procedure Rules (CPR) as it was not signed and sealed by either the Judge or Registrar. Counsel relied on the case of ***Fredrick James Jjunju & A'nor vs. Madhivani Group Ltd & Anor H.C.M.A No. 688 of 2015*** (Land Division) to support his submissions and prayed that on that account the application be dismissed with costs.

Counsel further submitted that the Applicant should bear the costs of this application because it is an abuse of court process. That there is a trend by litigants especially of the like – mind of the Applicant of proliferation of litigation by parties who simply file suits in court as a means to intimidate and cajole institutions of learning to graduate them or award them qualification through

courts, and that this court has a duty to curtail that ignoble practice.

The second objection is that Section 64 and 65 of the Advocates Act bar an unqualified person from practicing as an Advocate or appearing in court and holding out as an Advocate in court. Further, that section 65 (3) (supra) make is an offence for one to hold out as an Advocate in court whereas not. Counsel submitted that in the instant application the Applicant signed the documents as Counsel for the Applicant, which he is not and that it is an offence and court should not sanctify such an illegality.

In reply the Applicant, who is self-representing, stated that he has noticed and acknowledged the errors in his application but that he also does not know how they occurred. That whereas the copies of Notice of Motion he filed on court record and copies of Notice of Motion he served on the Respondent do not bear the Seal of Court or the Registrar's endorsement, his own copy of the Notice of Motion does. The Applicant stated that he cannot explain why the documents he filed in court and served on to the Respondent do not bear the Seal of Court or Registrar's stamp and signature. The

Applicant ventured to state that it could be foul play, but still could not establish how or when or who committed the foul play. The Applicant prayed that he be given time in order to "formalise" the application by rectifying the Notice of Motion.

Court also noted that the affidavit in support of the application sworn by the Applicant filed on court record was not commissioned at all. Counsel for the Respondent also confirmed the same omission to commission the affidavit in support in the copy of the application they were served with by the Applicant. The Applicant, however, insisted that his own copies were commissioned, and that he could not explain why the all the other copies of the affidavit he filed on court record and served the Respondent were not commissioned. The Applicant again prayed that he be given time to "formalise" his affidavit in support.

Opinion:

As a general rule where a statute provides for an application to court, but does not specify the form in which it is to be made and the rules do not expressly provide for any special procedure, the application may usually be made by notice of motion. This position

is well restated in ***St. Benoist Plantation Ltd vs. Jean Emilie Adrien Felix (1954) 21 EACA 105***. Further, in ***Contrast Joy Kagina vs. Dabo Boubou [1986] HCB 59***, and ***Kaur vs. City Mart Ltd [1967] EA 108,*** it was held that where a notice of motion is not signed by a Judge or Registrar or officer appointed for that purpose and sealed by a seal of court, then that is a fundamental defect which is incurable and hence the application is incompetent and a nullity. If not signed by the Judge, the notice of motion is signed by the appointed officer for that purpose who in this case is the Registrar of the court. A similar position was taken by this court in ***Fredrick James Jjunju & Anor vs. Madhivani Group Ltd & Anor*** (supra) which relied on ***Nakato Brothers Ltd vs. Katumba (1983) HCB*** to and ***Hussein Badda vs. Iganga District Land Board & 4 O'rs H.C.M.A No. 479 of 2011.***

The requirement takes after the signing and sealing of the summons under Order 5 r 1 (5) CPR which requires that every such summons shall be signed by the Judge or such officer as he or she appoints, and shall be sealed with the seal of court. An application is valid only when it is signed by the officer of court appointed for

the purpose and sealed with the seal of court as under Order 5 r 1 (5) (supra).

The claim of "foul play" by the Applicant as the reason for non-compliance with the provisions of the law is rather far-fetched much as it was it was not established or substantiated. It is far-fetched in a sense that "foul play" could not be traced on the court file which has been in the custody of the court after the Applicant filed his application. Foul play could also not be traced on the application which the Applicant personally served onto the Respondent which bears the same details depicting the fatal omissions as found on the court record. It is a claim that could not be established by the Applicant hence the notice of motion remained invalid and incurably defective all the way.

Similarity, the affidavit in support of the motion was incurably defective as it was not commissioned and contravened Section 2 of the Oaths Act Cap. 19 which provides that;

> ***"2. Officers to take oaths.***
>
> ***A person appointed to an office set out in the second column of the Second Schedule to this Act shall take the***

oath specified in the first column of the Schedule which shall be administered by the authority specified in the third column of the Schedule."

In the instant case where an affidavit for court purposes is concerned an officer set out in the second Schedule (supra) is a Commissioner for Oaths.

It must be restated that every affidavit must comply with the Oaths Act (supra) which sets out the form and manner in which the oath may be taken and also the place and date of the oath under Section 5 and 6 thereof. In particular, Section 6 provides as follows;

"Every commissioner for oaths or notary public before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made."

The importance of these provision is seen in their replication under Section 5 of the Commissioner for Oaths Act, where it is a requirement that certain pparticulars be stated in jurat or attestation clause. It is stated as follows;

"Every commissioner for oaths before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made."

A cursory look at the affidavit in support of the application easily reveals that it is not commissioned which renders it defective. Since the defect is in the jurat it renders the entire affidavit fatally defective. A fatally defective affidavit cannot support an application. Even assuming (for argument's sake) that the notice of motion was not defective itself, it would still collapse because there is nothing to support it.

It is also noted that the Applicant is self-representing and is not an Advocate. However, he signed his application and the other documents as "Counsel for the Applicant" without removing the word "Counsel". In effect he was holding out to court and the opposite party as an Advocate, whereas he is not one. Section 64 (1) of the Advocates Act, prohibits unqualified persons not to practice or act as an Advocates before court and makes it an offence for one to do so. It provides as follows;

"64. Unqualified person not to practise.

(1) 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 (1) (supra) also prohibits an unqualified person from holding himself/herself out as qualified to be an Advocate. It provides as foll0ows;

"***65. Unqualified person not to hold himself or herself out as qualified.***

(1) No person, not being an advocate, shall pretend to be an advocate, or shall take or use 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."

Sub-section (3) thereof; also makes it an offence for unqualified person to hold out as an Advocate. In ***Makula International Ltd vs. His Eminence Cardinal Nsubuga & Anor [1982] HCB 11***, it was held, inter alia, that an illegality once brought to the attention of court shall not be condoned. Summarily, since it is illegal and an offence for the Applicant, who is an unqualified person, to hold out before court as an Advocate by signing documents as counsel for the Applicant, which he is not, it shall not be condoned and on that account alone, the application would be dismissed.

On a final note, court entirely agrees with submissions of counsel Mr. John Musiime on the observations of court in ***Muhereza Mike Kiyingi & A'nor vs. Management Committee of Law Development Centre HCMC No. 222 of 2019.*** Mugambe J, (at page 11 of the ruling) noted the worrying trend of students running to courts for orders to be granted or sit exams and other similar demands. The learned Judge observed that;

> ***"While courts have a duty to all, nothing under judicial review laws empowers the courts to take over the standing mandate of Law Development Centre, or any***

other academic institution to determine who has passed or failed……Save for instances of clear violations of Constitutional rights, bias or bad faith, courts will always defer to the examination authorities to apply the relevant rules for passing a course, which students accede to when they join the programme. The court will always normally exercise restraint to interfere unnecessarily….”

This court holds the same view and re-echoes the position that students must adhere to the requirements of their institutions. They cannot use the court simply as a tool to intimidate their academic institutions into giving them what they want. They must adhere to laid down rules and only seek court’s intervention when there is a clear violation of the law or unfairness. They are under obligation to accept the guidance and directives of the substantial leadership and must not, with recklessness, use the courts to cajole administration, especially when administration acts with all the good faith. For the foregone reasons, the application is incompetent and it is dismissed with costs.

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BASHAIJA K. ANDREW
JUDGE
28/02/2019.