

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
MISCELLANEOUS APPLICATION NO. 165 OF 2021
(Arising from Civil Suit No. 046 OF 2021)**

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**1. NANTUNBWE DEZIRANTA
2. WASSWA CHARLES
(Administrators of the Estate
Of the late Male Eneriko)**

}**APPLICANTS**

VERSUS

**1. NAMAZZI MARY
2. KAYONGO DAN
3. NANYONGA CHRISTINE
4. MUWANGA CHURCHILL
5. BIKUNDI JIMMY
6. NAMBALIRWA SARAH
7. NANSEREKO ALLEN
8. NABABI NAOME
9. NASIMBWA CHRISTINE
10. NANTUMBWE JANE
11. SEBITENGERO SAMUEL
(Administrators of the Estate of
the late Daniel Patwe)**

}**RESPONDENTS**

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

Ruling

The applicants brought an application under **Section 33** of the Judicature Act, **Section 98** of the Civil Procedure Act, **Order 13 Rule 6** and **Order 5 Rules 1 and 2** of the Civil Procedure Rules against the respondents.

At the hearing of the application Counsel for the respondents raised a preliminary objection to the effect that the application was incompetently before this court. Counsel argued that Annexure B which explains the authority relied upon did not confer authority upon the 1st applicant to swear the affidavit on behalf of the 2nd applicant. That Musoke Muhammad who purportedly signed the authority as an attorney of the 2nd applicant had no legal authority. That he relied on the Power of Attorney Annexure C which in law became effective on the 29th




September 2021 upon being registered and a day after he had given the authority.

Counsel added that in the absence of a valid written authority to swear an affidavit in a representative manner in favour of the 2nd applicant, miscellaneous application No. 165/2021 is incompetently filed before this court. Counsel made reference to **Order 1 Rule 12** of the Civil Procedure Rules and the case of **Kaheru Yasin and another v. Zinorumuri David, Miscellaneous Application No. 082 of 2017**, where it was held that there is need for effecting written authority in the absence of which the application is incompetent.

10 In reply counsel for the applicants submitted that Annexure B (Authority to swear the affidavit was dated 28th September 2021) application dated 29th September 2021 and so is the affidavit in support. That there was a typographical error on annexure B dated 28th September 2021. It was made on the same day of the application. That the power of attorney took effect from the date of signing on 17th September 2021 and registration is a procedural step.

Further, that there is a written authority in compliance with **Order 3 Rule 2** of the Civil Procedure Rules. That in the presence of the written authority, the issue of the date cannot vitiate the substantive effect which authorized the 1st applicant to swear an affidavit on behalf of the 2nd applicant.

20 In rejoinder counsel for the respondents submitted that the invalid authority in Annexure B makes the objection go to the root of the case. That power of attorney becomes valid upon registration as per the case of **Fredrick J. K. Zaabwe v. Orient Bank and 5 Others, Civil Appeal No. 04 of 2006**. That **Order 3 Rule 2** of the Civil Procedure Rules is inapplicable in the instant case and Annexure C is therefore invalid. 

Representation:

M/s Kvumbi Madinah Kikomeko Advocates & Solicitors represented the Applicants and M/s Byarugaba & Co. Advocates represented the respondents.

Analysis of court:

5 I have carefully considered the submissions of both parties in regard to the preliminary objection.

Order 1 Rule 12 of the Civil Procedure Rules provides;

10 *“(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for that other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for that other in any proceeding.*

15 *(2) The authority shall be in writing signed by the party giving it and shall be filed in the case.”*

The above order was cited by counsel for the respondents however, I find this order inapplicable in the instant case as it refers to representative suits and the instant case is not a representative suit. I accordingly disregard the same.

Order 3 Rule 2 of the Civil Procedure Rules provides that;

20 *“The recognised agents of parties by whom such appearances, applications and acts may be made or done are—*

(a) *persons holding powers of attorney authorizing them to make such appearances and applications and do such acts on behalf of parties;*
and

5 (b) *persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.”*

10 It was argued by counsel for the applicants that the holder of the power of attorney for the 2nd applicant was a recognized agent and therefore legally signed the authority allowing the 1st applicant to swear the affidavit on behalf of the 2nd applicant. I do agree with this submission.

Section 14 of the Registration of Documents Act, provides for Registration not to cure defect or confer validity as follows;

15 *“Registration shall not cure any defect in any document registered or confer upon it any effect or validity which it would not otherwise have had, except insofar as provided in this Act.”*

20 The essence of this Section as relied on by counsel for the applicants is to the effect that the power of attorney if was said to be invalid could then not be cured by its registration however, in the instant case it was argued that the power of attorney was not invalid and registration did not cure any invalidity.

25 It was contended by counsel for the applicants that registration does not cure any defect in any document once it is registered and does not confer any effect or validity which it would otherwise not have had. That the essence of the authorities relied on by the applicants is that the Power of Attorney takes effect upon execution and can be exercised from the date of execution. That if a document is invalid at the time of execution then registration cannot confer

validity upon that document as per the case of **Nagji Textiles Ltd v. A.B Popat and 2 Others, Civil Appeal No. 5 of 2008.**

Counsel for the applicants concluded that, in the instant case the Power of Attorney was valid and that counsel for the respondents did not challenge the validity of the Power of Attorney but the date of registration.

It is my considered view, that in the instant case written authority dated 28th September 2021 was given by the 2nd applicant through his attorney Musoke Muhammad to the 1st applicant to swear an affidavit on his behalf in compliance with **Order 3 rule 2** of the Civil Procedure Rules as a recognized agent. The Power of Attorney were signed on the 17th September 2021, and registered on the 29th September 2021. The date of registration was challenged by counsel for the respondents as making the power of attorney invalid because according to him it becomes valid upon registration.

It is my finding and holding that **Section 146 (2)** of the Registration of Titles Act and the case of **Fredrick J. K. Zaabwe (Supra)** as relied on by the Counsel for the respondents are in applicable in the instant case.

I do concur with the submissions of counsel for the applicants and find that the instant application is competently before this court as the Power of Attorney is valid and the registration a day after the authority had been given by the 2nd applicant is immaterial as per the case **Ebrahim Kassam and another v. Mumtaz Kassam and another, Civil Appeal No. 48 of 2002** which cited with approval the case of **Mohamed Kafero v. J. Turyagyenda, Civil Suit No. 534 OF 1979.** Registration of the power of attorney is not what confers validity and non-registration does not make the document invalid. It was also agreed that there was no revocation of the power of attorney and thus the power of attorney is deemed to be valid as the same was not revoked.

The preliminary objection is hereby overruled. The application will be heard on its merits. Costs in the cause. I so order.

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5 **OYUKO ANTHONY OJOK**

JUDGE

20/01/2022