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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Taxation Miscellaneous Application No. 83 of 2022

*(Arising from Miscellaneous Application No. 24 of 2022)*

*(All arising from HCCS No. 019 of 2019)*

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The Registered Trustees of Soroti Catholic Diocese ..... Applicant

Versus

Imalingat John Peter ..... Respondent

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling on a Preliminary Objection

**1. Introduction:**

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According to the court record, I did not find when the preliminary objection was raised during the hearing and by whom, but there is an un-dated ruling of the then Deputy Registrar which hypothesizes the preliminary objection with respect to an illegal court order raised by the counsel for the applicant.

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“I am writing this ruling based on a Preliminary Objection by Counsel for the Judgement Debtor. I thought I should be writing a ruling on the taxation of the Bill of Costs filed, but instead, I am writing a ruling on whether a bill of costs should be taxed in the first place. That the ground for the Preliminary Objection is that the orders from Miscellaneous Application 24 of 2022, which were extracted, are illegal for not being cited by the Hon. Judge. I don’t think I am in the place to determine the issues of illegality,

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5 but rather the Hon. Judge. I am therefore referring the matter to the Hon. Judge to determine the issue of illegality of the extracted order.”

2. Submissions:

10 M/s Oboth Okumu & Company Advocates for the applicant and M/s Danrich Advocates for the respondent each filed written submissions, which have been considered in the determination of the Preliminary Objection.

The applicant’s counsel submits that the Bill of Costs prepared for the respondent and served to the applicant is tainted with illegality, is null and void of no legal  
15 effect and should be dismissed accordingly.

Counsel for the applicant avers that the Hon. Judge’s Order from which the Bill of Costs is derived is a forged order and, therefore, tainted with illegality, is null and void and of no legal effect.

20 Consequently, to the applicant’s counsel, there is no Bill of Costs to respond to by the applicant and to be heard (taxed); except the consideration and ruling on the important point of law raised.

25 Counsel for the applicant further averred that the extracted forged order contains content (page 8 from line 9 to line 15 of the Ruling) that this Honourable Court did not make, that is, the second line in the extracted court order that reads;

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**IT IS HEREBY ORDERED THAT:**



5 1. ....

2. This application is unmeritorious before this Honourable Court, given the provisions of Rule 84(a) of the Judicature (Court of Appeal Rules) Directions.

10 Counsel avers that instead of the above illegally added content, the right wording of Order 2, which is in the ruling, should be:

15 **“That reason can only be assessed and determined by the appellate Court and not this Court, which has no jurisdiction to determine the merit or not of application for the extension of time which forms the basis of this application.** (emphasis mine)

Counsel for the applicant cited the case of *Coffee Marketing Board Limited vs. Bunkyeke Coffee Factory (U) Ltd [1996] HCB* for the submission that; ***“the court will not condone or perpetuate illegalities.”***

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Counsel for the applicant prayed that the objection is an important point of law that fatally affects the Bill of Costs, which the court should dismiss.

25 On the other hand, the respondent’s counsel first gave a background to the application and indicated that the instant preliminary objection was not the one that counsel for the applicant first submitted during the hearing.

He contended that on 3<sup>rd</sup> April 2023, when the matter came up for hearing,

30 Counsel for the applicant raised a preliminary objection that the Court should

5 stay the taxation of the respondent's bill of costs until/pending the determination of the applicant's appeal.

Thus, he submitted that:

10 ***"This is for the benefit of Imalingat more than anyone else. The money paid to him won't be kept in a pot, awaiting the result of the Court of Appeal. The better view is that everything is stayed pending the resolution of the case because its chances of success are more than 100%..."***

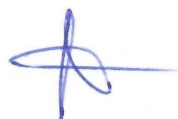
15 Counsel for the respondent contended that before that preliminary objection could be determined, counsel for the applicant raised the instant preliminary objection on the forgery of a court order.

20 Counsel for the respondent contended that all this is done tactfully to delay the taxation of the respondent's bill of costs.

25 Counsel for the respondent also made a tirade of other allegations against counsel for the applicant including such things as the non-service of submissions, letters, etc., which counsel for the respondent alleged were only discovered during sporadic checks on the court file.

To the counsel for the respondent, the conduct of the applicant's lawyer are properly planned schemes of sabotaging the respondent's realisation of the fruits of successfully defending Miscellaneous Application No. 24 of 2022.

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- 5 In regard to the instant preliminary objection, counsel for the respondent contended that the preliminary objection is undoubtedly misplaced, wrongly conceived and is for the main purpose of delaying the taxation of the respondent's Bill of Costs.
- 10 Counsel submitted that the forgery of a judicial document is not a preliminary objection as envisaged under the law and, therefore, prays that this Honourable Court dismisses it with costs to be borne personally to Counsel for the applicant because he is the architect of the baseless objection.
- 15 Counsel submitted that this application has come up severally for hearing, but the applicant's counsel only sought to shift tact on the penultimate date fixed when he realised that the court would proceed with the taxation.

Counsel for the respondent contended that the alleged illegalities and forgeries  
20 raised by the applicant's counsel are only in his mind.

That none of the counsel for the applicant's averments can be seen on the Order extracted and the bill of costs the court is requested to tax.

- 25 Counsel for the respondent then submitted that the Bill of Costs is derived from a meticulously extracted order and endorsed by this Honourable Court, and thus, it is one which is legal and with the full force of the law and as such this preliminary objection should be dismissed with costs.

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5 **3. Court's Analysis Decision:**

The question relating to the preliminary objection, which is before this court for determination, is whether the submitted extracted court order through which the Bill of Costs filed by the respondent is/was forged/illegal because, under line  
10 2, it bears the imported words;

**"This application is unmeritorious before this Honourable court, given the provisions of Rule 84(a) of the Judicature (Court of Appeal Rules) Directions."**

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Which is not representative of the wording in the Ruling delivered on 14<sup>th</sup> July 2022, vide Miscellaneous Application No. 24 of 2022 which is:

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**"That reason can only be assessed and determined by the appellate Court and not this Court, which has no jurisdiction to determine the merit or not of application for the extension of time which forms the basis of this application."**

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Emphasis mine.

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In this regard, the applicant, through his counsel, sought the prayer that the Bill of Costs in Taxation **Miscellaneous Application No. 83 of 2022** with the attached illegally extracted Order derived from **Miscellaneous Application No. 24 of 2022** be dismissed because it is tainted with illegality, null and void of no legal effect.



5 The perusal of the court proceeding of file in **Miscellaneous Application No. 24 of 2022** and the ruling dated 14<sup>th</sup> July 2022 thereof, I note that there is a court order dated 28<sup>th</sup> September 2022, extracted by the respondent, which appears to slightly varies in wording in regard to the second order which is:

10 “This application is unmeritorious before this honourable court, given the provisions of Rule 84(a) of the Judicature (Court of Appeal Rules) Directions.”

The above is instead of the wording in the ruling; that is:

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“That reason can only be assessed and determined by the appellate Court and not this Court, which has no jurisdiction to determine the merit or not of application for the extension of time which forms the basis of this application,”

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That to me is the bone of contention from which this preliminary objection arises.

The **Black’s Law Dictionary, 6<sup>th</sup> Edition, on page 650**, defines “forgery” as;

25 “The false making or the material altering of documents with intent to defraud.”

It adds that it is;

30 “A signature of a person that is made without the person’s consent and without the person otherwise authorising it”.





- 5 In respect to the contended matter, I note that the then Assistant Registrar before whom the matter of taxation was and whose signature is on the extracted court order did not in her ruling; *while forwarding the file to me*; indicate any specific allegations of forgery of the extracted court order and yet it was her signature which was on the judicial document and she neither disowned it nor
- 10 denied taking part in its preparation.

That being the case, I am thus unable to make a finding that the impugned court order was forged.

- 15 This is because any allegations of forgery are serious and may carry both civil as well as criminal consequences as per Sections 342, 345, 346 and 347 of the Penal Code Act, Cap 120 as amended.

- Also as according to the **Black's Law Dictionary** it would require much more for an
- 20 impugned document to be found as forged including the involvement of a handwriting expert.

- In relations to the instant matter, the allegations of forgery as far as I can gather were advanced during the hearing of the taxation application and were from the
- 25 submissions of counsel for the applicant which in my considered view is evidence from the bar since it is trite that submissions are not evidence and are just meant to guide the court as was pointed out by **George V. Odunga** in **Odunga's Digest on Civil Case Law and Procedure**, Law Africa Publishers.

- 30 Also in *Baigumamu v Uganda [1973] EALR 26*, it was pointed out that the falsity must be the purport of the document, not its contents.





5 In other words, the document must tell a lie about itself.

Further, in *Azolozo vs. Republic [1986-1989] EA 16*, it was held that the falsity of a document must relate to the document itself and not its contents.

10 Emphasis Mine:

Accordingly, it is my considered view that since the impugned court order was not disowned by the then Assistant Registrar, then the plausible reasoning for the variation is that it was irregularly procured without following the laid down  
15 procedure but does not meet the standard and definition of forgery.

This is because the impugned orders were issued by a registrar of the court who was clothed with the power and authority to issue such orders.

20 Those orders formed part of the court record and bore the signatures of the lawfully authorised judicial officer.

However, this does not mean that this Honourable Court cannot inquire about the irregularity.

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In order to ensure that proper procedures are followed in consideration of the instant preliminary objection, I do find that it was correct for counsel for the applicant to aver and assert that there were indeed needed amendments in the order before it could have been signed and sealed by the registrar; which was not  
30 done; and that is what I am now dealing with, an irregularly issued order.



5 This is because as is seen from Section 2 (c) of the Civil Procedure Act, Cap 71 (CPA), defines a Decree to mean;

10 The formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to any of the matters in controversy in the suit and may be either preliminary or final.

Further, Section 2 (o) of the Civil Procedure Act defines an Order to mean;

15 The formal expression of any decision of a civil court which is not a decree and shall include a rule nisi.

Also Black's Law Dictionary, 6<sup>th</sup> Edition, on page 1096, defines an order as

20 A mandate; precept; command or direction authoritatively given; rule or regulation.

Furthermore, Black's Law Dictionary, 6<sup>th</sup> Edition, on page 1096, defines an Order as the;

25 Direction of a court or judge made or entered in writing, not included in a judgement, which determines some point or directs some step in the proceedings.

30 More importantly, Section 91 of the Civil Procedure Act provides that all orders or notices served on or given to any person under this Act shall be in writing.



5 And **Order 21 rule 7 of the Civil Procedure Rules S1 71-1 (CPR)** provides for how to prepare a decree and order and this is provided for in the following stringent terms thus;

1) A decree shall bear the date of the day on which the judgment was delivered.

10 2) It shall be the duty of the party who is successful in a suit in the High Court to prepare without delay a draft decree and submit it for the approval of the other parties to the suit, who shall approve it with or without amendment, or reject it, without undue delay. If the draft is approved by the parties, it shall be submitted to the registrar, who, if he  
15 or she is satisfied that it is drawn up in accordance with the judgment, shall sign and seal the decree accordingly. If all the parties and the registrar do not agree upon the terms of the decree within such time as the registrar shall fix, it shall be settled by the judge who pronounced the judgment, and the parties shall be entitled to be heard on the terms  
20 of the decree if they so desire.

3) .....

4) Any order, whether in the High Court or in a magistrate's court, which is required to be drawn up shall be prepared and signed in like manner.

25 **Order 49 Rule 2 of the Civil Procedure Rules** provides that all orders, notices and documents required by the Act to be given to or served on any person shall be served in the manner provided for the service of summons.

30 According to **Order 5 Rule 16 of the Civil Procedure Rules**, proof of service of summons is by an affidavit of service, and this must state the time when and the





5 manner in which summons was served and the name and address of the person,  
if any, identifying the person served and witnessing the delivery of summons.

Evidently, it is clear to me that the steps of preparation of the impugned order  
under **Order 21 Rule 7 (2) of the Civil Procedure Rules** was not followed. Had it  
10 been so, then this preliminary objection would not have arisen.

This is because after such preparation of the order, the successful party  
(respondent) would be required under **Order 49 Rule 2 of the Civil Procedure  
Rules** to serve the draft order onto the applicant for approval before the same is  
15 submitted before the Registrar for signing and sealing in accordance with Order  
5 Rule 16 of the Civil Procedure Rules.

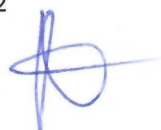
Furthermore, in the event of disagreements between the parties, the same  
would have been settled by this Honorable Court itself which delivered the ruling  
20 as per **Order 21, Rule 7 of the Civil Procedure Rules**.

Thus now we are dealing with an irregularly issued order which does not conform  
with the provisions of **Order 21 Rule 7 (2) of the Civil Procedure Rules** and **Order  
49 Rule 2 of the Civil Procedure Rules**.

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**Black's Law Dictionary, 6<sup>th</sup> Edition, on page 829, defines "irregular" as;**

Not regular; not according to established law, method, or usage; not  
conformable to nature, to rules of moral rectitude, or to established  
30 principles; not normal, disorderly.



5 The **Black's Law Dictionary** (*supra*) further defines "irregularity" to mean;

The doing or not doing that in the conduct of a suit at law, which, conformably with the practice of the court, ought or ought not to be done. Violation or non-observance of established rules and practices.

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The want of adherence to some prescribed rule or mode of proceeding; consisting either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unseasonable time or improper manner.

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4. Conclusion:

On the record, I find that there is no evidence that the process under **Order 21 rule 7(2) of the Civil Procedure Rules** was followed while extracting the order  
20 dated 28<sup>th</sup> September 2022.

That being so, I would find and conclude that the process of the extraction and the issuing of the impugned order was irregular as it on all fours with the **Black's Law Dictionary** definition above and as was pointed out in the case of *Uganda vs. Lwamafa Jimmy and Three Others HCT-00-ACD-SC-NO. 0003 of 2006*, a court order  
25 must not be tainted with irregularities.

Consequently, it is my finding that the extracted order dated 28<sup>th</sup> September 2022 was irregularly extracted.

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5 The above being so, I am constrained to order the expunging off the court record the irregularly extracted order due to the fact that it was obtained without following the due process of the law and do direct the successful party to extract<sup>+</sup> the required order in accordance with the law.

10 However, for the avoidance of doubt, I do hereby reiterate that I find no problem with the orders of this Honourable Court in **Miscellaneous Application No. 24 of 2022** which I find still accurate and valid.

Counsel for the applicant prayed that I dismiss the taxation application in **HCMA**  
15 **83 of 2022** because of the impugned order, however, I would disallow that prayer as there is no law that makes a taxation hearing dependent on an extracted order and also because I have already directed the respondent to extract the order in accordance with the law.

20 In conclusion, therefore, the preliminary objection raised by counsel for the applicant that the order was extracted illegally succeeds in part as above with 50% costs awarded to him.

I so order.

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.....  
Hon. Justice Dr Henry Peter Adonyo

Judge

13<sup>th</sup> September, 2023

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