

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT Jinja**  
**CIVIL SUIT NO. 056 OF 2014**

**DEPARTED ASIANS PROPERTY CUSTODIAN BOARD::: PLAINTIFF**  
**VERSUS**

- 1. PRABHUDAS DAMODAR KOTECHO**
- 2. ARVIND JERAMBHAI KOTECHA**

**DEFENDANTS**

**BEFORE HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA**  
**NTAMBI**

**RULING**

When the matter came up for hearing on 25<sup>th</sup> January 2023, Mr. Hillary Ebila representing the Attorney General, the Plaintiff in this matter, prayed that before the Defendant opens his case, the Donor of the Powers of Attorney specifically the 1<sup>st</sup> Defendant should appear in Court to determine whether he is alive or not. Mr. Ebila argued that the appearance of the Donor of the Powers of Attorney would assist Court to determine the validity of the Powers of Attorney and whether the Defendant can present the witness who is the lawful attorney of the Defendants, namely Mr. Vijay Amritlal Kotecha.

Counsel for the Defendants, Mr. Daniel Mudhumbusi objected to the procedure adopted by the Plaintiff's Counsel. He argued that the Plaintiff has no right to call the donor since he is not a witness in this case.

I find the Plaintiff's prayer ridiculous since he is the one who sued the First Defendant who is the donor of the Powers of Attorney. The Plaintiff should have ascertained the existence of the 1<sup>st</sup> Defendant before instituting this suit. The Plaintiff should be cautious with the manner in which he is proceeding with this case since Courts have struck out Plaints where the Defendant is dead or non-existent (**See The Trustees of Rubaga Miracle Centre Vs Mulangila Ssimbwa MA 576 of 2006**)

It is foolhardy for the Plaintiff to sue the First Defendant, proceed with leading his evidence and after closing his case, he now turns round to question the existence of the First Defendant, a party that he sued. Worth noting is that this issue of the existence of the First Defendant never arose when the Plaintiff was leading his evidence. Surprisingly, the impugned Powers of Attorney were

  
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produced and admitted as both the Plaintiff's and the Defendant's exhibits without any objection. Nevertheless, the Plaintiff can examine the Defendant's witnesses during their testimony to ascertain whether the First Defendant is dead or alive.


It is my considered opinion that unless evidence is adduced to the contrary, the First Defendant is alive.

Be that as it may, although the Plaintiff wants to determine the validity of the Powers of Attorney, once Powers of Attorney are duly executed, they remain valid until they are revoked by the donor or upon the donor's death. There is nothing on record to suggest that the Powers of Attorney were revoked by the Donor or that the Donor is dead.

I find no issue in the Defendant presenting the witness who is the lawful attorney Mr. Vijay Amritlal Kotecha.

The Plaintiff's prayer thus fails.

I so order.



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**JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI**  
**Ruling delivered in Court on 14<sup>th</sup> June, 2023**