

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
FAMILY DIVISION
MISCELLANEOUS APPLICATION NO 196 OF 2015
ARISING FROM CIVIL SUIT NO 0346 OF 2003

CISSY MUKASA (through her duly authorized
attorney **CYPRIAN SEBUNJO** vide special power of attorney
dated the 09th day of September 2013 and registered
as instrument no. 13455/2014 on the 11th day of September 2014)
.....**APPLICANT**

VERSUS

- 1. MARY NANSIKOMBI**
- 2. NABYONGA MARGRET.....RESPONDENTS**

BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This was an application by Notice of Motion brought under Article 126(2) of the Constitution, section 33 of the Judicature Act, section 98 of the Civil Procedure Act and Order 52 rules 1, 2, & 3 of the Civil Procedure Rules (CPR), for orders that:-

- a) Entry and registration of the respondents as proprietors on Kyadondo Block 204 Plot 127 obtained pursuant to court orders in HCCS 346/2003 and vide instrument no KCCA – 00010874 be cancelled.
- b) The applicant and respondents’ memorandum of understanding dated the 20th day of December 2013 be enforced in the terms as agreed by both parties; but more specifically that:

- i) Cissy Mukasa and Mary Nansikombi be registered as proprietors of land at Kawempe comprised in Kyadondo Block 204 Plot 127.
 - ii) Land comprised Kyadondo Block 204 Plot 127 be sold and the proceeds shared as per agreement.
- c) Costs of the suit be provided for.

The application is supported by the affidavit of Cyprian Sebunjo. The background, which also includes the grounds of the application, is that the applicant and respondents were parties to Civil Suit No. 346/2003 where ownership of land comprised in Kyadondo Block 204 Plot 127 was in dispute. The suit was determined in favour of the respondents and four others. The applicant was dissatisfied with the decision and she filed a notice of appeal. The parties sought to resolve the matter amicably by entering into a memorandum of understanding where they agreed to cease litigation against each other, to vest Kyadondo Block 204 Plot 127 in the names of Cissy Mukasa and Nansikombi Mary, and to sell the said property and share the proceeds. The applicant complied with the terms of the memorandum of understanding by abandoning the appeal. The respondent has however, since 14th October 2014, used the decree in HCCS 346/2003 to cancel the applicant's name on the entry of the land register for Kyadondo Block 204 Plot 127, substituted the same with their names and also neglected to have the same property sold.

The application was opposed by the respondents through the affidavit in reply of Mary Nansikombi (1st respondent). The affidavit stated that the application was frivolous and vexatious and an abuse of court process with no merit; that the property in issue was distributed to the minor children who included the 1st respondent and was put in the trust of the applicant by the Administrator General; that the 1st respondent and other beneficiaries filed HCCS 346/2003, which was decided in their favour to recover the property from the applicant who had given it to her son Cyprian Sebunjo; that the applicant withdrew the appeal against the decision following a memorandum of understanding she physically participated in, which was to sell the property and give her a share; and that the said share of Uganda Shillings 100,000,000/= (one hundred thousand) was given to her son Geoffrey Kiwanuka Salongo. The 1st respondent also challenged the power of attorney used by Cyprian Sebunjo to file a supporting affidavit to the application.

I will first address the 1st respondent's challenging of Cyprian Sebunjo's power of attorney relied on to file the application and depone its supporting affidavit. Learned Counsel Bamwite Edward

submitted for the 1st respondent that the power of attorney attached to the application and used by Cyprian Sebunjo did not give him authority to file a court case on behalf of Cissy Mukasa (applicant) against the respondents. He cited **Mumtaz Kassam & Another V Ebrahim Kassam & Another [2008] HCB 19** to support his submissions. Counsel Richard Kiboneka did not address this issue in his submissions in reply, nor was it addressed by the applicant's affidavit in rejoinder.

The application reads that the applicant Cissy Mukasa filed it "*through her duly authorized attorney Cyprian Sebunjo...*" A certified true copy of the power of attorney is on the court record, showing that it was registered under the number 13455/2014 filed on the 11th day of September 2014. The powers spelt out in the power of attorney were to do any of the following:-

1. *"Take and keep custody of the duplicate certificate of title in respect of the above land.*
2. *In my names, place and stead to negotiate, conclude any sale agreement in respect of the above land with any person company or entity.*
3. *On my behalf to sign any transfers, mutation forms and any other document necessary and incidental to the aforesaid purposes.*
4. *To do in my name everything whatsoever which he may deem necessary and proper to fulfill the objective above.*
5. *To effectively in my behalf to receive payments from such buyer and to effectively transfer ownership thereof from him.*
6. *That so long as my attorney performs the above powers I undertake unequivocally to confirm, ratify and approve whatsoever action he has taken in pursuance of this power of attorney."*

It was held in **Mumtaz Kassam & Another V Ebrahim Kassam & Another [2008] HCB 19** that authority under an instrument of powers of attorney is construed from the deed itself and must be exercised within and as authorized by the donour.

In the instant case, there is no clause in the power of attorney that authorizes Cyprian Sebunjo to file a court case against the respondents or any other person. In that regard I agree with the submissions of the 1st respondent's counsel that since there was no clause in the applicant's

power of attorney authorizing Cyprian Sebunjo to file a court case against the respondents, the attorney (Cyprian Sebunjo) had no authority to file the instant application.

The respondent's counsel also submitted that the power of attorney does not disclose the signature of the donour. Section 148 of the Registration of Titles Act cap 230 provides as follows:-

“No instrument or power of attorney shall be deemed to be duly executed unless either –

- a) The signature of each party is in latin character, or*
- b) a transliteration into latin character of the signature of any party whose signature is not in latin character **and the name of any party who has affixed a mark instead of signing his or her name are added to the instrument or power of attorney by or in the presence of the attesting witness at the time of execution, and beneath the signature or mark, there is inserted a certificate in the form in the eighteenth schedule to the Act.*** (emphasis mine).

In this case, there is a mark on the power of attorney above the names of Cissy Mukasa. However, there is no certificate of an attesting witness beneath the applicant's mark as required by the law.

In the circumstances, for reasons given above, I find this application incompetent. It cannot be maintained in law. It is accordingly dismissed with costs.

Dated at Kampala this 8th day of July 2016.

Percy Night Tuhaise

Judge