

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(FAMILY DIVISION)

ORIGINATING SUMMONS No. 10 OF 2018

BETWEEN

1. KIBULWE SIMON
2. SSEKALALA STEVEN=====APPLICANTS
3. MPIIMA STEPHEN

AND

1. PAUL MBAZZI KIGGYE
2. JOHN TTUNTU SERYAZI=====RESPONDENTS
3. EPHRAIM NIMROD MPIIMA

**(ARISING OUT OF THE ADMINISTRATION OF THE ESTATE OF KIBUUKA SIIRA
NKAKYA UNDER ADMINISTRATION CAUSE NO. 180 OF 2013)**

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

When this matter came up for hearing on the 22nd August 2018, Counsel for the respondents, Mr Joseph Amanyia raised a preliminary objection in respect to the fact that the application was not supported by valid affidavits. Counsel for the respondent

contended that the invalidity of the affidavits stemmed from the fact that the Commissioner for oaths who purported to commission said affidavits, Mr. Semakula Augustine, had by the 23rd May 2018 been struck off the roll of advocates and was therefore not authorised to commission the affidavits. Mr. Amanyia relied on S.1(4) of the Commissioner for Oaths Act, which provides that every commission shall

immediately terminate on the holder ceasing to practice as an advocate. Mr. Amanyia fortified his position by relying on the case of Professor Saidi Yaka v Islamic University of Uganda SCCA 47 of 1995, where the Supreme Court held that once an advocate is

suspended from practice, his commission to practice as a commissioner is terminated. Counsel for the respondent submitted that since all the supporting affidavits were illegal, they ought to be struck out and the application dismissed with costs.

In reply, Counsel for the applicants, Mr. Kizito Kisaakye relied on S.13 of the Advocates Amendment Act of 2002 which amended S.14 of the Advocates Act; the short title provides for protection of clients from advocates. It provides that any act, document, contract, pleading, done by an advocate contrary to S.14 shall not be invalidated and in any case they relate to that case, that case shall not be dismissed. It was Counsel's contention that the Supreme Court decision cited by Counsel for the respondent was no longer good law in light of that amendment to the Advocates Act.

This court has had the opportunity to peruse the Advocates Act (Amendment Act), 2002. S.13 of the Act amends the principal Act by inserting a new section 14A which provides for the protection of clients of advocates. S.14A (1) provides that;

Where-

- a) *an advocate practices as an advocate contrary to subsection (1) of section 14; or*
- b) *in any proceedings, for any reason, an advocate is lawfully denied audience or authority to represent a party by any court or tribunal; then-*
 - i) *no pleading or contract or document made or action taken by the advocate on behalf of any client shall be invalidated by any such event; and in the case of any proceedings, the case of the client shall not be dismissed by reason of any such event*
 - ii) *the client who is a party in the proceedings shall, where necessary, be allowed time to engage another advocate or otherwise make good any defects arising out of any such event.*

It was the contention by Counsel for the respondent that the foregoing amendment did not cover the provisions of the Commissioner for Oaths Act. I must disagree with Counsel for the respondent. S.14 of the Advocates Act which the amendment modifies provides for the consequences of cancellation or suspension of a practising certificate of an advocate. S.13 of the amendment seeks to protect clients from such consequences.

It would be absurd to conclude that the protection of clients was limited to a select group of actions by advocates who have had their certificates cancelled or suspended and not the whole spectrum of actions envisaged under the law. S.14A clearly states that; ‘ ..no action taken by the advocate on behalf of the client shall be invalidated...’, rendering
5 total protection of clients.

An advocate, who commissions affidavits, with the knowledge that his practicing certificate has been cancelled, commits professional misconduct and appropriate action should be taken against him by the Law Council. His clients are however insulated by S.13 of the Advocates Amendment Act from the repercussions of his misconduct.

10 In the instant case, the affidavits commissioned by the suspended advocate, Mr. Augustine Semakula were defective because the advocate had been stripped of the authority of Commissioner for oaths by his being struck off the roll of advocates. The remedy for the applicants lies in S.14A (a) (ii) of the Advocates Act as amended. Counsel for the applicants should have exercised more diligence perhaps in ensuring
15 that the affidavits were commissioned by a legitimate officer of court, however their failure to do so did not rob the applicants of their right to be protected by the provisions of the Advocates Act as amended. The applicants shall be allowed to swear fresh affidavits in support of their application before an authorised Commissioner for Oaths, provided the content remains the same as that in the affidavits sworn before Mr.
20 Augustine Semakula.

The prayer for dismissal of the application is hereby denied.

Dated at Kampala this 19th day of September 2018

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25 **Olive Kazaarwe Mukwaya**

JUDGE