

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA (LAND DIVISION)
MISC. APPLICATION NO. 0460 OF 2013
(Arising out of Civil Suit No. 0211 of 2009)

LENA NAKALEMA BINAISA & 3 OTHERS :::::::::::::::::::: APPLICANTS

VERSUS

MUCUNGUZI MYERS :::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE BASHAIJA.K. ANDREW

R U L I N G:

This application is brought under *S.98 CPA, O 1 r. 13 CPR and O52 rr. 2&3 CPR* seeking orders that;

(a) That the Applicants be added as Defendants in Civil Suit No.211 of 2013 now pending before this Honourable Court.

(b) Costs of the Application be provided for.

At the commencement of hearing the application Mr. Abomugisha Innocent, Counsel for the Respondent, raised a preliminary point of law to the effect the affidavit in support of the application is fundamentally defective and cannot support the application. He pointed out that in paragraph 2 thereof, the deponent swears that she is authorised by the other two Applicants to swear on their behalf, but that there is no proof of the authority or representative order of court, or Power of Attorney attached. That in absence of the authority the affidavit becomes defective and cannot support the application. Counsel relied on *Taremwa Kamishana Tomas v. Attorney General, HC Misc. Application No. 38 of 2012* to buttress his objection, and prayed that the application be dismissed with costs.

Mr. Erias Lukwago, Counsel for the Applicants, submitted that the objection is misconceived, and that the authority cited by Counsel for the Respondent is distinguishable. That in the instant application the Applicants are joint administrators and administratrix of the estate, and that a copy of the Letters of Administration is annexed to the affidavit of the deponent Lena Nakalema. That the said copy of Letters of Administration is in itself an order of court by necessary implication, and that if any one of the administrators depons on the matter, and there is no evidence that the Letters of Administration were revoked, that would be sufficient. Further, that the suit is not a representative action because the Applicants have joint obligation to defend the estate. In the alternative, Counsel argued that the offending part of the affidavit can be severed off and the rest of the content be relied upon to entertain the case on merit, and that there would be no prejudice to the Respondent.

Consideration.

Order 1 r.12 (I) CPR provides that;

“Where there’s more plaintiffs than one any one or more of them may be authorised by any other of them to appear, plead or act for that other in any proceedings, and in like manner, where there are more defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for that other in any proceedings.

Sub -rule (2) (Supra) is mandatory and provides that;

“The authority shall be in writing signed by the party giving it and shall be filed in the case.”

In paragraph 2 of Lena Nakalema Binaisa’s affidavit in support of the application, she swears that she has been authorised by 2nd and 3rd Applicants and swears the affidavit on their behalf. However, no such authority is attached as required by the mandatory provisions of ***sub -rule 2(supra)***.

Contrary to submissions of Mr. E Lukwago, the authority required in writing signed and filed in court under **O.1 r.12 (2) CPR** is quite different from the Letter of Administration which the Applicants jointly hold. Even with first Letters of Administration, the joint administrators have to give some or one of them the authority to in writing signed by those giving it to swear affidavit on their behalf as required under **O.1 r.12 (2) CPR**.

Whether it be a representative action under **O.1 rr.10(2)and.13 CPR** or suit by a recognised agent under **O.3 r.2 (a) CPR** or by order of court, the person swearing on behalf of the others ought to have their authority in writing which must be attached as evidence and filed on the court record. Otherwise there would be no proof that the person purporting to swear on behalf of the others has their express authority.

This court has held before in the authority cited of **Taremwa Kamishana Tomas v. Attorney General (supra)** and **Vincent Kafero & 11 O'rs v. Attorney General, H.C Misc Appl. No. 048 of 2012**, and most recently in **Mukuye & 106 O'rs v Madhvani Group Ltd., Misc. Application No.0821 of 2013 (Arising out of CS No.0615 of 2012)** relying on the case of **Makerere University v. St Mark Education Institute & O'rs, HC Civ. Suit No.378 of 1993**, that an affidavit is defective by reason of being sworn on behalf of another without showing that the deponent had the authority of the other. In this case the affidavit is incurably defective for non - compliance with the requirements of the law. It cannot support the application which seeks to add the other Applicants. The application is dismissed with costs.

BASHAIJA.K. ANDREW
JUDGE
02/10/2013

