

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISC. APPL. NO. 1109 OF 2018**

**(ARISING FROM CIVIL SUIT NO. 431 OF 2018)**

**ELIZABETH MIRIKA NAMAGHEMBA OFUMBI:.....PLAINTIFF**

**VERSUS**

**1. NABIRAH KHAN**

**2. GODFREY OFUMBI:.....DEFENDANTS**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

This is an application brought by way of Notice of Motion for orders that;

- a) The suit instituted in the names of the Applicant by the Plaintiff be struck out for want of authority from the Applicant.
- b) Costs of the suit be in the cause.

The grounds as contained in the Notice of Motion and supported by the affidavit in support are that;

- 1) The Applicant has never instructed the Respondents to represent her and in Civil Suit No. 431 of 2018 in the High Court Land Division,
- 2) The suitland in Kyadondo Block 214 Plot 3545 be transferred into the names of Amdan Khan was with their knowledge and consent,

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(RULING)**

- 3) That the Applicant has never granted nor executed power of Attorney in favour of the Respondents regarding the suitland comprised in Kyadondo Block 214 Plot 3545 at Kisasi,
- 4) That the signature attributed to the Applicant in annexure 'A' to the plaint is a forgery as she does not sign as such,
- 5) That the Applicant does not include the names of Oboth in her signature attributed to the Powers of Attorney annexed to the plaint as 'A'.

The Applicant annexed the affidavit sworn by Elizabeth Mirika Namaghamba Ofumbi – to which she attached a copy of her national ID card annexed as 'A' and a copy of the plaint provided as annexure 'B'.

The Respondents through Godfrey Ofumbi filed an affidavit in support are denied and the Applicant did donate to them Powers of Attorney in issue.

The Respondents filed an additional affidavit in reply by Elizabeth Mirika Namaghamba Ofumbi in which she deponed in paragraph 3 that she never instituted Misc. Application No. 1109 of 2018 nor instructed anyone to institute Misc. Application No.1109 of 2018. Both parties filed submissions.

The issues for determination in this application are;

1. Whether the Applicant instructed the Respondents to represent her and file Civil Suit No. 431 of 2018 and if not, whether Civil Suit No. 431 of 2018 should be struck out for being incompetently filed in this Court.
2. Whether the Applicant has ever instructed M/s. Kangaho & Co. Advocates to file Misc. Application No. 1109 of 2018.

During the hearing of this application on 29<sup>th</sup> March 2019, Counsel for the Respondents M/s. Namara Ann and Wegoye Jude raised a preliminary objection to the effect that Counsel Kangaho for the Applicant did not have instructions from the Applicant (who they alleged is now their client!) to file the application on her behalf.

Court directed parties to address it on this matter and to also attend to the Registrar to sort out any perceived issues of representations. This gave rise to issue 2. Both Counsel addressed this Court in their submissions. I do resolve this issue as herebelow;

From the submissions filed by both the Applicant and the Respondents on this issue, (which I will not reproduce, but do acknowledge). I note that the matter before me raises both matters of fact and law.

The first question to investigate is;

- i) *Did Kangaho Edward have instructions?*

In answer to that question, the Applicant referred this Court to the affidavit in rejoinder by Kangaho Edward, of Kangaho & Co. Advocates which depones to the fact that on 12<sup>th</sup> July 2018, he went together with Counsel Kangaho Edward and the daughter of the Applicant; Claire Ofumbi Okuna) to Kampala International Hospital to see the Applicant who was admitted thereat, but wanted legal representation. Kangaho went in to see the Applicant and later told him that the Applicant had given him a letter of instructions.

Counsel Kangaho then referred to the fact that the Applicant had disputed the Power of Attorney and a handwriting expert was contacted who gave a report on the authenticity of the signature in issue.

Counsel also referred to the meeting with the Registrar where the Applicant feigned ignorance of her own National ID. He further pointed at the demeanor of the Applicant in the said meeting as pointing to connivance with the Respondents aimed at helping her to deny her earlier statements.

Counsel also referred to section 76 of the Advocates Act and faulted the conduct of Counsel for the Respondents' attempt to snatch his client and aiding her to file false affidavits in their bid to perpetuate their illegal conduct. He referred to the proceedings before the Registrar for a

temporary injunction and submitted that the Applicant had already gone on record as having admitted that she had never filed any case and she was in Court because she had been told that she had a case against her children, and moved this Court to dismiss the application with costs.

In response, Counsel for the Respondents also referred to the meeting with the Registrar and quoted the Applicant as having denied ever having given the sum of Kangaho & Co. Advocates instructions; to institute Misc. Application No. 1109 of 2018. He referred to the assertions alluded to of the Applicant's demeanors and invited Court to disregard them. He also referred to annexure 'A' to the affidavit in support of the application; as falsehoods to be disregarded. He prayed that the affidavit in rejoinder be struck out for being hearsay. He further prayed that the report of the handwriting expert be equally rejected for not meeting the standards of secondary evidence.

On being unethical, Counsel for the Respondent argued that it is Counsel Kangaho who acted unethically by instituting an application without authority in abuse of Section 74(c) of the Advocates Act.

From the above submissions, I can conclude with authority that the Applicant before Court; Elizabeth Mirika Namaghamba Ofumbi appears to be a party to a series of orchestrated illegalities and mechanisations by the parties before me.

It is surprising that it is Elizabeth Mirika Namaghamba Ofumbi who is alleged to have authorized the institution of Civil Suit No. 43 of 2018 by virtue of the contested 'Powers of Attorney' in favour of the Respondents.

It is further surprising that it is again Elizabeth Mirika Namaghamba Ofumbi who allegedly instructed Kangaho & Co. Advocates to institute Misc. Application No. 1109 of 2018, in which she depones that she has never given Powers of Attorney to the Respondents to institute the suit on her behalf and swore an affidavit to that effect.

It is surprising that when Misc. Application No. 1109 of 2018 was called for hearing, again it was the same Elizabeth Mirika Namaghamba Ofumbi who was alleged to be denying ever

having given instructions to Kangaho & Co. Advocates to file the said Misc. Application No. 1109 of 2018, in which she is alleged to have sworn an affidavit to that effect.

It must be noted that in Civil Suit No. 431 of 2018 the pleadings therein indicate that the said Elizabeth Mirika Namaghamba Ofumbi is the Plaintiff suing through Nabilah Khan and Godfrey Ofumbi, who are suing Amdan Khan and Commissioner for land Registration; alleging forgery of her signatures on a loan agreement, which led to transfer of the suitland into the Defendant's names. Incidentally, while attending Court in Misc. Application No. 1109 of 2018, Elizabeth Mirika Namaghamba Ofumbi was cross examined on her affidavit and the following is an extract of what is recorded as having transpired in Court. The record shows that;

“She also stated both in cross examination and re-examination that she has never filed any case and she was in Court because she was told she had a case against her children”.

The Registrar further noted that the “the Applicant clearly stated that she never filed a suit...this puts the propriety of this matter before this Court in question...”

The Registrar's comments above, when taken in line with the fact that the said cross examination happened on 23<sup>rd</sup> November 2018, yet, and this application was filed on 17<sup>th</sup> July 2018, it means that there is more than meets the eye regarding the averments by the same Elizabeth Mirika Namaghamba Ofumbi on 29<sup>th</sup> March 2019 before the Registrar, when she said that she never gave instructions to Counsel Kangaho to file Misc. Application No. 1109 of 2018.

The above observations show that Elizabeth Mirika Namaghamba Ofumbi and her children who are Respondents or co-applicants in the different cases above, appear to be engaged in a scheme to use Court to perform illegalities and to abuse its process. There are very serious implications against the conduct, character and person of Elizabeth Mirika Namaghamba Ofumbi, brought to the forefront in this application which will requires a full scale investigation to ascertain who is behind the alleged forged Powers of Attorney, the alleged forged affidavits attributed to Elizabeth Mirika Namaghamba Ofumbi accompanying Misc. Application No. 1109 of 2018 and the affidavit sworn in the additional reply of 27<sup>th</sup> March 2018.

This Court has been invited by both Counsel for the Applicant and the Respondents to cite each other for professional mis-conduct. The factors alluded against each other warrant a full scale inquiry as to how M/s. Kangaho got instructions and how Counsel for the Respondents; Namara Ann and Wegoye Jude took over instructions from Arcadia Advocates for the Respondents and how they got access to a client represented by Kangaho & Co. Advocates and also, influenced her to change her position as recorded by Court in an earlier proceeding before it on 23<sup>rd</sup> November 2018.

I further note that this application has brought to light a seemingly cleverly thought out plan to use the Court system to commit an illegality. The case of **Makula International Ltd. versus H. E. Cardinal Nsubuga & Anor (1982) HCB II** states that;

*“An illegality once brought to the attention of the Court overrides all questions of pleadings including admissions made thereon...”*

The case enjoins Courts not to entertain any matter hinged on an illegality. The facts before me raised both factual and legal connotations which put to questions the instructions given by Elizabeth Mirika Namaghamba Ofumbi, by way of Powers of Attorney to the Plaintiffs to institute Civil Suit No. 431 of 2018. It also raised issues of whether Elizabeth Mirika Namaghamba Ofumbi gave instructions to Kangaho & Co. Advocates to file the current matter. She being the root of both the main suit as Plaintiff and also Misc. Application No. 1109 of 2018, as the Applicant, must have come to Court with dirty hands, apparently clothed in illegality.

The dirty hands have in them have suspected Powers of Attorney allegedly authored by her, a suspected affidavit in support of a notice of motion in Misc. Application No. 1109 of 2018, to which is attached a suspected national ID card in her names and having her photo, (but denied by her before the Registrar). Her hands are further tainted with another affidavit sworn in an additional reply dated 27<sup>th</sup> March 2019, denying giving instructions to M/s. Kangaho & Co.

Advocates, yet her alleged signature is attached to another document annexed as 'A' to Isaac Okello's affidavit in rejoinder.

There is obviously a lot of forgeries and frauds associated with those documents. This application cannot be used to determine which one of them is correct. However where, records of Court are involved, by the evidence Act, provides that relevant pieces of such evidence must be taken judicial notice of.

At a preliminary hearing of this matter, it is on record that on the 23<sup>rd</sup> day of March 2018 that the Applicant appeared before the Asst. Registrar and was cross-examined but denied to ever having instituted Civil Suit No. 431 of 2018. The same response was captured in the Registrar's Ruling delivered on 10<sup>th</sup> January 2019, which was duly signed and is not appealed against. It was therefore an afterthought and dishonest of Elizabeth Mirika Namaghamba Ofumbi to appear before the same Court later on 29<sup>th</sup> March 2019 and deny the same facts she had already clarified.

The above conduct and the subsequent behaviours of Counsel for the Respondents, to move Court to believe that the Applicant had never given such instructions inspite of the above, Court record has more to it than meets the eye.

I find that this the application has partially succeeded to prove that given the oscillating conduct of the applicant, it is more likely than not that she gave instructions to Counsel. However, the Court has also noted the possibility of parties taking advantage of Elizabeth Mirika Namaghamba Ofumbi's advanced age, and sickly condition to cause her to take actions on their behalf which end up contradicting each other and to that extent illegal. For that reason, issue 1 partly succeeds in that I find that Kangaho had instructions to bring Misc. Application No. 1109 of 2018, but the application is clothed with illegalities; which need further investigations regarding how these instructions were obtained from a sick person in a hospital.

The second issue has been conversed while discussing the first.

I do find that the Applicant's hands are dirty, by her own admission before the Assistant Registrar, she categorically stated that she had not instituted any Civil Suit. The Applicant is denying in her affidavits on record all the Court process involving her name as having been forged.

I therefore find that this Court cannot uphold an illegality. (*See Makula International Ltd. versus H. E. Cardinal Nsubuga*) (*Supra*)

All the arguments by Counsel lead me to one conclusion that there is a line of crime which is hidden by the parties in Civil Suit No. 431 of 2018. The frauds, forgeries and allegations imputed in this application by both the Applicants and the Respondents warrant an independent inquiry.

I therefore find that Civil Suit No. 431 of 2018, is incompetently before this Court having been brought by parties whose authority is denied by its author; the suit will be accordingly be struck off with orders that;

- a) Parties herein present themselves before the CID in charge fraud to commence inquiries into this matter regarding all Court documents bearing Elizabeth Mirika Namaghamba Ofumbi's signature which is allegedly forged,
- b) The inquiry should also inform this Court who master minded these frauds.
- c) The Advocates are hereby referred to the Law Council for an inquiry into their part in orchestrating any of frauds attributable to them as alleged in their submissions,
- d) Each party to bear own costs.

I so order.

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(RULING)**

Henry I. Kawesa

**JUDGE**

3/5/2019

3/5/2019:

Kangaho Edward for the applicant

Namara Ann and Wegoye for the Respondent.

Agnes Tugume (for Edward Kangaho) for the Applicant.

Applicant absent.

Respondents absent.

Court: Ruling delivered to the parties above.

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Henry I. Kawesa

**JUDGE**

3/05/19