

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DAVISON]
MISCELLANEOUS APPLICATION NO. 1795 OF 2021

1. BALIKUDDEMBE KAWEESA
2. BRUNO S. SERUNKUUMA:.....APPLICANTS

VERSUS

1. AURUM ROSES LTD.
2. MBABAZI REBECCA NAYITA
3. NANTEZA AGATE
4. MUGANZA JUMA MPOYA
5. ADMINISTRATOR GENERAL
6. COMMISSIONER LAND REGISTRATION:.....RESPONDENTS

BEFORE: HON. MR. JUSTICE HENITY I. KAWESA

RULING ON P.O

When this application was called for hearing on March 3, 2022. Counsel for the Applicant raised a preliminary objection regarding the affidavit in reply filed by the 3rd Respondent for being out of time. He referred this Court to O.1 r9 of the Civil Procedure rules. He also referred to the case of *Stop and See Uganda Ltd; HCT CS No.332 of*

2010. He prayed that the offending affidavit by Agatti Nanteza be struck off.

The 3rd Respondent's Counsel alluded to have been served effectively and conceded that it's true, but even if the affidavit is false, he can submit on points of law.

For the 1st Respondent and 2nd Respondent, again service was acknowledged and for different reasons, their Counsel failed to put in affidavits in reply on record on time. They all however, argued that Counsel for the Applicant still retains the burden to prove his case and they are also allowed by law to submit on points of law to submit on points of law even if they filed an affidavit in reply.

In reply, Counsel for the Applicant conceded that they will prove their case as required by law.

Having conceded that the affidavit in reply by the 3rd Respondent is out of time. The 3rd Respondent's Counsel has in effect agreed with the strict provisions of the Civil Procedure Rules.

This Court has had occasions to deal with a similar matter in *Patrick Senyondwa & Ors versus Lucy Nakitto; Misc. Application No.1103 of 2018 from Civil Suit No.170 of 2005* of the Civil Procedure Rules sets timelines for matters such as the one before me, which are interlocutory in nature, coming after scheduling.

Service on the opposite party I limited to a time frame of 15 days. This was violated by the 3rd Respondent. Also the 1st and 2nd Respondents did not file replies in the stipulated time.

The effect of this finding is that the impugned affidavit in reply by the 3rd Respondent is improperly before this Court. There was no leave sought to have it filed out of time.

It is therefore an alien document on record which ought to be struck off and is hereby struck off the record. Counsel prayed that on the occasion of its being struck off, there would be no evidence on record offered by the Respondents. He prayed that on that basis, Court should allow the Applicant to go ahead and prove their case. I do strike off the affidavit. This Court granted parties a schedule to address Court on the preliminary objection.

The preliminary objections raised by the 3rd Respondent is that the Applicant lacks *locus standi*. Counsel raised his grounds in the submissions to which he attached a Court decision that defines *locus standi* of *Dima Dominic Property versus Nyani Godfrey & Ors; CA No.0017 of 2016.*

The thrust of his argument relates to the fact that the 3rd Respondent was granted Letters of Administration to the 5th Respondent to administer the estate of the late Kyobe and the 5th Respondent ordered to liase with the 2nd Applicant and the 3rd Respondent.

These facts are not supported by any visible evidence on record, save Counsel's own submissions. Counsel refers to a Ruling attached in the matter, but no such Ruling is attached; what he referred to has been part of the expunged affidavit in reply and hence cannot be relied on in this Ruling.

The Applicant in reply points out that the preliminary objection is not on points of law which is Respondent 1 annexed to the Respondent's defective affidavit. This position has already been upheld by the finding that the affidavit be struck off. That be as it is,

there is no point of law raised to support the assertion that the Applicant has no *locus standi*.

I did not find anything useful in the 3rd Respondent's submissions in rejoinder. Since they just attempted to justify the fact that they were relying on a Ruling in Misc. Application No. 443 of 2020, which in essence, was not attached but even if it had been attached, would be irregularly introduced in the submissions as evidence.

For all the reasons above, I do find no merit in the preliminary objection raised and it is disallowed.

The effect of the above is that the Applicant has *locus standi* and has shown that the Respondents have not sufficiently raised any ground that persuades this Court to disallow this application.

I do therefore, having looked at the application and its affidavit in support by Balikuddembe Kaweesa, find that the Applicant has proved that there is need to add the Applicants as parties to the suit.

Under O.1 r10(2) and (4) of the Civil Procedure Rules, I do order that the Applicants be added as Defendants to HCT Civil Suit No.518 of 2019.

I further order that the Applicants be allowed to file a written statement of defense to HCT Civil Suit No. 518 of 2019, within 15 days from the date of this Ruling as per the Civil Procedure Rules.

Costs be borne by the Applicants.

I so order.

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Henry I Kawesa

JUDGE

1/4/2022

1/4/2022:

Emmanuel Kiirya (brief for Peter Walubiri) for the Applicants.

Applicants absent.

Omolo Juma Noah for the 1st Respondent.

Jotham Asiimwe for Aisu for 2nd Respondent.

Eric Muhwezi for the 3rd Respondent absent.

Court: Ruling delivered to the parties present.

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Henry I Kawesa

JUDGE

1/4/2022