

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO.2442 OF 2021**  
**(Arising from Civil Suit No. 419 of 2015)**

**1. MIREMBE RACHEAL**  
**2. NAMUBIRU JOYCE            :::::::::::APPLICANTS/DEFENDANTS**

**VERSUS**

**1. NABBANJA MARIAM**  
**2. NABBANJA MADINA**  
**3. SALIMU SSEMITALA**  
**4. REHEMA NACEEJWE**  
**5. SENTAMU ABDUL**  
**6. NAMATOVU ABDU            :::::::::::RESPONDENTS/PLAINTIFFS**

**BEFORE HON LADY JUSTICE KANYANGE SUSAN**

**RULING**

The applicants brought this application by way of Chamber Summon under Section 98 of the Civil Procedure Act cap 71, Section 33 of the Judicature Act Cap 13, Order 6 Rule 28 and 29, Order 7 Rules 11(a), 11(e) and 19 of the Civil Procedure Rules S1 71-1. Seeking for orders that:

- a) Civil Suit No. 419 of 2015 does not disclose a cause of action against the 4<sup>th</sup> and 5<sup>th</sup> Defendant/Applicants.***
- b) Civil Suit No. 419 of 2015 is frivolous and Vexatious as brought against 4<sup>th</sup> and 5<sup>th</sup> Defendant/ Applicants.***
- c) Costs of this application be provided for.***

The application was supported by an affidavit deposed too by the 1<sup>st</sup> applicant **Mirembe Racheal**, the respondents opposed the application.

## **BACK GROUND:**

The respondents are beneficiaries in the Estate of Late Musa Segibwa formerly of land (kibanja) comprised on Block 9 plot 486 land at Kagugube Makerere. On the 21<sup>st</sup> day of August, 2015 they instituted Civil Suit No. 419 of 2015 in the High Court Land Division at kampala against three defendants who were; Margret Kibuuka Nakibuuka, Douglas Gawuluguma, Commissioner Land Registration. Seeking among other orders that; the commissioner land registration cancels the first defendant from the title. Later on 24<sup>th</sup> day of February, 2021 the respondents/ plaintiffs filed an amended plaint and included the applicants/ 4<sup>th</sup> and 5<sup>th</sup> defendants wherefore the 5<sup>th</sup> defendant is the registered proprietor on the suit land.

It is upon that background that the applicants/ 4<sup>th</sup> and 5<sup>th</sup> defendant filed witness statements and later filed the present application in which they raised preliminary points of law which they seek this court to determine first.

## **Issues**

1. Whether the applicants' application is fatally defective?
- 2 Whether Civil Suit No. 419 of 2015 discloses a cause of action against the applicants/4<sup>th</sup> and 5<sup>th</sup> defendant?
- 3 Whether Civil Suit No. 419 of 2015 is frivolous, vexatious and an abuse of Court process?
- 4 What are the remedies available?

## **ISSUE No. 1**

Whether the applicants' application is fatally defective?

The respondents in the present application submitted that the Chamber Summon, which was served to the respondents is fatally defective, irregular, improper and it has no force of law. That it was



neither endorsed by the registrar/Judge nor sealed by court. The respondents cited **Order 5 Rule 1(5) of the Civil Procedure Rules**. Further Counsel for the respondents also cited the case of **Kinyara Sugar Limited Versus Kyomuhendo Pamela HCMA No. 61 of 2020**

The applicant in reply stated that the court which has powers to endorse the application gave directions to serve the respondents with the application and the same was complied with.

Upon perusal of the court file the copy of the Chamber Summon on the record is not endorsed by the Registrar/Judge nor is it sealed.

Under **Order 5 rule 1(5) of the civil Procedure Rules**,

Every such summons shall be signed by the judge or such officer as he or she appoints and shall be sealed by court.

Thus every summon or application should be signed by the judge or registrar. It is thus settled law that provisions of order 5 are mandatory and should be complied with. see **case of Kanyabwera versus Tumwebaze 2005)EA 86 at 93**

In the case of **Iron steel Wares Limited versus CW Matyr and company 1956)23 E.A.C.A. 175 at 177 the East African Court of Appeal** held that Procedural rules are intended to serve as hand maidens of justice, not to defeat it, and we think the high court in its inherent jurisdiction to control its own procedure and has a duty to ensure that each party is given a fair opportunity to state its case and to answer the case made against it.

In deserving cases, court may rightfully exercise its discretion to overlook the failure to comply with rules of procedure upon such conditions as it deems fit intended to guard against abuse of its process.

**Article 126 of the constitution 1995** enjoins courts to administer substantive justice without undue regard to technicalities. But in the

case of **Byaruhanga and co Advocates versus Uganda Development Bank SCCA no 2 Of 2007**, the supreme court held that Article 126(2) (e) is not a magical wand in the hands of defaulting parties.

I find that Counsel for the applicants had an obligation to follow up and ensure that the application is signed by a registrar or judge before serving it. Order 5 is couched in mandatory terms and serving unsigned and unsealed summons is a defect that goes to the root and not a mere technicality.

I thereby find merit in the preliminary objection raised and uphold it. This application is hereby dismissed with costs.

**DATED AT KAMPALA THIS** 31<sup>st</sup> **DAY OF** August **2023**

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**KANYANGE SUSAN**

**AG JUDGE LAND DIVISION.**