

1. JJUNJU FRANK

2. TENDEKE DEOGRATIAS :::::::::::::::::::::::::::::: APPLICANTS

VERSUS

1. ZALWANGO IMMY

2. MBOMBO MONICA :::::::::::::::::::::::::::::: RESPONDENTS

RULING

1. ***Jjunju Frank & Tebandeke Deogratias*** hereinafter referred to as the applicants brought the application against ***Zalwango Immy, Mbombo Monica & Nabiryo Rita*** hereinafter referred to as the respondents by way of miscellaneous application under Section 33 of the Judicature Act. Cap 13, Section 98 of the Civil Procedure Act Cap.71 and Order 6 rules 18& 30, Order 7 rules 6 & 11(d), (e), Order 8 rules 9 & 10 of the Civil Procedure Rules for orders that;

- 1

- iv) Court be pleased to enter a judgement on admission.
- v) The counter claim be dismissed for being served without a seal of court and signed.
- vi) Counter claim be dismissed for having been supported by the illegal powers of attorney
- vii) The counter claim be dismissed for having been served to the 2nd applicant without summons issued
- viii) Court to enter a judgment for the applicants against the respondent/defendants jointly.
- ix) Court be pleased to order Nandawula Jackie to pay costs of this application and the counter claim.
- x) Costs of the application and the main suit be provided for.

Background:

2. The first applicant claims that the respondents are trespassers on his suit land and that early 2020 when the plaintiff completed to erect a house on the suit land, he left the house in charge of his relatives to find tenants to occupy the said house. When his brother approached the 2nd and the 3rd respondents to legalize their tenancies, they informed him how the 1st respondent is their landlord not the applicant. When the applicant approached the 1st respondent, she informed him that she is the owner of the premises and the developments there on and that the 2nd and 3rd respondents are her agents. The applicant filed HCCS No.646 of 2023 for actions of trespass against the respondents, the respondents/defendants served onto the plaintiff a joint written statement of defence which the applicant/plaintiff claims to be invalid at law because it was not signed and sealed by court. The applicant further challenges the documents attached

on the written statement of defence by the respondents/defendants which include the powers of attorney and the tenancy agreements.

1st Applicant's evidence;

3. The application is supported by an affidavit deponed by **Mr. Jjunju Frank** the first applicant which sets out the grounds of the application including the following;

- i) That the pleadings served onto the applicant/plaintiff in HCCS No.646 of 2023 which include a written statement of defence and counterclaim were not signed and endorsed by court.
- ii) That the documents attached to the written statement of defence and counter claim in HCCS No.646 of 2023 which include a tenancy agreement are illegal and invalid at law.
- iii) That the counter claim served onto the 2nd applicant was without a summon yet he was never party to the suit.
- iv) That it is just and equitable of the said application is granted to the applicant.

2nd applicant's evidence;

4. The application is supported by an affidavit deponed by **Mr. Tebandeke deogratias** the second applicant which sets out the grounds of the application including the following;

- i) That I was never coerced to give away a piece of land to the 1st applicant and that the document executed was neither backdated nor executed through fraud.
- ii) That I know the 1st respondent as my daughter but I have never donated or permitted the 1st respondent to erect structures on my land.
- iii) That the 1st respondent has never built any house on my land and she only wants my property and that of the 1st applicant.
- iv) That the power of attorney attached to the counter claim in HCCS No.646 of 2023 is illegal and invalid.
- v) That the counter claim served onto me in HCCS No.646 of 2023 was without a summon yet I was never a party to the plaint.
- vi) That it is just and equitable that the application be granted to the applicants.

Respondent's evidence;

5. The application is responded to by an affidavit in reply sworn by **Mrs. Nandawula Jackie** the lawful attorney for the first respondent in this application in which she states the following among others;

- i) That the powers of attorney attached to the pleadings in HCCS No.646 of 2023 are not only valid at law but also meet the minimum requirements of a valid powers of attorney on grounds that they were signed by both the donor and the donee.

- ii) That the judiciary requires pleadings to be filed through ECCMIS and that upon filing litigants are required to serve physical copies to the opposite parties pending validation, signing and sealing of court then the opposite party is required to follow to ensure that he obtains the signed copies from ECCMIS.
- iii) That the tenancy agreements were duly signed by the rightful parties and the same are valid and enforceable in law.
- iv) That the 2nd applicant was duly served with court process and that's what brings him to court.
- v) That it is in the interests of justice, equity and fairness that the application be dismissed with costs.

6. The same Nandawula Jackie who is the lawful attorney of the 1st respondent replied to the affidavit in support by the 2nd applicant where she states as follows;

- i) That the 2nd applicant was coerced and unduly influenced by the 1st applicant and the document executed was backdated to defeat the 1st respondent's interest.
- ii) That the powers of attorney are not only lawful in nature but also meet the required standards for an enforceable power of attorney.
- iii) That the tenancy agreements annexed to the written statements of defence in HCCS No.646 of 2023 were all signed with the rightful authorized parties.

- iv) That it is in the interests of justice, equity and fairness that the applicant's application number 2639 of 2023 be dismissed with costs.

Representation;

7. The applicants were represented by **Mr.Alex Kagalama** of M/s J.F Ssengoba & Co.Advocates whereas the respondents were absent. The applicants filed their affidavits and only the 1st respondent filed her affidavit in reply as well. The applicants and 1st respondent filed their submissions only which I have considered in the determination of this application. The 2nd & 3rd respondents did not file any affidavits in reply and submissions and if the 2nd & 3rd respondents had any objection to this application, they would have filed affidavits in reply to guide this court in reaching its decision therefore this matter stands uncontested against the 2nd & 3rd respondent.

Issues for determination;

- i) Whether the joint written statement of defence served onto the 1st applicant in HCCS No.646 of 2023 was valid?
- ii) Whether the powers of attorney attached on the Joint Written statement of defence and counter claim in HCCS No.646 of 2023 is invalid?
- iii) Whether the tenancy agreement attached on the Joint written statement of defence in HCCS No.646 of 2023 is invalid and not enforceable at law?

- iv) Whether the 2nd applicant was served with summons to file a defence in HCCS No.646 of 2023?
- v) Whether the affidavit in reply by the 1st respondent offends the law regarding affidavits?

Resolution and determination of the issues;

- i) Whether the joint written statement of defence served onto the 1st applicant in HCCS No.646 of 2023 was valid?
8. The law on filing of defence is provided for under the civil procedure rules under Order 9 and emphasis being laid on the provisions of rule 1 and sub rule (3) which states “***that a defendant on the or before the day fixed in the summons for him or her to file defence shall file the defence by delivering to the proper officer a defence in writing dated on the day of its filing and containing the name of the defendant’s advocate and also the defendants address for service. In such a case he or she shall at the same time deliver to the officer a copy of the defence which the officer shall seal with the official seal, showing the date on which it is sealed and then return it to the person filing the defence and the copy of the sealed defence shall be a certificate that the defence was filed***”. Then sub rule(3) ***on receipt of these documents, the proper officer shall immediately file the defence as of the date when it was posted and shall seal the copy of the defence with the official seal showing the date when it***

was sealed and shall post the defence to the plaintiff or his or her advocate and the copy of the defence to the defendants and file a copy of the defence.

9. I will lay emphasis and particular attention to the underlined sentence which speaks to the point that the defendant shall have his written statement of defence signed and sealed by court before serving the same onto the plaintiff. This is the rationale behind the intentions of the framers of the civil procedure rules under Order 8 Rule 19 which states that; ***“subject to rule 8 of Order 8, a defendant shall file his/ her defence and either party shall file any pleadings subsequent to the filing of the defence by delivering the defence or other pleadings to the court for placing upon the record and by delivering a duplicate of the defence or other pleadings at the address for service of the apposite party”.***
10. The written statement of defence is complete upon fulfilling the provisions of order 8 rule 1 and order 9 rule 1 of the civil procedure rules, drawing reference to the decision in **M/s Simon Tendo Kabenge Advocates & Anor Vs Mineral Access Systems ltd, Misc.App No.570 of 2011** before the learned justice David Wangutusi where he held that, **“the rule under order 9 rule is so clear, that what amounts to filing was the reception of written statement of defence have it sealed and dated by court then serving it on the opposite party.**
11. With the introduction of the Electronic Court Case Management Information System (ECCMIS) by the Judiciary litigants, advocates and all court users ought to be more vigilant

while filing their pleadings in court to ensure that they are in compliance with the civil procedure rules.

12. Parties should take note that pleadings or documents uploaded on ECCMIS that require endorsement and seal of court are considered as drafts till they are endorsed by the registrar and sealed by court further it is the responsibility of the party who files or uploads the documents to ensure that the documents uploaded are competent in order to be authentic and relied upon, where the same is not complied with, the said documents or pleadings are deemed not to be in existence.**(See; *Lawrence Martin Mugerwa Musisi Vs Mugubi Stephen Banja and Anor, Supreme Court Civil Application No.15 of 2022, rulling of Justice Mwondha.*)**

13. In the instant application, the applicants in their affidavits in support under paragraphs 6 & 7 respectively state that they were served with unsigned and not sealed copies of the joint written statement of defence and counter claim by the respondents/defendants in HCCS no.646 of 2023 the same pleadings are attached to the affidavits in support by the applicant and the same neither entail a signature of the registrar nor the seal of court.

14. The 1st respondent in her affidavits in reply to the two affidavits in support under paragraphs 5(b)&5(e) respectively states that court documents are required to be filed through ECCMIS and upon filing, litigants are required to serve physical copies the opposite parties pending validation, signing and sealing of such documents by the registrar and that the opposite party is required to follow up and obtain signed copies from ECCMIS.

15. I find this to be a very strange arrangement and procedure as per the wording of civil procedure rules order 8 rule 1 and order 9 rule 1 and sub rule 3 of the same order together with the supreme court decision in **Mugerwa Musiisi Vs Mugabi and anor (supra)**.
16. I am of the view that the respondents/defendants in HCCS No.646 of 2023 were under a responsibility to follow up on the draft joint written statement of defence and counter claim filed on eccmis to ensure that the same is validated by court and then they were under a duty to serve the signed and sealed written statement of defence and counter claim to the opposite party that is something I find to be parallel to the provisions of Order 9 rule 1 of the civil procedure rules and the ruling in **Mugerwa Musiisi Vs Mugabi & anor (supra)**
17. It is to my finding that the joint written statement of defence and counter claim together with the attachments thereunto in HCCS No.646 of 2023 are defective, non-existence and cannot be relied upon by the parties in court. Therefore, this issue is resolved in the negative and the same succeeds.
18. Upon resolving and determining the first issue to this application this honorable court doesn't find it necessary to resolve and determine the other issues raised by the parties to this application since the same issues derive their validity from the first issue.
19. Before I take leave of this matter, in the alternative the respondents/defendants in HCCS No.646 of 2023 can move court to have the joint written statement of defense filed out of time and the same be validated by court.

20. In the result therefore, this application succeeds with the following orders;

- i) The joint written statement of defence and counter claim together with the attachments thereunto in HCCS No.646 of 2023 is struck out/off the record.
- ii) No order as to costs in this application and the main suit Civil suit No.646 of 2023.

I SO ORDER.



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NALUZZE AISHA BATALA

JUDGE

31st /10/2023