

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 339 OF 2019**

JUSTICE ACUNGWIRE:.....PLAINTIFF

VERSUS

- 1. MUMTAZ KASSAM**
- 2. MUSTAFA TURABARI**
(Administrators to the estate of the late Sugarabai Amarbhai)
- 3. COMMISSIONER LAND REGISTRATION:.....DEFENDANTS**

COUNTERCLAIM

- 1. MUMTAZ KASSAM**
- 2. MUSTAFA TURABA:.....COUNTERCLAIMANTS**
(Administrators to the estate of the late Sugarabai Amarbhai)

VERSUS

- 1. JUSTICE ACUNGWIRE**
- 2. BIZIBU GEORGE WILLIAM**
- 3. DEPARTED ASIANS' PROPERTY
CUSTODIAN BOARD:.....COUNTERDEFENDANTS**

BEFORE: HON. JUSTICE BERNARD NAMANYA

RULING ON PRELIMINARY OBJECTION

1. The brief background of the dispute is that the suit property was among the properties expropriated in 1972 following the expulsion of Asians. The suit property was allegedly repossessed by the late Sugarabai d/o Mahomedali and the late Abbas Ali Valiji on the 10th February 1993 whose estates are now administered by the 1st and 2nd defendants.



2. The plaintiff, Justice Acungwire, brought this suit challenging ownership of the property comprised in LRV 206 Folio 22 Plot 7 Dewinton Road (hereinafter “the suit land”) by the 1st and 2nd defendants (Mumtaz Kassam and Mustafa Turabali, administrators of the estate of the late Sugarabai Amarbhai).
3. The plaintiff claims that he is a sitting tenant on the suit property and that the repossession by the 1st and 2nd defendants of the suit property was fraudulently obtained. The plaintiff avers that the suit property still vests in the Departed Asians’ Property Custodian Board (hereinafter “DAPCB”), and the DAPCB allocated the suit property to him by virtue of an allocation permit.
4. The 1st and 2nd defendants filed a counterclaim in this court against the plaintiff, Mr. Bizibu George William, Executive Secretary of the DAPCB and the DAPCB claiming among other reliefs, that the DAPCB and its officials have no power over the suit property and cannot allocate it to the plaintiff. Mr. Bizibu George William, Executive Secretary of the DAPCB is sued in his personal capacity for his alleged highhanded and fraudulent acts relating to the suit property (see paragraph 4 of the counterclaim).
5. In paragraph 11 of the counter claim, the 1st and 2nd defendants allege several acts of fraud and collusion against the plaintiff (Justice Acungwire), Mr. Bizibu George William, Executive Secretary of the DAPCB and the DAPCB, including the plaintiff colluding with Mr. Bizibu George William to allocate the suit property to him; and the plaintiff colluding with the DAPCB to incite the tenants on the suit property to stop paying rent.



6. The plaintiff (Justice Acungwire), Mr. Bizibu George William, Executive Secretary of the DAPCB and the DAPCB are represented by the same law firm of M/s. Guma & Co Advocates.
7. When the matter came up for a scheduling conference, Mr. Nelson Nerima, counsel for the 1st and 2nd defendants/counterclaimants raised a preliminary objection on the legal representation of the DAPCB by M/s. Guma & Co Advocates on two main grounds: i) that the legal services of M/s. Guma & Co Advocates were procured in breach of the *Public Procurement and Disposal of Public Assets Act (2003)*; and ii) that a conflict of interest situation exists arising from M/s. Guma & Co Advocates representing both the DAPCB and Justice Acungwire (plaintiff and beneficiary of the impugned allocation of the suit property by the DAPCB).
8. In response, Mr. Guma Davis of M/s. Guma & Co Advocates submitted that he was duly appointed by the DAPCB and he tendered in a letter dated 31st July 2019 to confirm that he was instructed to provide legal representation to both the DAPCB and Mr. Bizibu George William, the Executive Secretary of the DAPCB. Mr. Guma Davis also represents the plaintiff (Justice Acungwire). Mr. Guma submitted that he has instructions to represent both Mr. Bizibu George William in his personal capacity as well as the DAPCB. He further submitted that the 1st and 2nd defendants are not prejudiced in any way as a result of his legal representation of the three parties.
9. There are two issues for resolution by the court. The first is whether the procurement of legal services of M/s. Guma & Co Advocates by the DAPCB is in compliance with the *Public Procurement and Disposal of Public Assets Act (2003)*; and secondly, whether a conflict of interest arises as a result of M/s.

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Guma & Co Advocates representing the DAPCB, Mr. Bizibu George William and the plaintiff (Justice Acungwire).

10. Regarding the first issue, the court in the case of Attorney General & Hon. Nyombi Peter v. Uganda Law Society (Miscellaneous Cause 321 of 2013) [2014] UGHCCD 99 considered the issue as to whether the Attorney General had complied with the *Public Procurement and Disposal of Public Assets Act (2003)* in procuring the legal services of M/s Kampala Associated Advocates. *Justice Stephen Musota* held that:

“I am in agreement with the submission by learned counsel for the respondent that it was contrary to the PPDA Act and Regulations as amended for the Attorney General to retain Kampala Associated Advocates to represent him as a person in his own right and then the office of the Attorney General without following the PPDA Act and Regulations. The illegality in instructing Kampala Associated Advocates contrary to the law renders all resultant acts done by the said advocates in relation to the first applicant irregular. The submission by the applicant that complying with the PPDA act was not necessary is therefore misplaced.”

11. The DAPCB is a body corporate established under *section 4* of the *Assets of Departed Asians Act (Cap 83)* and may sue and be sued in its corporate name. The DAPCB is subject to the *Public Procurement and Disposal of Public Assets Act (2003)*. Considering that the DAPCB did not adduce any evidence to prove that the *Public Procurement and Disposal of Public Assets Act (2003)* was complied with in procuring the legal services of M/s. Guma & Co Advocates, on the authority of the case of *Hon. Nyombi Peter (supra)*, I have no difficulty in

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holding that there was non-compliance by the DAPCB in the procurement of the legal services of M/s. Guma & Co Advocates. I therefore declare that the continued legal representation of the DAPCB by M/s. Guma & Co Advocates is illegal.

12. I now wish to consider the second issue. In *Uganda v. Patricia Ojangole (Criminal Case No.1 of 2014)*, the brief facts of the case were that the accused, Ms. Patricia Ojangole, the Chief Executive Officer of Uganda Development Bank retained M/s Ligomarc Advocates to provide legal representation to her as the accused person in a criminal case, and yet the same firm of lawyers were lawyers of Uganda Development Bank. *Justice Lawrence Gidudu* held that M/s Ligomarc Advocates (both partners and employees) cannot ethically represent the accused without falling into the danger of conflict of interest and disqualified M/s Ligomarc Advocates from providing legal representation to Ms. Patricia Ojangole, the accused. *Justice Lawrence Gidudu* further held as follows:

“It is both the actual and the perception that counts when tracing conflict of interest in a transaction. It is what a reasonable person would conclude while viewing the transaction from a distance that counts. It is related to [the] rule against bias. The old adage that justice must not only be done [but] must be seen to be done applies to conflict of interest.”

13. In the case of Sudhir Ruparelia v. MMAKS Advocates, AF Mpanga Advocates (Bowman Uganda), Crane Bank Limited (In Receivership), Bank of Uganda & 2 others, Misc. Application No. 1063 of 2017, Justice David K. Wangutusi held that:

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“Conflict of interest may not exist between an Advocate and a party at the onset of the suit, but an amendment of the pleadings or filing of a Written Statement of Defence, or a Counterclaim or addition of a Third Party may create a conflict of interest that was not previously expected. This realignment of the parties seems to have arisen in the instant case when the Applicant filed a Counterclaim.”

14. Regulation 9 of the Advocates (Professional Conduct) Regulations (S.I 267-2)
provides that:

“9. Personal involvement in a client’s case.

No advocate may appear before any court or tribunal in any matter in which he or she has reason to believe that he or she will be required as a witness to give evidence [...]”

15. Regulation 10 of the Advocates (Professional Conduct) Regulations (S.I 267-2)
provides that:


“An advocate shall not use his or her fiduciary relationship with his or her clients to his or her own personal advantage and shall disclose to those clients any personal interest that he or she may have in transactions being conducted on behalf of those clients”.

16. In the case before me, the 1st and 2nd defendants allege several acts of fraud and collusion against the plaintiff (Justice Acungwire), Mr. Bizibu George William, Executive Secretary of the DAPCB and the DAPCB, including the plaintiff colluding with Mr. Bizibu George William to allocate the suit property to him; and the plaintiff colluding with the DAPCB to incite the tenants on the suit property to stop paying rent.

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20. Furthermore, it is reasonable for the 1st and 2nd defendants to perceive M/s. Guma & Co Advocates as being in possession of facts or knowledge that could give undue advantage to the plaintiff (Justice Acungwire) to the prejudice of their case.
21. Accordingly, it is my conclusion that the law firm of M/s. Guma & Co Advocates cannot ethically provide legal representation to both the DAPCB and the plaintiff (Justice Acungwire) without being engulfed in a conflict-of-interest situation.
22. M/s. Guma & Co Advocates (both partners and employees) is consequently disqualified from providing legal representation to the Departed Asians' Property Custodian Board (DAPCB) and the plaintiff (Justice Acungwire) in H.C.C.S No. 339 of 2019.

I SO ORDER.


BERNARD NAMANYA
JUDGE
28th February 2023