

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA
LABOUR DISPUTE MISCELLANEOUS APPLICATION 101/2016
(Arising from Misc. Appl. No. 24/2016)

MUTAWE ANDREW.....APPLICANT

VERSUS

SANLAM GENERAL INSURANCE.....RESPONDENT

BEFORE

1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda TumusiimeMugisha

PANELISTS

1. Mr. Ebyau Fidel
2. Mr. F. X. Mubuuke
3. Ms. Harriet NganziMugambwa

RULING

This a ruling arising out of a preliminary objection.

Briefly, the applicant filed this application seeking that this court vacates the order of the registrar in M.A. No. 24/2016 which orders stayed execution of an award by a labour officer at Nakawa. The application was supported by an affidavit sworn by the applicant.

An affidavit in reply was sworn by one Timothy Lugaizi of Masembe, Makubuya Adriko, Kagaba& Sekatawa Advocates.

Before the court proceeded to hear the application counsel for the applicant raised an objection to the affidavit in reply contending that Timothy Lugaizi had no capacity to swear the affidavit in reply. He relied on **regulation 9 of the advocates professional conduct regulations** which according to him bars advocates from making affidavits in regard to contentious matters. He also relied on **Busingye Properties Vs Jianhige FrassioLuyondo M. A. 2013/2013.**

In reply Mr. Mukibi countered that the deponent was not in personal conduct of the case and deponed to the facts he was knowledgeable about.

He argued that whereas regulation 9 cited by counsel for the respondent bars an advocate for appearing at the bars as a witness, the situation was different in the case before court. He submitted that counsel T. Lugayizi deponed to questions of law to which he could ably do.

Regulation No. 9 stipulates

" 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, whether verbally or by affidavit; and if , while appearing in any matter, it becomes apparent that he or she will be required as a witness to give evidence whether verbally or by affidavit, he or she shall not continue to appear, except that this regulation shall not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on a formal or non contentious matter or fact in any matter in which he or she acts or appears".

We agree with counsel for the applicant that the mischief that regulation No. 9 intended to prevent was to preclude a lawyer from providing evidence that ordinarily should be provided by their clients. Although counsel Timothy Lugayizi may not have been in personal conduct of the case, having been a practicing advocate with chambers hired by the claimant, he was in our considered opinion covered by the said regulation. The fact that he was not in personal conduct of the case would not exclude him from the operation of the regulation.

On perusal of paragraphs 3 of the affidavit in reply, counsel Timothy Lugayizi says “the respondent denies each and every allegation of fact..... paragraphs 4, 6, 7, 8, 10, 16, 21, in our view are averments that ought to have been deponed by the client.

They are therefore in contravention of regulation 9 cited above.

Without the said averments, the whole affidavit is in our view defective and therefore the objection is sustained and the affidavit in reply is struck out.

No order as to costs is made.

Signed by:

The Hon. Chief Judge, Asaph Ruhinda Ntengye

The Hon. Judge, Linda Lillian Tumusiime Mugisha

Panelists

Mr. Ebyau Fidel

Ms. Nganzi Harriet Mugambwa

Mr. Frankie Mubuuke

DATED: 27TH MARCH, 2017.