

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA

**HCT-05-CV-MA-0115-2000**

WILLING TUMUKUNDE .....APPLICANT

VERSUS

ABUSAGI KARUNGI .....RESPONDENT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

**RULING**

At the outset of the hearing of this application Mr. Magoba, counsel for the respondent raised two points of objection. The first was that the application had long expired given that it was signed and issued by the Acting Deputy Registrar on 27th March 2000 and was not served on the respondent until 17th April 2003, almost three years after the event. The second point of objection was that the application is incompetent given that it offended against Order 6 rule 1 of the Civil Procedure Rules, lacking as it did a summary of evidence, a list of witnesses, a list of documents and a list of authorities. In the circumstances Mr. Magoba argued the application be struck out with costs.

On his part Mr. Kwizera counsel for the applicant opposed the contentions of Mr. Magoba. While he conceded that the application was filed on 15th September 2000 he observed that the Deputy Registrar could not have signed and issued the notice of motion on 27th March 2000 which was an earlier date. He added also that having filed the notice of motion the applicant did not have the onus to find the appropriate hearing date and then proceed to communicate it to the respondent. He said that that is court's work after taking into account the court's diary. Regarding the second point of objection Mr. Kwizera argued that Order 6 rule 1 does not apply to these proceedings and that as such it was not mandatory to annex the various accompaniments to the application.

Concerning the first point of objection I agree with counsel for the applicant that there must have been a mistake in the process somewhere for the Deputy Registrar could not have possibly signed the notice of motion about six months prior to its signature by counsel for the applicant who then proceeded to register it. The signature could have come at a later date and most probably in a different year. The blame should not go to the applicant's door then. It is clear at the time of filing the application that court left the date of hearing open. If a date was fixed years later once again the applicant is not to blame. This point of objection must therefore fail.

Regarding the other point of objection, I find the applicant had accompanied the notice of motion with an affidavit, a summary of evidence and lists as required under Order 6 rule 1 CPR. However only the notice of motion and the affidavit were signed. The balance of the requirements did not bear either a signature or a date though space for both was amply provided for. In my view it is when counsel for the applicant realized what had gone amiss that he found handy the argument that in an application like the present Order 6 rule 1 CPR was not mandatory. This is all the more puzzling given that the aim had initially been to abide by provisions of Order 6 rule 1 CPR and the realization that the application revolves around documents like a will and judgments of L.C. Courts. Can it still be gainfully argued that provisions of Order 6 rule 1 CPR are irrelevant? Perhaps counsel for the applicant would have argued successfully in an application that relied solely on an affidavit. Such is the position even in specially endorsed plaint under Order 33 CPR. Indeed that was the holding of this court in Sule Pharmacy Ltd vs The Registered Trustees of the Khoja Shia Itana Shari Jamat, Misc. Appl. No. 14 of 1999 (High Court, Kampala). As I have already observed, this application would require a statement of the requirements mentioned under Order 6 rule I of the Civil Procedure Rules. Lack of the same offends against the provision and renders the application incompetent. The second objection is thus upheld.

Accordingly this application is struck out with costs to respondent.

P. K. Mugamba  
Judge

19th October 2004

Mr. Kwizera for the applicant

Mr. Magoba for respondent

Parties in court

Ms Tushemerirwe — court clerk

Court:

Ruling read in court.

P. K. Mugamba

Judge