

THE OF REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

Sirasi Bitaitana & 4 Ors. v. Emanuel Kananura

(Civil Appeal No. 47 of 1976)

Judgement

Civil Procedure - Applications - Application will be dismissed if the affidavit supporting such application is false.

Civil Procedure - Effect of non-entrance of appearance - if party does not enter an appearance in response to summons to enter appearance, the party so failing puts itself out of court and has no locus standi.

Evidence - Affidavits - an affidavit is a serious document once it contains falsehood in one part, the whole becomes suspect.

This was an appeal against the ruling of the Magistrate Grade 1 at Mbarara on 9th February, in which he dismissed applications by the present five appellants/defendants to set aside an ex-parte judgement entered against them.

The respondent/plaintiff had sued for the return of his weighing scale or its value (Shs. 1,500/=) and general damages for its unlawful seizure and detinue by the five appellants. This suit followed criminal proceedings against the appellants in the same matter. The trial magistrate gave judgment after hearing formal proof in favour of the respondent/plaintiff for the scale or their value of Shs. 1,500/- and Shs.200/- general damages and costs. The appellants never entered an appearance after being served and no defence was filed.

The appellants then filed a notice of motion to set aside the ex-parte judgment and applying for stay of execution supported by the affidavit of one of the appellants which was adopted by each of the other appellants. The magistrate who heard that application found the affidavit to be false on the grounds that paragraph six of the

affidavit was inconsistent with paragraph two of the notice of motion which it purported to support. He held that the lie in the affidavit went to the root of the application.

On appeal it was suggested for the appellants that the inconsistency be ignored and the application be decided upon other paragraphs. It was, however, a contention of the respondents that since the applicants were served with summons to enter appearance and failed to enter an appearance or file a defence, there was no merit in the application.

Held: 1. The inconsistencies in affidavits cannot be ignored however minor, since a sworn affidavit is not a document to be treated lightly. If it contains an obvious falsehood, then it all naturally becomes suspect.

2. An application supported by a false affidavit is bound to fail because if applicant in such a case does not go to court with clean hands and tell the truth.

3. Since the appellants had been served with summons to enter appearance they failed to respond to them, then they had, by that failure put themselves out of court and had no locus standi.

4. Ignorance of the procedure is no defence, except in very exceptional cases especially constitutional ones - Katikiro of Buganda v. Attorney General of Uganda. [1958] E.A. 765.

Appeal dismissed with costs.

Allen, J

January 20th, 1977

Cases Cited:

1.Dyson v. Att. Gen., [1911] 1 K.B. 410

2.Katikiro of Buganda v. Att.Gen. of Uganda, [1958] E.A. 765.