

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-MA-0297-2014  
(ARISING FROM CIVIL APPEAL NO. 110 OF 2012  
(ARISING FROM MBALE CIVIL SUIT NO. 68/2011)**

**1. BIKWERERE LAWRENCE**

**2. MASAABA ISAAC.....APPLICANTS**

**VERSUS**

**NAMATAKA REGINA BENNARS.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

The applicant moved this court by chamber summons for grant of the following orders.

1. That the consent Certificate of taxation dated 21. August. 2014 in Appeal No.110 of 2012 be set aside.
2. That this Honourable Court be pleased to stay the execution issued in civil appeal No.110 of 2010 pending civil suit 68 of 2011.
3. Costs of the application.

The application is supported by the affidavit of **MASAABA ISAAC**.

The respondent opposed the application and relied on the affidavit in reply by **Namataka Regina Bennars**. Applicant filed an affidavit in rejoinder sworn by **Masaaba Isaac**.

During the hearing, Counsel for Applicants in his submissions agreed with counsel for Respondent's submissions that the second ground was moot, and he abandoned it. This court therefore finds that the 2<sup>nd</sup> ground is not proved as there is nothing to stay.

This court will now consider the first ground regarding setting aside of the consent order.

The applicant through the affidavit of **Masaba** under paragraph 7 stated that he has never personally executed the consent nor authorized his lawyer to consent to the taxation. He stated that his lawyer colluded with the lawyer for the respondents to file the said consent.

These averments were contraverted and denied by **Namatoka Regina**.

Under paragraph 6, 7, 8, 9, 10 and 11, she depones that both applicant and respondents and their respective lawyers attended a taxation hearing on 21.08.2014, and all agreed to the proceedings that culminated in the consent taxation order. She insisted under paragraph 13 of her affidavit, in response to paragraph 8 of applicant's affidavit that the applicant was in court during the taxation hearing and was fully aware of what transpired.

In his affidavit in rejoinder, under paragraph 6, applicant states that he was not present before the Registrar on 21.08.2014. He avers under paragraph 13 that the Registrar did not give him a fair hearing, by denying him an opportunity to be heard.

It was argued by counsel for Respondents that the applicant both accepts and denies being present in court in his own pleadings. Respondent's Counsel invited court to check the record to ascertain if applicant was in court or not.

I have cross checked the record on court proceedings before the Registrar. I find that on 21.08.2014, the 1<sup>st</sup> Applicant was present, the 2<sup>nd</sup> Applicant absent, but their lawyers were all present. However lawyers are on record as having reported that they consented with the parties to allow the bill at 8,118,20/=. There is therefore one legal point to determine here. Whether these parties are bound by the actions of their lawyers.

Counsel for the Respondent referred to the authority of *Twiga Chemicals Industries Ltd v. Viola Bamusedde*, CA 9/2002, to argue that:

*“A man or woman who empowers an agent to act for him/her is not allowed to plead ignorance of his/her agent’s dealings.”*

He also referred to the case of *Okwir P. v. Charles Olwa Okwaro Misc. Appn 314/2012 (Kla)*, where **J. Tuhaise** discusses the effect of O.4 rule 3 of the Civil Procedure Rules, and held that:

*“Service of process on the recognized agent of a party is as effective as if the party had been served.”*

The appellant’s counsel in rejoinder referred court to the case of *Harani v. Kassam (1952 EACA) 131* where **Seato J** held that:

*“An order made on behalf of parties is legally binding but can be invalid if there was collusion, fraud, or misapprehension....”*

Counsel referred to paragraph 7 of the applicant’s affidavit to infer collusion.

I have carefully considered the above arguments. I find that applicants do admit that they instructed **Mustapha Watuwa Songoni** as Counsel in the said matter. (Paragraph 3 of **Masaba**’s affidavit). The applicants also concede that their counsel informed them that hearing of taxation was on 20<sup>th</sup> August 2014, (See paragraph 7 of the **Masaba**’s affidavit in support). The Applicant (**Masaba**) claims he reached late and found when his counsel had entered consent with Respondent’s counsel.

This action in law is what is referred to as the principle of “agents” or Advocates acting on behalf of clients. I agree with the arguments expounded by counsel for respondents that applicant in this case has not led any evidence of fraud or collusion as alleged. He states so in his affidavit but has no evidence in proof. It is moreover on record that both applicants are jointly seeking court to set aside the consent. However the court record shows that 1<sup>st</sup> Applicant **Bikwerere** was present in court on 21.08.2014 when taxation hearing was being conducted. Their lawyer was also present. Court took down a record of what was going on. The 1<sup>st</sup>

Respondent did not object. The lawyers clearly informed court that both parties had reached the said consent amicably.

I find no evidence of fraud or collusion, to cause this court to treat the actions of counsel for the applicants- **Mr. Mustapha Watuwa** as fraudulent. The decision in the case of ***Twiga Chemicals Industries Ltd v. Viola Bamusedde*** (supra) is instructive in this matter, to restate the principle that the knowledge by the Applicants that a taxation was being handled that day, on their behalf by Mr. Mustapha, as their legal representative, brings into play the doctrine that a man or woman who empowers an agent (Advocate) for him or her is not allowed to plead ignorance of the agent's dealings. This rule in our Civil Procedure Laws is re-emphasized under the provisions of O.3 r. 1 of the Civil Procedure Rules which provides that:

*“Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may except where otherwise expressly provided by law for the time being in force, be made or done by the party in person or by his recognized agent, or by an Advocate duly appointed to act on his or her behalf except that such appearance shall if court so directs be made by the party in person.”*

In this case the person who appeared in court on behalf of the applicants was a fully instructed Advocate. (See paragraph 3 of **Masaba's** affidavit in support). He therefore had authority to act on their behalf as he did. There was no contrary court order requiring the parties to appear in person. There is no evidence of collusion, or fraud.

I am therefore unable to find any justification for the prayers made under this ground. This ground is not proved and for reasons above, it fails.

In the result, this application is not proved. It is dismissed with costs to Respondents.

**Henry I. Kawesa**

**JUDGE**

**11.11.2016**

Right of appeal explained.