

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT Jinja
MISC. APPLICATION NO. 142 OF 2020
(Arising out of Land Suit No. 080 of 2019)**

IGANGA TALKIES LIMITED APPLICANT

VERSUS

HUSSEIN BADDA RESPONDENT

BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

RULING

Introduction

This application was brought by way of Chamber Summons under Order 41 Rules 1 and 9 of the Civil Procedure Rules, SI 71-1 and Section 98 of Civil Procedure Act, Cap 71 for orders that:

- a) A temporary injunction doth issue against the Respondent his agents, workers, servants, and any person claiming under him or acting on his behalf from demolishing the existing structure, constructing any new structure on the suit property, main suit pending before this Honorable Court.
- b) Costs of this application be provided for.

Background

The application was supported by an affidavit sworn by Ali Mukidadi Mulikiriza, the Applicant's lawful attorney wherein he averred as follows. That the Applicant filed Civil Suit No. 080 of 2019 (hereafter referred to as the main suit) before this court and it has a very high chance of success. That the Respondent has cordoned off the suit property using iron sheets with intention to demolish the existing structures and commence construction of a new structure on the suit property. Also that it is imperative that the status quo of the suit property is maintained until final determination of the main suit. He avers that the Applicant will suffer irreparable loss which cannot be easily remedied by damages.

The Respondent filed an affidavit in reply on 29th October 2020 firstly pointing out that the deponent of the Affidavit in support of the application is not the Applicant's attorney. Secondly that the Applicant's interest if any expired on 29th



October, 2004. That the Applicant's claims were also the subject of determination in Civil Suit 101 of 2014 which was dismissed for lack of a cause of action. That the current structure on the suit land is old, dilapidated and a public health hazard.

Representation

Bwenene Victoria appeared for the Applicant at the hearing. The Respondent and his lawyers, M/S Namabale, Nerima & Co. Advocates & Legal Consultants were absent.

Resolution

While reading this file, I observed firstly that the affidavit in support of the application was sworn by a person without capacity to. Paragraph 1 of the Affidavit in Support of the application sworn by Ali Mukidadi Mulikiriza states:

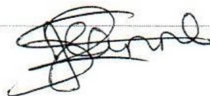
“That I am a male adult Ugandan of sound mind the holder of powers of attorney to represent the Applicant in all legal proceedings touching the suit property and I affirm this affidavit in that capacity.”

Attached was a copy of a duly registered power of attorney. However, this power of attorney is issued to Ali Mukidadi Mulikiriza by Indira Kishor Jobanputra (Executor of her late Natwarlal Gordhandas Kachhela), and Nirmala Kachhela (wife to the late Natwarlal Gordhandas Kachhela). The Powers of Attorney in this case should have been issued by the Applicant, Iganga Talkies Limited. As far as this court is concerned the above named grantors of the powers of attorney are strangers to this application and the Applicant company. and the main suit in general.

The Certificate of title to the suit land, LRV 208 Folio 14 Plot No. 114 Main Street Iganga, is registered to Iganga Talkies Limited. The Repossession Certificate issued in line with the suit land was also made out to the Applicant company.

Where an affidavit is made on behalf of another, the deponent must attach a document granting him or her authority to do so. In this case, the power of attorney needed ought to have been granted to Ali Mukidadi Mulikiriza by the Applicant company. See **Kaheru Yassin & Another -v- Zinorumuri David, Misc. Application No. 82 of 2017.**

Therefore, since the company is a distinct person in law, only a person well versed with the operations of the company should be in a position to swear an affidavit as to its dealings. This court cannot take as credible Mr. Mulikiriza's assertions as to when and how the Applicant's lease was renewed, and the status




quo on the suit land. The credibility of the entire affidavit is brought into question. On that basis alone, the affidavit is struck out, and in turn the application too.

Conclusion:

This application therefore fails and is dismissed with costs to the Respondent.

I so order.



Jeanne Rwakakooko
JUDGE
17/12/2021

This Ruling was delivered on the 10th day of Feb, 2022