

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 0821 OF 2013
(Arising out of Civil Suit No. 0615 of 2012)

MUKUYE STEVEN & 106 OTHERS ::::::::::::::::::::::::::::::::::: APPLICANTS
VERSUS
MADHIVANI GROUP LTD ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE BASHAJA K. ANDREW

R U L I N G:

The Applicants brought an application under **Order1 r.13; Order 52 r.1 CPR** seeking for orders that 106 Applicants be joined as Defendants to the main suit vide **Civil Suit No. 615 of 2012**. At the commencement of the hearing Mr. Kuteesa Paul, Counsel for the Respondent, raised a number of preliminary points to law seeking to have the said application dismissed.

The first one is that the application is supported only by the affidavit of **LUMAAMA APPOLLO** who does not represent the other 106 persons, who have not sworn affidavits. That the said **LUMAAMA** has not sworn on behalf of the others and is thus the only Applicant to this application, which should be dismissed as against the other 106 persons.

Secondly, that one **WALUSIMBI GODFREY** who swore an affidavit on 17/9/13 purporting to represent the 106 people lacks their authority to do so. That even “**Annexure L01**” to his affidavit, which is list of the 106 people claiming to have

given him authority shows that quite a number of them did not sign it, which excludes them from being represented by the said Walusimbi.

Thirdly, that the said Walusimbi purports to swear the affidavit on behalf of 106 yet he does not have a Power of Attorney from them as proof that he is acting as their agent. That under **Order 3 r.2 (a) CPR**, it is a requirement that a recognized agent must have a Power of Attorney, and that “*Annexure LO1*” attached to his affidavit is one.

The fourth point is that the application was filed on 5/9/13, but the letter purporting to authorise Walusimbi to act for the 106 people is dated 13/9/13, and that this means that the application was filed without their authority in the first place. Counsel prayed that the application be dismissed as against all the 106, save for Lumaama Apollo who has filed a proper affidavit in support of the application. To buttress these propositions, Counsel relied, *inter alia*, on the cases of ***Mugoya Construction & Engineering Ltd.v. Central Electricals International Ltd., Misc. Appl. No. 699 of 1009 (Arising from C.S. No. 203/2009 (Commercial Court Division); Makerere University v. St. Mark Education Institute Ltd. & O’rs H.C.C.S No. 378/93.***

In response Mr. Luzige Joseph, assisted by Mr. R. Bawutu, Counsel for the Applicants, submitted that all the Applicants are properly before court through their chairman and representative Walusimbi; who has sworn an affidavit on his own behalf and on behalf of the 106 other persons; and that his affidavit discloses the that he swears in that capacity. Further, that “*Annexure LO1*” to Walusimbi’s affidavit is a list of the 106 persons who signed it authorising him to act on their behalf, and that there would be no need of the 106 persons swearing separate affidavits.

Regarding the persons who did not sign the list, Counsel for the Applicants submitted that the Respondent has not adduced evidence to rebut their willingness

to be added as parties, and that their failure to sign was due to a short time given and practical difficulties in locating them.

Counsel also submitted that **Order 3 r.2 (I) CPR** cited by Counsel for the Respondent as regards recognised agents is not applicable because Walusimbi has not sworn the affidavit as an agent but as a representative of the other people who authorised him to act for them. Counsel cited **Order 1 rr.8 & 12(2) CPR** as the applicable law that where there are many defendants they may authorise anyone or a few of them in writing to act for them. Further, that the cases cited by the Counsel for Respondent are distinguishable from the instant one in that they were dealing with recognized agents, whereas in this case the issue at hand is a party acting in representative capacity on behalf of others.

Consideration.

The application is brought under **Order 1 r.13 CPR**, which provides for adding or striking parties to proceedings either as plaintiffs or defendants at any time before the trial. It is, however, not called for to go into detailed consideration of the provision at this stage since the points raised only relate to the issue as to whether the Applicants have legally given their authority to the parties claiming to represent them.

Order 1 r.12 (1) CPR provides that;

“Where there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for that other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for that other in any proceeding.” [Underlined for emphasis]

Sub –rule 2 thereof stipulates that the authority shall be in writing signed by the party giving it and shall be filed in the case.

From the clear wording of the provisions above, there appears to be nothing that prohibits the deponent, Walusimbi in the instant application, from swearing an affidavit on behalf of the others who have given him the authority in writing duly signed to represent them. In my view, “*Annexure LOI*” to the affidavit of Walusimbi meets the requirement under **sub –rule 2 (supra)** that the form of the authority shall be “*in writing signed by the party giving it.*”

The Applicants in this case had several other options open to them in by which they could still properly bring the application to be added as parties. For instance, they could obtain a representative order under **Order 1 r.8 (1) CPR** and one or a few of the Applicants could, in that case, act as representatives of the others. Under **Order 1 r. 10(2) CPR**; the Applicants had yet another option, though time wasting and cumbersome, where each of the 106 persons could move court, and if their application met the criteria provided thereunder they would be added as defendants. The Applicants also had the option of giving a Power of Attorney to one or few of them to act as their agents under **Order 3 r.1 CPR**.

In all cases, however, where a party acts whether in a representative capacity or as agent of the others, **Order 7 r.4 CPR** requires that not only must the party have the necessary authority of the others to act for on their behalf, but also must show in the pleadings the capacity in which he or she is acting on behalf or in the name of the others. See: ***Wycliffe Kiyangi v. Kajuna, HCCS No.813 of 1992 (1994) V KALR 1.***

On the issue regarding persons listed in “*Annexure LOI*” who did not append their signatures, provisions of **Order 1 r.12 (2) CPR** are mandatory that the form of the authority shall be in writing signed by the party giving it. It would follow that by not signing or by withholding their signatures; those particular persons did not give their authority, and cannot be regarded as being represented by Walusimbi or any other person in the application. Accordingly, the application is dismissed as against

all those persons listed in “*Annexure LOI*” whose signatures do not appear. For avoidance of doubt these are listed as number 20, 22, 41, 42, 45, 48, 64, 65, 66, 68, 69, 70, 72, 73, 74, 75, 76, 78, 81, 86, 87, 88, 89, 92, 93, 96, 97, 98, 101, 102, 104 and 106.

Concerning the issue that the application was filed on 5/9/13 and the letter authorising Walusimbi is dated 13/9/13, in my view, it does not raise strong arguments. ***Order 1 r.13 CPR*** provides that parties may be joined at any time before trial by motion or summon or at the trial in a summary manner; and the pleadings shall be amended to reflect the amendments made. It follows that the authority to Walusimbi on later date would not affect the application. In any case, evidence could be adduced at any time provided there is no prejudice to the opposite party.

The preliminary points are overruled. The application will proceed only with the parties who appended their signatures authorising Walusimbi to act on their behalf.

BASHAIJA .K. ANDREW

JUDGE

24/09/2013