

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 0799 of 2022
ARISING OUT OF CIVIL SUIT NO. 0081 of 2022**

BAGUMA GEOFFREY:..... APPLICANT

VERSUS

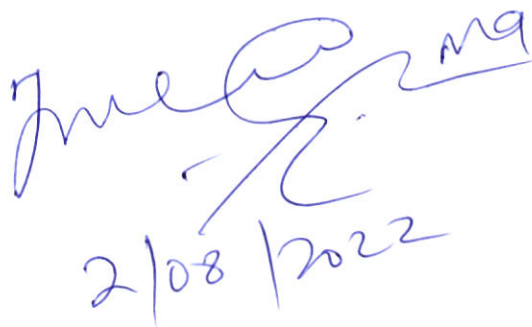
**NILITA PAUL:..... RESPONDENT
(*Suing through her Lawful Attorney SARITA ALAM*)**

BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

RULING

This is an application brought by way of Chamber Summons under **Section 33 of the Judicature Act Cap 13, Section 98 of the CPA Cap 71, Order 7 rules 11(d) and 19 of the CPR, Order 52 Rules 1 and 3 of the CPR.** The applicant is seeking for orders that:-

- (a) The plaint filed by the respondent on the 27th day of January 2022 vide **Civil Suit No. 81 of 2022** be


2/08/2022

struck out for being barred in law and/ or offending


Order 7 Rule 11 (d) of the CPR.

(b) The respondents' said suit be struck off and dismissed with costs for being incompetent.

(c) The costs of the application be provided for.

The application is supported by the affidavit of the applicant who deposes inter alia:-


(i) That the respondent's case offends the provisions of **Order 7 Rule 11(d) of the CPR** and should be struck off/rejected as it is premised on an illegal, invalid and defective Powers of Attorney.


2/08/2022

- (ii) That is fair, just, equitable and in the interests of substantive justice that this application is granted.


In her affidavit in reply **Sarita Alam** the Lawful Attorney of the respondent deposes inter alia:-

- (i) That with the help of her lawyers, she finds the supportive affidavit deposed by the applicant misconceived, misleading, hurriedly filed without due diligence, ill advised, incompetent and lacking in merit and the same ought to be dismissed summarily.
- (ii) That the gist of the application is that the head suit should be struck out with costs since she filed it without first registering the Power of


2/08/2022

Attorney from the respondent to her and paying the necessary stamp duty.

- (iii) That she received the Power of Attorney from Nilita Paul dated 21st March 2021.
- (iv) That she registered the same with Uganda Registration Services Bureau (URSB) on the 27th day of May 2021 and paid the necessary chargeable stamp duty. A copy of the certified copy was attached to the affidavit in reply and marked as Annexure "A".
- (v) That there is no confirmation from URSB that her Power of Attorney was never registered and the allegations contained therein are totally baseless.



2/08/2022

(vi) That the application should be struck out with costs.

Counsel for the applicant and counsel for the respondent filed written submissions the details of which are on record and which I have considered in determining this application.

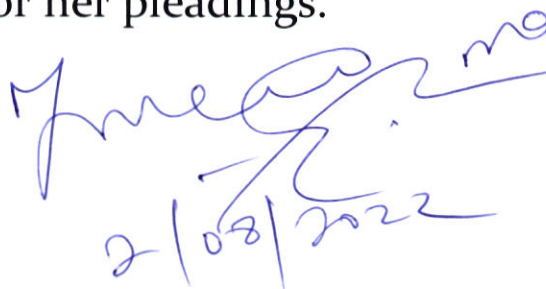
The gist of this application was that the Powers of Attorney the respondent's Attorney relied on were not registered with the Uganda Registration Services Bureau (URSB) and there was nothing to show whether stamp duty had been paid.

It was held in the case of; **Mukisa Biscuit Manufacturing Company Limited Versus West End Distributors Limited**, (1969) E.A 696 that it was trite


2/08/2022

law that a preliminary objection should raise a pure point of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion. A preliminary objection where evidence is required cannot dispose of a suit.

In their submissions, the applicant submitted on points that were not pleaded in his application. The gist of the main application and supportive affidavit were on the suitability of the Powers of Attorney of the respondent's attorney. It was held in the case of *Interfreight Forwarders Limited Versus E.A Development Bank-S.C.C.A No. 33 of 1992* that in a trial a party should not depart from his or her pleadings.

A handwritten signature in blue ink, followed by the date 2/08/2022, also written in blue ink.

The above notwithstanding, the reasons raised by the applicant on the plaint lacking a cause of action are matters that require evidence which cannot summarily be disposed of in an application of this nature. They are facts that would require evidence to prove.

The application was brought under **Order V11 Rule 11(d)** and not **Order 7 rule 11 (a)** on which counsel for the applicant made his submissions on (lack of cause of action).

With regard to the impugned Power of Attorney under paragraph 5 (b) of the attorney to the respondent's affidavit in reply, she deposed that she registered the Power of Attorney on 27th May 2021 as shown in

June 2022
2/08/2022

Annexure “A” of the affidavit in reply. This evidence was not rebutted by the applicant.

Annexure “A” shows that the Powers of Attorney held by **Sarita Alam** from the respondent were duly registered and stamp duty paid.

I therefore find no merit in the preliminary objections raised by the applicant which I will dismiss with costs to the respondent.



.....
HON. JOHN EUDES KEITIRIMA

JUDGE

02/08/2022