

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

CIVIL SUIT NO. DR. MFP 12/90

MRS. TEREZA BEATRICE NALUMAGA NYAIKA:.....PLAINTIFF

VERSUS

PRINCE PATRICK OLIMI KABOYO:.....DEFENDANT

BEFORE: THE HONOURABLE MR JUSTICE I. MUKANZA

RULING

When this case was called for hearing the learned counsel representing the plaintiff raised two preliminary points. He submitted that under Order 1 rule 8 of the Civil Procedure rules Mr. Mugenyi who was possessed of powers of Attorney to represent the defendant did not qualify to do so because he had no common interest with the plaintiff as far as the subject matter was concerned. Secondly under order 3 of the Civil Procedure rules there was subrule 2 where parties are granted powers of Attorney to represent such parties. He submitted that the person appearing before court was not an advocate and secondly the powers of Attorney Mr. Mugenyi had presented were defective. That powers of Attorney are governed by special law and they have got to be registered by the registrar of business and documents on the third floor of Parliamentary building. They must not only be registered by the registrar of business but must also be sealed. The document Mr. Mugenyi had presented does not conform with the legal requirement.

In addition he submitted that the whole purpose of person appearing under the powers of Attorney is to enable a transaction to take place where the person giving the powers of Attorney is for good reason is unable to appear in person physically to transact the business himself.

In the present case Mr. Mugenyi has never applied to this court to justify why he should appear as representative of Prince Kaboyo who lives and then lived in. his house at Government Plot in

Fort Portal. He therefore prayed that the power the document purportedly lodged in court by Mr. Mugenyi be refused on the grounds that:-

It did not conform with the legal requirements under which powers of Attorney are drawn and presented.

The person presenting them has not made a formal application to the court to show why he should appear on behalf of the defendant and what interest he has in the subject matter which is before the court for determination.

Prince Kaboyo is physically present and alive and his home is on Government Road in Fort Portal.

If he was not able to come for some justification he should still have made an application. The court could not allow such conduct for a litigant who is around and does not want to come to court. That was very contemptuous of the court.

The learned counsel finally submitted that the document presented to court as powers of Attorney be rejected and Mr. Mugenyi be dismissed and the documents be done away with so that prince Kaboyo appear in person.

Mr. Mugenyi -Under the Civil Procedure rules a person may appear by himself or by his advocate or any other person authorised by law on his behalf. In this particular case a formal application was made to the District Registrar by the Defendant Prince Kaboyo which was accepted by the District Registrar and signed in his presence and which he also counter signed thereby authorising him Francis Mugenyi to appear on behalf of the defendant as a true and lawful Attorney of Prince Kaboyo.

Secondly Prince Kaboyo swore an affidavit and thereby authorising him to act and execute on his behalf all matters relating to the Civil Suit.

Another *reason* was that at that time when he was granted powers of Attorney Prince Patrick Kaboyo was suffering from goat arthritis. He could not stand and could produce documents to

prove his assertions. He prayed the court that he be accepted as a true Attorney of Prince Patrick Kaboyo having been allowed by the District Registrar.

In reply Mr. Kagaba submitted that even the application to introduce Mr. Mugenyi was irregular under order rule 8 of the CPR in order for the latter to appear there must be a formal application which is heard in chambers by chamber summons. In this case the procedure was never followed. Also under order 48 rule 2 it is a requirement that all matters before court shall be served on the opposite party. In this case the request of making the application was never followed and that created another irregularity. If Mr. Mugenyi relies on order 3 which deals with an agent representing a party but as I said earlier that had to be done by a formal application by the person delegating to another to appear on his behalf and had to show cause why he was delegating the powers and the same have to be examined by the court or if that was difficult the Attorney had to apply and justify his reason for appearing before the court. Under order 3 rule 1 of the CPR the court had the last word on the appearance of such matter. It could accept or reject the substituted party to the suit. He renewed his earlier prayer that the appearance of Mugenyi was wrong and that he be dismissed from the suit and the purported powers of Attorney granted to him be rejected.

From what has transpired above the searching questions as deduced from both the addresses by the learned counsel representing the plaintiff and Mr. Mugenyi the man allegedly possessed with powers of Attorney are how and when are such powers of Attorney granted. Perhaps it is pertinent at this juncture to define the powers of Attorney. **Osborne's Concise Law Dictionary** defines Powers of Attorney as formal instrument by which one person empowers another to represent him or act in his stead for certain, purposes, usually in the form of a deed poll and attested to by two witnesses. The donor of the power is called the Principal or Constituent, the donor is called the Attorney. Osborne quotes an English Statute Powers of Attorney Act 1971 as the authority for that.

And the same Osborne defines an instrument as a formal legal document e.g. a deed of Conveyance, And a deed poll as meaning a deed which is polled or smooth i.e. not indented extra, here as Halsbury Laws of England fourth Edition (Lord Halsham of St. Marylebone) Para 730 Page 438 defines powers of Attorney as an instrument conferring authority by deed. The

person conferring the authority is termed as the donor of the power and the recipient of the authority the donee. In the same paragraph it is stated that a power of Attorney is construed strictly by the courts according to well recognized rules (Bryant Powis is and Byrant Ltd .vs. Le Banque die People 1893 AC at P. 177, Haward vs Bailee 1796 HCB L 618) regard having had to any recitals which showing general object controlling the general terms in the operative part of the deed Rooke vs Lord Kensington 1856 211 & 753 at P. 769.

I have made some researches with regard to both the decisions of this court and the Supreme Court and its predecessors in connection with the matter before the court and I have not come across a relevant authority to the instant case. However under S. 154 of the Registration of Titles Act The proprietor of any land under the operation of the act or any lease or mortgage: may appoint any person to Act for him in transferring the same or otherwise dealing there with by signing power of Attorney in the form in the sixteen schedule to the Act but every such power shall be registered in accordance with the provisions of the Registration of document Act and if so registered within four months shall be presumed to be in force at the time of the registration thereof unless a revocation thereof has been previously registered under the said act. I am of the view this section is relevant to the instant case in as much as he registration powers of Attorney is concerned. And the authority and English Act referred to above are in my opinion also relevant.

It is however important to note that before I proceed to apply the above principles to the instant to reproduce the document the powers of Attorney as granted by the Chief Magistrate/District Delegate.

Republic of Uganda

Mrs. Betty Nyaika::Plaintiff

—versus—

Prince Patrick Kaboyo::Defendant

Powers of Attorney

A power of Attorney give on the 23rd day of October 1990 by me Prince Patrick Kaboyo.

Appointee - Francis Mugenyi P.O. BOX 13 Fort Portal.

I Prince Patrick Kaboyo do hereby appoint nominate constitute Francis Mugenyi to be my true and lawful Attorney for me and in my names and for my use to perform the following acts that is to say:-

(1) To attend to matters pertaining to and case No. DR. MFP 12/90 between me and Mrs. Betty Nyaika and any subsequent matters arising out of this case.

(2) For the purpose of doing every other act or things by my Attorney deemed to be necessary or proper in relation to the said case.

(3) And I hereby declare that all the acts matters and things which shall by it my Attorney given executed made or done for the purpose of the aforesaid shall be as good valid and effectual to all and purposes as if the same had been given made or done by me in my own proper names.

And I hereby undertake at all times to rectify whatsoever by virtue of this power of Attorney.

In witness where of the said prince Patrick Kaboyo has hereinto set this hand the day and year first above written.

Signed and delivered by the said Prince Patrick Kaboyo in the presence of the Chief Magistrate.”

To begin with it cannot be said that that document referred to above was a formal instrument. It was not in the form of deed poll and was never attested to by two witnesses as required by law no was it sealed and registered with the Registrar of Documents under the Registration of Documents Act Cap 80. Mr. Mugenyi therefore was not a recognised agent holding powers of Attorney authorising him to make such appearances and applications on behalf of Prince Pratrck Kaboyo. See order 3 rule 2 of the Civil Procedure.

When addressing me Mr. Mugenyi submitted that Prince Kaboyo swore an affidavit authorising him to appear on his behalf. With due respect I have gone through the records of this court but I have not come across such an affidavit. The only document in the file is the document headed Powers of Attorney and that was all.

Mr. Mugenyi further submitted that under the civil procedure rules a person may appear himself or by his advocate or by any other person authorised by law on his behalf. I think Mr. Mugenyi had in mind the provisions of order I rule 8 of the Civil Procedure rules which states:

*“Where there are numerous persons having the same interested one suit one or more of such persons may with the permission of the court sue or be sued or may defend in such suit on behalf of or for the benefit of all persons so interested. But the court shall **in** such case give notice of the institution of the suit to all such persons either by personal service or where from the number of persons or any other cause such service is not reasonably practicable by public advertisement as the court in each case may direct.”*

The provision of order I rule 8 of the Civil procedure is not available to Mr. Mugenyi because it is not shown in the plaint that he shares the same interest with the defendant in this case and even if I were mistaken here Mr. Mugenyi had never applied and been granted permission to appear and defend the suit on behalf of the defendant. He should have made an application under order 48 rule 1 & 2 and the notice of motion would be served on the apposite party unless the court permitted the application to proceed exparte. That unfortunately was never done. Mr. Mugenyi has definitely no locus standi in this matter. The document signed by Prince Kaboyo was not powers of Attorney conferring on Mugenyi authority to conduct this case on his behalf. The said document is therefore rejected and Mr. Mugenyi is dismissed from the suit and is barred from conducting this case on behalf of the defendant.

I. MUKANZA

JUDGE

17/5/91.

