

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 733 OF 2018
(ARISING OUT OF CIVIL SUIT NO. 113 OF 2008)

- 1. MUGISA M ABRAHAM**
- 2. MUSASIZI JAMES**
- 3. BAMUTAZE JOSEPH**
- 4. BWAMBALE SIBENDA**
- 5. APIKO SAMUEL----- APPLICANTS**

VERSUS

RWAMBUKA & CO ADVOCATES----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application brought under Section 64 and 98 of the Civil Procedure Act, Section 17 of the Advocates Act , Order 41 r 2 (1) & 9 of the Civil Procedure rules and Rule 2 of the Advocates (Professional Conduct) Regulations by chamber summons for the following orders;

- (1)A declaration that Rwambuka & Co. Advocates are not duly appointed/instructed to act as advocates of the parties in Civil Suit No. 113 of 2008 and accordingly do not represent the parties in the suit.

(2) A declaration that Rwambuka & Co advocates have acted in violation of the Advocates (Professional Conduct) Regulations and Advocates Act and are therefore barred from appearing in Civil Suit No. 113 of 2008 or any matter related thereto.

(3) An Injunction against Rwambuka & Co Advocates restraining them from appearing or acting as counsel for the plaintiff/applicants in Civil Suit No. 113 of 2008.

(4) That the costs of the application be provided for.

The grounds upon which this application is based are set out in the affidavit in support of Musasizi James briefly as hereunder;

(a) That on 28th day of March 2008 the parties appointed the applicants as their recognised agents by way of a power of attorney to conduct the suit on their behalf.

(b) That the applicants instructed Mukuve & Co Advocates to conduct the suit as advocates of the applicants/plaintiffs. They conducted the suit and it is only left with the defence witness to close the matter.

(c) That another Advocate appeared when the matter came up for hearing on 22nd November 2018 and claimed to have been instructed to handle the matter.

(d) That Rwambuka & Co Advocates filed a notice of Change on the 15th November 2018 and claimed to have been instructed by 126 plaintiffs/applicants.

(e) That the parties and their recognised agents have never instructed Rwambuka & Co Advocates to be their agents and neither have they withdrawn the instructions.

The respondent opposed the application through an Affidavit in reply filed by Obonyo Peter and a supplementary affidavit of Okwalinga Malinga Peter who stated that;

(1) That on 22nd October 2018, himself and 125 others withdrew instructions for Mukuve & Co Advocates and duly filed a Notice of Withdrawal in court.

(2) That on 25 October 2018, when the matter came up for mention before the trial judge, we were advised to harmonize with Mukuve & Co. Advocates and all attempts failed.

(3) That on 14th November 2018 126 plaintiffs appointed the respondents and the respondents accepted the instructions and on 15th November 2018, the said new advocates filed the Notice of Change of advocates of 126 plaintiffs.

(4) That the trial court directed that the respondents and Mukuve & Co Advocates should prepare a list indicating the names and signatures of the plaintiffs each firm represents and that they should attach signed copies of identity cards of each plaintiffs.

(5) That the reason the plaintiffs withdrew the instructions from the former lawyers Mukuve & Co. Advocates is that Mr. Mukuve Mugaga connived with the applicants and another vendor in town and deducted a sum of equivalent to 33.3% from the payments which had been awarded in Labour Dispute Appeal No. 22 of 2017 which

caused the plaintiff to loss confidence in his professional dealings and on 17th may, 2019 Mr Kalemire Mugagga Mukuve of Mukuve and Co Advocates was found to have a case to answer and was asked to file a defence before 23rd July 2019.

(6) That about 75 plaintiffs formally revoked the powers of attorney which had been given to the applicants. The same have been registered with the registrar of Documents on 17th January 2019 and filed in Court on 19th January 2019.

The applicants were represented by *Mukuve Mugagga* and the respondent was represented by *Nuwandida Johnan Rwambuka*. In the interest of time court directed the counsel for both parties to file written submissions. However, by the time of writing this ruling, the applicant's counsel had not filed the submissions but the respondent filed their submission.

The main ground for this application is that the respondent should not represent the plaintiffs or part of the plaintiff because he has not been instructed by the applicants who are holders of the powers of attorney.

According to the complaints in this matter, the plaintiff filed their suits in an individual capacity through their then advocates of *Muwema & Mugerwa & Co Advocates* and all their names appear as such.

It appears they had a private arrangement outside court where they instructed the applicants in a power of attorney drafted by *Rwakafuuzi & Co Advocates* to represent all the plaintiffs in this matter.

The plaintiffs had another labour dispute in the Industrial Court where they were given an award but according to some of them they never

received all their entitlements/money out of the industrial court Award from their lawyer-Mukuve & Co Advocates.

It is this disagreement that sparked off the withdrawal of instruction from the said Mukuve & Co Advocates and the holders of the powers of attorney for personal reasons are opposed to the instruction of the new advocates in this matter and this is why this application has been filed to restrain them in appearing a counsel for the plaintiffs.

This court had earlier directed that each of the two counsel should present a list of plaintiffs they claim to represent so that the same could be verified in open court in presence of all the rest of the parties. The respondent presented a list of people he claims to represent who indeed gave him instructions together with the national identity cards.

However, the applicants' Counsel Mukuve Mugagga did not or refused to avail the list of the plaintiffs he claimed to represent although some of them appeared in court during the verification exercise. About 53 of those present confirmed to court that their lawyer was M/s Rwambuka & Co Advocates while 21 of those who appeared confirmed that their lawyer was M/s Mukuve & Co Advocates.

It is the view of this court after the whole exercise of verification that there could be some 'ghost' plaintiffs who do not exist or if they exist they are not former workers/employees of G4S Security Services Limited. The list of plaintiffs should be investigated by police and properly be verified by the defendant in order to be sure that the court is dealing with the proper persons named in the plaints.

The applicants' counsel after the verification exercise insisted that the application be heard on its merits and determined.

Regulation 2(1) of the Advocates (Professional Conduct) Regulations provides that;

“ No advocate shall act for any person unless he /she has received instructions from that person or his or her authorized agent”

The respondent has been authorised some of the plaintiffs who have a disagreement against their former lawyers- M/s Mukuve & Co Advocates who had earlier on been instructed by the agents of those plaintiffs in a power of Attorney of 2008.

The respondents have been instructed by a group of plaintiffs who have revoked their instructions/powers to represent them in representation of their case under power of attorney dated 28th March 2008.

The applicants cannot claim that they have never instructed the respondent since the respondents have been duly instructed by a group who have properly revoked power of attorney to them.

They are at liberty to instruct another lawyer of their choice and it would very wrong for them to insist that they should be represented by M/s Mukuve & Co Advocates and yet they have lost professional confidence in his services.

The insistence on representations smucks of some sinister motive behind the same by the applicants. Some of these plaintiffs have indeed dragged their former lawyer to the Law Council. It is clear that the relationship too sour that they cannot be seen to be in harmony.

In a perfect world, every matter a lawyer handles for a client would come to a timely, successful, and profitable conclusion. Sometimes, however, it becomes necessary to withdraw from an engagement before the work is done or the matter comes to an end. Withdrawing from an engagement that

has become problematic can be an effective risk control measure, eliminating an impermissible conflict or neutralizing a dispute with a client before it takes on a life of its own.