



**THE REPUBLIC OF UGANDA**

**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**

**LABOUR DISPUTE MISCELLANEOUS APPLICATION NO. 169 OF  
5 2023 ARISING FROM LDA DISPUTE CLAIM NO.202 OF 2019**

**ANTHONY MUTYABA KATAMBA ..... APPLICANT**

**VERSUS**

**1.S&L ADVOCATES**

**2.MTN(UGANDA) LIMITED ..... RESPONDENT**

10 **RULING**

Before:

The Hon. Ag. Head Judge Linda Lillian Tumusiime Mugisha

**Panelists:**

1. Hon. Katende Patrick
- 15 2. Hon. Julian Nyachwo
3. Hon. Bwire John Abraham

**Representation:**

1. Mr. Peter Muchidi Walubiri and Mr. Hannington Mutebi of M/s. KBW  
Advocates and M/s. Bashasha & Co. Advocates jointly represented the  
20 Applicant.

2. Mr. Michela Mafaabi and Mr. Rodney Nganwa of M/s. S & L Advocates represented the Respondent.

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### **The Application**

This application is brought by notice of motion under section 33 of the Judicature Act, cap 13, Section 64(e) and 98 of the Civil Procedure Act, Cap 71, Section 1 and 77 of the Advocates Act Cap 267, Regulations 4,7,9 and 10 of the Advocates  
30 (Professional Conduct ) Regulations s.126, Order 52 rules 1 and 2 of the Civil Procedure Rules SI 71-1 for orders that:

1. The 1<sup>st</sup> Respondent be restrained from appearing in and acting as Counsel for the 2<sup>nd</sup> Respondent in Labour Dispute Claim No. 202 of 2019 and all applications and appeals arising therefrom.
- 35 2. That the costs of this application abide the results of Labour Dispute Claim No. 202 of 2019.

The grounds of the Application are set up in the Affidavit of the Applicant, Mr. Anthony Mutyaba Katamba and is summarized a briefly set out as follows:

- 40 1. That the advocates of the 1<sup>st</sup> Respondents will be required as witnesses to give evidence on the letter which terminated the Applicant's employment with the 2<sup>nd</sup> Respondent.
2. That the 1<sup>st</sup> Respondents are not independent Counsel capable of assisting Court to administer justice because they are compromised by their past conduct and have personal interest in the outcome of the litigation so as to  
45 vindicate their past actions.

3. The interests of justice require that the 1<sup>st</sup> Respondent are restrained from participating in these proceedings as Counsel and that the 2<sup>nd</sup> Respondent should be represented by an independent Counsel whose overriding duty to court is the due administration of justice.

50 4. He cited circumstances that led to his termination under paragraph's 3-37 and 39-42.

### 1<sup>st</sup> Respondent's Affidavit in reply

The Affidavit in opposition was deponed by **Joseph Luswata**, one of the partners of the 1<sup>st</sup> Respondent and is summarized as follows:

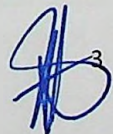
55 That the application is incompetent and without merit because there is no Advocate-Client relationship between the Applicant and the 1st Respondent. It is not denied that the 1st Respondent is retained as legal Counsel of the 2<sup>nd</sup> Respondent and in this capacity, different advocates employed by the 1<sup>st</sup> Respondent advise the 2<sup>nd</sup> Respondent on varied aspects of law, such as:

60 corporate affairs, tax, labor relations and dispute resolution. That the contents of the Affidavit in support and particularly paragraphs 3 — 37, 39-42 are not relevant to the determination of this application because they concern the merits of the main claim and the 1<sup>st</sup> Respondent has neither a personal, actual or potential interest nor a conflict of interest regarding the alleged disputed actions which are

65 the subject of the main claim nor do any of the advocates in personal conduct of the subject claim lack of independence as officers of court.

The issues raised by the Applicant are in any event res judicata having been raised and determined in *Civil Suit No. 168 of 2019: Anthony Katamba versus The Editor in Chief, East African Newspaper and others as well as Civil Suit No. 174*

70 *of 2019: Anthony Katamba versus The Editor in Chief, Independent Magazine and others*. Copies of which were attached and Marked "A" and "B" respectively. In any case Labour Dispute No. 202 of 2019 and the actions alleged therein are





between the Applicant and the 2<sup>nd</sup> Respondent. It is clear that there exists no Advocate- Client relationship between the Applicant and 1<sup>st</sup> Respondent and  
75 there is no reason to believe that any member of the 1<sup>st</sup> Respondent firm is a potential witness or will be required as a witness or witnesses to give evidence in court in the main claim and none has been listed as such in the joint scheduling memorandum which was signed by both parties, attached on the record marked as "C". Therefore the Application has no merit, and is clearly an afterthought.

80 **2<sup>nd</sup> Respondent's Affidavit in reply**

The 2<sup>nd</sup> Respondent's Affidavit in reply was deponed by Enid Edroma an Advocate in the 1<sup>st</sup> Respondent is summarized as follows:

That Counsel in personal conduct of the labour dispute claim before this honorable court has not represented the Applicant in any matter in the Applicant's  
85 personal capacity. That the issues raised by the Applicant in his affidavit in support go into the merits of the dispute between the parties to the main claim with the effect that this application pre-judges the trial and the 2<sup>nd</sup> Respondent like any other individual has a right to determine its Counsel and should not be compelled by the Applicant, its adversary at law, on the choice of Counsel to  
90 represent her. Therefore, she should not be coerced by the Applicant on her choice of legal representation.

**Applicant's Submissions**

The application seeks orders that, the 1<sup>st</sup> Respondent be restrained from appearing in and acting as Counsel for the 2<sup>nd</sup> Respondent in Labour Dispute Cause No. 202  
95 of 2019 and all applications and appeals arising therefrom, because the 1<sup>st</sup> Respondents will be required as witnesses to give evidence on the letter which terminated the Applicant's employment with the 2<sup>nd</sup> Respondent and the 1<sup>st</sup> Respondents are not independent Counsel capable of assisting Court to

administer justice but are compromised by their past conduct and have a personal  
100 interest.

The following issues were framed for the resolution of the application:

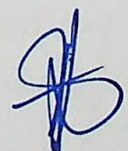
**1. Whether the 1<sup>st</sup> Respondent is required as a witness in Labour dispute  
Claim No. 202 of 2019?**

**2. Whether the 1<sup>st</sup> Respondent is not an independent counsel and is conflicted  
105 in duty to court in prosecuting Labour dispute Claim No. 202 of 2019?**

**Resolution of the issues**

**1. Whether the 1<sup>st</sup> Respondent is required as a witness in Labour dispute  
Claim No. 202 of 2019?**

It was Counsel's submission that Paragraphs 2, 3, 6, 11, 16, 17, 18, 34, 36, 37,  
110 38, 43, 44, 45 and 46 of the Applicant's affidavit in support of the application  
clearly show that the 1<sup>st</sup> Respondent was one of the 2<sup>nd</sup> Respondent's external  
lawyers involved in rendering legal advice and guidance during the process of  
negotiating the renewal of the 2<sup>nd</sup> Respondent's Second National Operator  
Licence, therefore in the course of their engagement, they were aware of the role  
115 of the Applicant in this process and all challenges encountered in the process.  
They were aware of the Respondent's Board's decision to terminate the Applicant  
and actually drafted the Applicant's termination letter giving reasons for  
termination which they knew were not correct. In addition, they drafted a reply  
to the Applicant's Claim and Micheal Sekaddede's witness statement which  
120 according to Counsel introduced other grounds of termination not reflected in the  
letter of termination. Therefore, the 1<sup>st</sup> Respondents are necessary witnesses to  
explain to Court the real grounds of termination and the actual circumstances of  
termination. In the circumstances, **Regulation 9 of the Advocates (Professional  
conduct) Regulations SI. No. 267-2** bars them from appearing in this matter as  
125 Advocates for the 2<sup>nd</sup> Respondent. Counsel relied on **Uganda Vs. Patricia**

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Ojangole, Criminal Case No. 1 Of 2014, in which Court held that, all lawyers in the Partnership in M/S. Ligomac & Co. Advocates, could not represent the accused because they had authored a document that they had to tender in evidence and they had background information that the prosecution would, rely on against the accused. According to Counsel the 1<sup>st</sup> Respondent in the instant case authored the Applicant's letter of termination, and it will cross examine him on this controversial letter alongside other evidence on termination. Therefore, they cannot remain as Advocates in this matter. He also relied on **Sudhir Ruparellia Vs. MMAKS Advocates & 3 Others, Miscellaneous Application No. 1063 of 2017**, in which Court emphasized the "canteen factor" where interactions involving one of the partners is imputed on the other partners. Consequently, if one partner of the 1<sup>st</sup> Respondent is disqualified, the rest of the partners are disqualified as well. He also cited Mallesons Stehen Jaques Vs. KPMG Peat Marwick [1990] 4 WAR, 357 at 374-5 and Linyi Huatai Battay Manufacturing Co. Ltd Vs. Muse AF Enterprises Co. Ltd, Miscellaneous Application 573 of 2020, in which court found that an affidavit in rebuttal deposed by Counsel in personal conduct of a Contentious matter was held to be fatally defective and struck it . Similarly, the Advocates from S & L Advocates being witnesses in the Labour claim before this court cannot appear as counsel.

In reply, the 1<sup>st</sup> and the 2<sup>nd</sup> raised a Preliminary Point to the effect that the application was improperly before this and it could neither be saved by **Section 33 of the Judicature Act, Cap 13 (as amended)** nor by **Section 98 of the Civil Procedure Act, Cap 98** because the *Advocates (Professional Conduct) Regulations SI 267-2* upon which the application is premised requires that there must be an advocate-client relationship between the Applicant and the 1<sup>st</sup> Respondent did not have one.

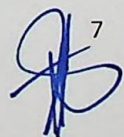
With regard to the Merits of the application, Counsel for the Respondent contended that, the issues in contention in the main claim do not require any of

the Advocates of the 1<sup>st</sup> Respondent as witnesses for either party because it was  
155 not true that the 1<sup>st</sup> Respondent drafted the Applicant's letter of termination or  
the reply to his claim in the main suit, or the witness statement of Michael  
Sekadde. Therefore the assertion that its advocates will be required as witnesses  
to testify on the grounds and circumstances of his termination, cannot hold.

He argued that the resolution of the issues in contention in the main claim do not  
160 require any of the advocates of the 1<sup>st</sup> Respondent as witnesses for either party.  
In any case none of the 1<sup>st</sup> Respondent's lawyers were listed as witnesses by either  
party in the joint scheduling memorandum filed in the main claim as stated in  
*paragraphs 10, 14, 15, 16 and 17 of the 1<sup>st</sup> Respondent's affidavit in reply and  
annexure C thereof*).

165 In the circumstances the case of *Uganda vs Patricia Ojangole, Criminal Case  
No. 1 of 2014* cited by the Applicant is distinguishable since the facts in that case  
are fundamentally different from the facts of the present case. In the Ojangole  
case, the accused retained the firm of lawyers as her employer thus Court found  
that *prima facie* there was a conflict of interest. The court noted that there was a  
170 fiduciary duty towards the employer which would conflict with their obligation  
to another client, the employee. According to Counsel the circumstances under  
*Uganda vs Patricia Ojangole (supra)* would only be applicable to the present  
case if the Applicant instructed the 1<sup>st</sup> Respondent to represent him in any action  
against the 2<sup>nd</sup> Respondent regarding his termination. Since this is not the case,  
175 Court should find that **Uganda vs Patricia Ojangole (ibid)** is inapplicable in the  
circumstances.

Counsel further contended that to require the 1<sup>st</sup> Respondent Advocates as  
witnesses for the Applicant would violate the public policy doctrine of legal  
privilege. In any case, even if the 1<sup>st</sup> Respondent drafted the Applicant's letter  
180 of termination (which is denied), on account of the advocate-client relationship  
between the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the communications between the two





regarding the Applicant's termination are protected by the doctrine of legal advice privilege. He insisted that, Legal advice privilege protects communications between an advocate and client made for the sole or dominant purposes of giving  
185 or receiving legal advice if they are legitimate communications in the sense that they are not made in furtherance of fraud or crime. The effect of the privilege is that neither the client nor the advocate can without the client's consent, be compelled to disclose the communications during legal proceedings. Therefore, if this Court finds that the 1<sup>st</sup> Respondent rendered legal advice of whatever nature  
190 to the 2<sup>nd</sup> Respondent regarding the Applicant's termination, requiring the 1<sup>st</sup> Respondent to disclose any communications in that regard through testimony before the court would amount to an unwarranted violation of the legal advice privilege owed to the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent. Counsel argued that the 1<sup>st</sup> Respondent is bound by its duty of confidentiality to the 2<sup>nd</sup> Respondent  
195 which bars the 1<sup>st</sup> Respondent from disclosing or being compelled unjustifiably to disclose the particulars of any communications relating to the termination of the Applicant exchanged between the Respondents. In any case, the Applicant has not provided any justification/exception as to why the legal advice privilege owed to the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent should be waived in the  
200 circumstances.

Therefore, the application should therefore be denied.

### **Decision of court**

Regulation 9 of the Advocates(Professional Conduct) Regulations provide as follows:

205 ***“Personal involvement in a client's case***

*“No advocate may appear before any court or tribunal in any matter in which he or she has reason to believe that he or she will be required as a witness to give evidence, whether verbally or by affidavit; and if, while*



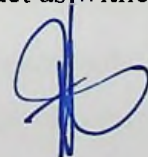
210 *appearing in any matter, it becomes apparent that he or she will be  
required as a witness to give evidence whether verbally or by affidavit, he  
or she shall not continue to appear; except that this regulation shall not  
prevent an advocate from giving evidence whether verbally or by  
declaration or affidavit on formal or non-contentious matter or fact in any  
matter in which he or she acts or appears.”*

215 In our understanding this provision is intended to bar an advocate from appearing  
before a court on behalf of his or her client in a contentious matter, as a legal  
representative and at the same time as a witness or potential witness. It is intended  
to separate the role of the advocate from that of witness so that the 2 roles do  
not overlap. (see **Uganda Development Bank vs Ms Kasirye Byaruhanga and**  
220 **Company Advocates CA No.35 of 1994**).

It is the contention of the Applicant in the instant case that ,the 1<sup>st</sup> Respondents  
Advocates are necessary witnesses in the main claim, in LDR No. 202 of 2019,  
to explain to Court the real grounds and actual circumstances of the Applicant’s  
termination, therefore, they are barred by **Regulation 9 of the Advocates**  
225 **(Professional conduct) Regulations** from representing the 2<sup>nd</sup> Respondent in  
the same claim.

It is not in dispute that the 1<sup>st</sup> Respondent is indeed counsel for the 2<sup>nd</sup>  
Respondent and as such they are entitled to have all communication and  
information regarding the 2<sup>nd</sup> Respondent to enable them render legal advice or  
230 represent them in litigation in all their causes including the Applicant’s Labour  
dispute LDR 202/2019 which is before this court. Therefore, they have an  
advocate- client relationship which is what is envisaged under Regulation  
9(supra).

However regulation 9 would only apply in circumstances where the advocate  
235 being counsel in personal conduct of a matter is required to also act as witness in



the same matter. The Applicant in this case is the 2<sup>nd</sup> Respondent's adversary at law and has not adduced any evidence to show that there exists an advocate- client privilege between him and the advocates in the 1<sup>st</sup> Respondent or that the 1<sup>st</sup> Respondent's advocates will be required to disclose information about the 2<sup>nd</sup> Respondent that is intended for the commission of fraud or a crime nor did he demonstrate how the 1<sup>st</sup> Respondent's role as advocate for the 2<sup>nd</sup> Respondent will prejudice his case. It is not in dispute that the Applicant was an employee of the 2<sup>nd</sup> Respondent and this in our considered view did not entitle him to enjoy the advocate- privilege in any case he did not place before us any evidence to that effect. Unlike the **Ojangole** case(supra) where the employee retained the same Advocates as her employer, the Applicant in the instant case has not shown that the 1<sup>st</sup> Respondent's were his lawyers as well.

Be that as it may, as rightly submitted by Counsel for the 1<sup>st</sup> Respondent, where there exists an Advocate- client privilege neither the client nor the advocate can without the client's consent, be compelled to disclose the communications during legal proceedings, except where Counsel discovers that the information and communication is intended to further the commission of fraud or crime or where they are compelled by operation of law or by Court order. Therefore, to require the 1<sup>st</sup> Respondent in the instant case to render testimony on behalf of the Applicant without can only be possible the exceptions mentioned exist. Therefore, even if it was a possibility that the 1<sup>st</sup> Respondent was involved in drafting his termination letter as he alleges, or it was involved in drafting their pleadings in the main claim, this was done in the exercise of their professional duties to the 2<sup>nd</sup> Respondents as their legal representatives, and they can only be compelled to render testimony about it in exceptional circumstances. As already discussed, an advocate-client privilege fundamentally depends on trust and confidentiality, where the advocate is expected to protect confidential matters entrusted to him or her by the client and he or she cannot voluntarily or be



compelled to share such matters without the express permission of the client.  
265 Although the privilege is not absolute. Where the advocate in the course of his  
employment has observed facts showing the commission of fraud or crime he or  
she will be compelled to disclose the same.(See **Kiconco Patrick vs Attorney  
General and Others HCMisc Cause No. 00086 of 2023**).

This Court has taken cognizance that many institutions engage both external and  
270 inhouse counsel as legal advisers in the management of their human resources  
and particularly in the management of disciplinary proceedings which escalate  
to court and therefore as their legal representatives in litigation. In the  
circumstances such lawyers will be expected to have all the communication,  
information and documentation regarding the employees in disputes which is  
275 required to enable them carry out their professional duties as the employers  
advocates. Therefore, unless it can be demonstrated that the information in their  
possession regarding such employees is intended for fraudulent or criminal  
purposes, They would not be compelled to render testimony about it in any matter  
involving the employees. Court will only compel them to disclose such  
280 information if it is established that the employee would be prejudiced if it is not  
disclosed and it is only then that, Regulation 9 would apply.

We had an opportunity to peruse the main file and the Joint Scheduling  
memorandum which was signed by both parties and established that none of the  
parties listed the advocates of the 1<sup>st</sup> Respondent as witnesses or potential  
285 witnesses therein. We are not satisfied that the Applicant has shown that 1<sup>st</sup>  
Respondent's advocates will be required to testify in LDR No. 202 of 2019 or  
that there are exceptional circumstances intended to further the commission of  
fraud or a crime to warrant restraining the 1<sup>st</sup> Respondent from representing the  
2<sup>nd</sup> Respondent in LDR No. 202 of 2019.

290 In the circumstances we find no merit in this ground.





**2. Whether the 1<sup>st</sup> Respondent is not an independent counsel and is conflicted in duty to court in prosecuting Labour dispute Claim No. 202 of 2019?**

Counsel for the Applicant argued these grounds concurrently and stated that, 1<sup>st</sup> Respondents has a personal interest in LDC 2002 of 2019, especially because  
295 they participated in the process of the 2<sup>nd</sup> Respondent's controversial license renewal which is purported to be the reason the Applicant was terminated. Counsel argued that the 1<sup>st</sup> Respondent drafted the termination letter and the processes highlighted under paragraphs 3-37 and paragraphs 43, 44, 45 and 46 of the affidavit in support, are evidence that they lacked independence as  
300 Counsel. He further contended that a lawyer's duty to his client is subject to the overriding duty to the Court even to the disadvantage of his client, he is not only an agent of his client, but he or she exercises an independent judgment in the interests of the Court. He insisted that the administration of justice in the adversarial system of litigation in particular, depended on the faithful exercise  
305 by barristers of this independent judgment in the conduct and management of cases, therefore lawyers must not have any interest in the suit. According to him, an interest exists where a solicitor is aware that he or she may be called as a material witness in the proceedings or where allegations against the solicitor are made in the pleadings, requiring him or her to defend his or her professional  
310 conduct. He argued that in the instant case, the 1<sup>st</sup> Respondent is not only required as a witness but there are serious allegations regarding their drafting of a termination letter which to their very knowledge had falsehoods against the Applicant.

He opined that, the 1<sup>st</sup> Respondent's professional conduct was called into  
315 question because their independence as Counsel in Labour Claim No. 202 of 2019, will be overshadowed by the desire to defend their professional integrity. He argued further that, the outcome of the suit and the fate of the termination letter in particular, was a matter of personal interest to the 1<sup>st</sup> Respondent,

therefore in the interest of justice, the 1<sup>st</sup> Respondent should not act in a situation  
320 in which they have a personal interest which “far outweighs any small  
inconvenience which could be suffered by the 2<sup>nd</sup> Respondent changing her  
solicitors. He called upon the Court to ensure that the solicitors (Advocates in  
our jurisdiction) not only perform their duty towards their own clients, but also  
towards all those against whom they are convened, and that litigation is in the  
325 interest of the litigant as opposed to that of Counsel/Advocate. He cited **M/S.  
Quality Uganda Ltd Vs. Uganda Performing Rights Society & 2 ors, HCCS.  
444 of 2019,** and **Shell U Ltd & 9 others Vs. Rock Petroleum U Ltd,  
**Miscellaneous Application No. 645 of 2010,** in which these common law  
principles were applied in Uganda and ought to be applied in this case because,  
330 Advocates are officers of law and owe a duty to court to see that justice is done.  
He contended that, the 1<sup>st</sup> Respondents have an interest to vindicate their  
wrongdoing for drafting the Applicant's termination letter and have an interest  
in the outcome of the litigation which compromises their independence and  
overriding duty to assist Court to render justice, therefore they should not act as  
335 counsel in the proceedings.**

In reply Counsel for the Respondent refuted the allegation that the 1<sup>st</sup> Respondent  
lacked independence, is compromised by its past conduct, and has a personal  
interest in the outcome of the litigation. He also contended that, the application  
is an affront to the 1<sup>st</sup> Respondent's right to practice law as envisaged under  
340 **Article 40(2) of the Constitution of the Republic of Uganda, 1995 (as  
amended) (“the Constitution”)** and to the 2<sup>nd</sup> Respondent's right to legal  
representation by Counsel of their choice as provided for under **Article 28(3)(d)  
of the Constitution,** therefore the application should not be allowed. He argued  
that, Advocates should not suffer, or be threatened with suits, prosecution or  
345 administrative, economic, or other sanctions for any action taken in accordance  
with recognized professional duties, standards and ethics and they should be able





to perform all their professional functions without intimidation, hindrance, harassment or improper interference. He argued that the 2<sup>nd</sup> Respondent has a right to choose its counsel and should not be coerced by the Applicant, its  
350 adversary at law, on its choice of legal representation.

He insisted that this application sought to unjustifiably restrain the 1<sup>st</sup> Respondent from providing advisory legal support to the 2<sup>nd</sup> Respondent by depriving the 1<sup>st</sup> Respondent of its right to represent the 2<sup>nd</sup> Respondent in subsequent litigation proceedings. It is malicious, brought in bad faith, and amounts to an improper  
355 interference with the 1<sup>st</sup> Respondent's performance of its professional functions.

He relied on the applicant quoted **Linyi Huatai Battery Manufacturing Co. Ltd vs Muse AF Enterprises Co. Ltd, Miscellaneous Application No. 573 of 2020**, which the Applicant relied on for the proposition that an affidavit in rebuttal deponed by counsel in personal conduct of a contentious matters is fatally  
360 defective, out of context, with the intention to mislead Court, into concluding that, the advocates of the 1<sup>st</sup> Respondent being witnesses in the main claim cannot at the same time appear as counsel in LDC 202 of 2019. Whereas Counsel who swore the Affidavit in that case was indeed in personal conduct of the same case, moreover which was contentious, in the instant case, the 1<sup>st</sup> Respondent's  
365 affidavit was sworn by Joseph Luswata who is an advocate practicing with the 1<sup>o</sup> Respondent but is not Counsel in personal conduct in this matter. Therefore, the assertion that the 1<sup>st</sup> Respondent's affidavit in reply is defective has no basis in law and should be rejected by this Court. In any case it is now well-established law that an affidavit may be validly sworn by counsel if he/she is not in personal  
370 conduct of the matter such as in the instant case where it was only logical that the affidavit could only be sworn by a member of the 1<sup>st</sup> Respondent who is sued.

Regarding the 1<sup>st</sup> Respondent's independence in its duty as an officer to court, for the reasons advanced in paragraphs 43-46 of the affidavit in support, Counsel submitted as follows:



375 1. That the 1<sup>st</sup> Respondent did not draft the termination letter in dispute and  
therefore any arguments relating to personal interest arising from the 1<sup>st</sup>  
Respondent's drafting of the termination letter do not hold and even if they did  
draft the termination letter (which is denied), merely drafting the letter is not  
sufficient ground to restrain them from representing the 2<sup>nd</sup> Respondent in any  
380 subsequent legal proceedings where the said letter is in dispute. He relied on  
*Ayebazibwe Raymond vs Barclays Bank Uganda Ltd.* No. 165 of 2012, in which  
an argument similar to the Applicant's was rejected and prayed that this Court  
adopts the same position. In that case, the Plaintiff unsuccessfully sought to bar  
KSMO Advocates from appearing as counsel on the allegation that KSMO having  
385 drafted the sales agreement in dispute, its action would be directed at getting a  
favorable decision to absolve them. Accordingly, this Court should reject the  
Applicant's argument that the 1<sup>st</sup> Respondent having drafted the letter of  
termination, it is constrained to defend its professional integrity and lacks  
independence in its duty as an officer of Court. Additionally, even if the  
390 Applicant's advocates, are officers of the court, they are not the proper parties to  
object to the representation of the 2<sup>nd</sup> Respondent by 1<sup>st</sup> Respondent without  
disclosing or demonstrating how the Applicant would be prejudiced by such  
representation. In any case the paragraphs 3-37 of the affidavit in support and the  
corresponding submissions, address the merits of the main claim and are a  
395 disguised attempt to pre-judge the main claim which this Court should reject.

He contended further that, even if the 1<sup>st</sup> Respondent had a personal interest in  
the main claim, *Regulation 10 of the Advocates (Professional Conduct)*  
*Regulations SI 267-2* would not bar her from acting on behalf of the 2<sup>nd</sup>  
Respondent because it only requires the 1<sup>st</sup> Respondent to disclose the personal  
400 interest in the claim and upon s disclosure, the 1<sup>st</sup> Respondent would be free to  
continue representing the 2<sup>nd</sup> Respondent.



Regarding the 1<sup>st</sup> Respondents advocates being required as witnesses in the main claim, thus rendering them conflicted, Counsel insisted that, none of the advocates are potential or compellable witnesses in the main claim and thus, no  
405 conflict of duty arises in their representation of the 2<sup>nd</sup> Respondent.

In the circumstances, Court should find that the advocates of the 1<sup>st</sup> Respondent are neither potential nor compellable witnesses in the main claim and that the 1<sup>st</sup> Respondent firm is independent and free from conflict in their duty as officers of the Court and dismiss the application with costs to the Respondents.

410 **Decision of court**

It is a fundamental principle of our justice system that every person has a right to be represented by counsel. In **Simba properties Investment Co. Ltd & Others vs Vantage Mezzanine Fund II Partnership & Others Misc. Appln. No 0414 of 2022, Mubiru J** cited the United Nations Basic principles on the role of  
415 lawyers, 1990, for the definition of the fundamental requirements that guarantee that everyone has access to independent legal counsel and Principle 18 in particular, which provides that, “ *lawyers shall not be identified with their clients or their client’s causes as a result of discharging their functions, however popular or unpopular it may be.* His Lordship further stated that ... *identifying*  
420 *lawyers with their clients or client’s causes amounts to nothing less than intimidation and harassment prohibited by principle 18 thereof. ...An advocate must at all times be allowed to advance a client’s right without obstruction or impediment or fear of suits or prosecution for carrying out his or her duties as an officer of the court... ”*

425 In light of these principles, the 1<sup>st</sup> Respondent as the 2<sup>nd</sup> respondent’s advocate is entitled to perform her professional duties without undue interference. It is trite that as an advocate, the 1<sup>st</sup> Respondent while performing their professional functions regarding the 2<sup>nd</sup> Respondent’s causes, is entitled to receive any



information, communication or documentation relating to the 2<sup>nd</sup> Respondent.  
430 They equally have an obligation to keep this information confidential to the extent that the 2<sup>nd</sup> Respondent requires them to do so, unless they are compelled to disclose under exceptional circumstances such as fraud or crime or by order of court. In undertaking their professional role, the 1<sup>st</sup> Respondent like any other lawyers are called upon to maintain utmost trust and confidentiality which is a  
435 fundamental principle underpinning the advocate-client relationship. It is also their role as advocates to ensure that ensure that the interests of his or her client, or the remedy sought before court overrides their own interests. Therefore, as stated by Brett M.R in **Munster vs Lamb (1883) 11 QBD 588**, Brett M.R: "...  
440 *A counsel's position is one of utmost difficulty. He is not to speak of that which he knows ; he is not called upon to consider whether the facts with which he is dealing are true or false. What he must do, is to argue as best as he can , without degrading himself , in the order to maintain the proposition which will carry with it either the protection or the remedy which he desires for his client. If in the midst of the difficulties of his proposition he were to be called upon during the heat of*  
445 *his argument to consider whether what he says is true or false, whether what he says is relevant or irrelevant , he would have his mind so embarrassed that he could not do the duty which he is called upon to perform...*"

This passage clearly distinguishes the advocate from his or her client and unless there is evidence to show that an advocate's involvement in a matter would be  
450 prejudicial to any party, the advocate has the liberty to exercise his or her professional duties regarding in the interest of the clients causes whatever they maybe, without fear of reprisal. We are therefore inclined to agree with counsel for the Respondent that, advocates must be allowed to advance their client's rights without any obstruction or impediment or intimidation, in order to meet the  
455 ends of justice .





Therefore given the existence of the advocate-client privilege, between the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent, even if the 1<sup>st</sup> Respondent may have been aware of the Applicant's role in the 2<sup>nd</sup> Respondent and particularly his role in the negotiation of the renewal of the 2<sup>nd</sup> Respondent's impugned National  
460 Operation License, which he purports to be the reason for his termination and even if they were aware of the Board's decision to terminate the Applicant and even if they may have rendered legal advice regarding the termination letter, including drafting of the 2<sup>nd</sup> Respondent's pleadings in LDC 202 of 2019, which is what is expected of an advocate in personal conduct of a client's case, this in  
465 our considered opinion is not sufficient reason to restrain the 1st Respondent from representing the 2<sup>nd</sup> Respondent in the subsequent litigation proceedings in the absence of evidence that their involvement in the proceedings would be prejudicial to the Applicant. The Applicant has not demonstrated how 1<sup>st</sup> Respondent's role as advocates of the 2<sup>nd</sup> Respondent would prejudice his case  
470 and we respectfully do not accept his assertion that they would be called as witnesses or potential witnesses, because he failed to prove it. We also believe that on **Linyi Huatai Battery Manufacturing Co. Ltd vs Muse AF Enterprises Co. Ltd, Miscellaneous Application No. 573 of 2020(supra)** which the Claimant relied on, is distinguishable, because in that case there existed an  
475 advocate-client relationship which the Applicant has not demonstrated in the instant application. He also did not adduce any evidence to show that there were exceptional circumstances that would require the compulsion of the 1st Respondent's advocates to render testimony in the dispute they were defending.

Therefore, in the absence of any evidence to the contrary, to grant an order  
480 restraining the 1<sup>st</sup> Respondent from representing the 2<sup>nd</sup> Respondent would not only amount to infringing on the 1<sup>st</sup> Respondent's independence to exercise their professional duties to advance the rights of their client the, 2<sup>nd</sup> Respondent in LDC 202 of 2019, also to an infringement of the 2<sup>nd</sup> Respondent's right to choose

her own Counsel and therefore an affront to the administration of justice. ( see  
485 **Simba properties Investment Co. Ltd & Others vs Vantage Mezzanine Fund  
II Partnership & Others Misc. Appln. No 0414 of 2022(supra), Article 40(2)  
and 28(3)(d) of the Constitution of Uganda , 1995(as amended).**

It is unimaginable that an advocate in personal conduct of any matter would be  
expected to operate from a point of ignorance about the matter in which he or  
490 she is expected to render legal advice or represent the client in litigation in court  
for fear of being compelled to disclose to an adversary in law. Instructions to an  
advocate include issuance of information, communication and documentation  
about the matter to enable him or her prepare legal advice or pleadings for  
litigation. Even if any other advocates were to be instructed by the 2nd  
495 Respondent, they would be given the same instructions, communication, and  
documentation on the claim, even if they did not draft the termination letter or the  
pleadings which they had liberty to use in the interest of the client. In the  
circumstances we find nothing that creates a conflict of interest in the 1<sup>st</sup>  
Respondent's role as the 2<sup>nd</sup> Respondent's advocate. This is because as legal  
500 adviser their role was not to determine whether the decision the 2<sup>nd</sup> Respondent  
took to terminate the Applicant was true or false but rather was to render legal  
advice on the matter and eventually prepare pleadings for litigation in the interest  
of the 2<sup>nd</sup> Respondent. We have not found an iota of evidence pointing to any  
conflict of interest. We respectfully do not agree with the Applicant that delving  
505 into the circumstances he believes created a conflict at this stage because this  
would amount to examining the merits of the main claim.

In the circumstances, the Applicant has not satisfied this court that, the 1<sup>st</sup>  
Respondent's advocates lack independence and are conflicted and compromised  
by their past conduct or that they will be required as witnesses to give evidence  
510 in the main claim, to warrant being restrained from representing the 2<sup>nd</sup>  
Respondent.





In conclusion, we are inclined to agree with Counsel for 2<sup>nd</sup> Respondent that to restrain the 1<sup>st</sup> Respondent from performing their role as advocates in representing the 2<sup>nd</sup> Respondent in LDR No. 202 of 2019, would be an affront to  
515 the administration of justice which should not be condoned.

This application lacks any merit it is hereby dismissed. Costs shall abide in the main.

Delivered and signed by:

The Hon. Ag. Head Judge Linda Lillian Tumusiime Mugisha

520 **Panelists:**

1.Hon. Katende Patrick

2.Hon. Julian Nyachwo

3.Hon. Bwire John Abraham

DATE: 2/04/2024

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