

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISCELLANEOUS APPLICATION NO. 213 OF 2024**  
**(ARISING FROM CIVIL SUIT NO. 233 OF 2020)**

**KATEREGGA ZADOKI:..... APPLICANT**

**VERSUS**

**THE PRESBYTERIAN CHURCH IN UGANDA :: RESPONDENTS**

**BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING.**

**Introduction:**

1. This was an application by notice of motion brought under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act Cap 13 and Order 52 of the Civil Procedure Rules (CPR) for orders that:

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- i) Civil Suit No. 233 of 2020 be dismissed for failure to serve summons in time
- ii) Costs be provided for.



**Background:**

2. The Respondent/Plaintiff instituted Civil suit No. 233 of 2020. The summons to a file a defence issued on 18<sup>th</sup> March 2020 duly signed and sealed by this Honourable Court.
3. The Applicant contends that he was never served with summons to file a defence and hence it's on that basis that he brings this application to have the suit dismissed for failure to serve summons.

**Applicant's evidence;**

4. The grounds of the application are contained in the affidavits in support of the application deposed by **KATEREGGA ZADOKI** the Applicant and **KATEREGGA GLADYS**, and are briefly that: -

**KATEREGGA ZADOKI**

- i) That the summons to file a defence was extracted on 18<sup>th</sup> March 2020 the very night when the country was put under lock down and all movement was restricted.
- ii) That the Respondent alleges that he picked the summons, plaint and mediation summary for service upon me on 23<sup>rd</sup> March 2020 when the country was in a lock down.



- iii) That on the 23<sup>rd</sup> of March 2020 when the Respondent alleges to have served my wife, I was at home with my wife and we did not see any process server.
- iv) That the summons expired and they have never been renewed and I only got to know about the case in September 2020 after being told to appear for mediation.

**KATEREGGA GLADYS**

- i) That my attention has been drawn to the affidavit of service dated 20<sup>th</sup> July 2020 by Acaye Ronald.
- ii) That on 23<sup>rd</sup> March 2020, I was at home with my husband as the Country was in a lock down and I didn't see the said Acaye Ronald nor do I know him.
- iii) That the LC1 Chairman and Defence Secretary did not serve me with any summons.

**Representation;**

5. The Applicant was represented by Counsel Luzige Joseph of M/s Luzige, Lubega, Kavuma & Co. Advocates whereas the Respondent was represented by Counsel Kyamanywa Edward of M/s Kyamanywa, Kasozi & Co. Advocates.



6. Both parties did not file submissions to this application.

**Issues for determination;**

- i) Whether HCCS No. 233 of 2020 should be dismissed for failure to serve summons in time?***

**Resolution and determination of the issue;**

7. The rules governing service are set out in the provisions of Order 5 of the Civil Procedure Rules SI 71-1 as amended.

8. Order 5 rule 1 provides that:

**When a suit has been duly instituted a summons may be issued to the defendant-**

- a) Ordering him or her to file a defence within a time to be specified in the summons; or (emphasis mine)***
- b) Ordering him or her to appear and answer the claim on a day to be specified in the summons***

9. Service of summons is not a mere technicality but rather it's the foundation/premise of the right to be heard, for it's through this process that a party is given notice of the suit and called upon to defend him/herself. **(See Rashida Abdul Karim and Anor versus**



**Suleiman Adrisi HCMA 09 of 2017 as cited in Grace Nakiyemba Nakate v Ssemugenyi Godfrey & 4 ors HCCS NO. 397 of 2016)**

10. The objective of serving summons is to make the defendant aware of the suit.
11. In the instant application, summons to file a defence in HCCS No. 233 of 2020 were issued on 18<sup>th</sup> March 2020. The process server, Acaye Ronald set out to serve the same on 23<sup>rd</sup> March 2020.
12. According to the affidavit of service on Court record, he proceeded to Entebbe and met Mr. Milton Lipa and Ismail Baraka the defence of Katabi Kitubuulu LC1 and they proceeded to the defendant's (now Applicant's) home, which address is undisputed.
13. That the defendant (Applicant) was not at home and the wife who was present refused to acknowledge service and hence he left copies of the summons and the plaint at the LC1 Offices and the Defence Secretary appended his signature acknowledging receipt.
14. The Applicant states that he was never served and only got to know about the pending suit in September 2020.
15. I find that the purpose of serving the summons was duly achieved as the defendant became aware of the existence of the suit against him.



16. That there can be no doubt that the desired and intended result of serving summons on the defendant in a civil suit is to make the defendant aware of the suit brought against him so that he has the opportunity to respond to it by either defending the suit or admitting liability and submitting to judgment. **(See Geoffrey Gatete and anor versus Wiliam Kyobe SCCA No. 07 of 2005)**
17. That despite service not having been effected in the manner as provided for under Order 5 rule 10, this Court is inclined to believe that it was effective service since the defendant/Applicant got to know about the pending suit against him and duly filled his written statement of defence.
18. The service of a process becomes effective when a party who is targeted by that service becomes aware of the existence of that matter which he has to respond to. **(See Western Ugandan Cotton Company limited versus Dr. George Asaba & 3 othrs HCCS No. 353 of 2009 citing Pragji Bhagwanji and company limited v Michael Krag and othrs )**
19. It's the Applicant's contention that the summons was served out of time and there is no application for extension of time on Court record.



20. Order 5 rule 1 (2) of the Civil Procedure Rules provided that summons shall be served within 21 days from the date of issue except that time may be extended on application to Court.
21. In the instant application, the summons were extracted, signed and sealed by this Honourable Court on the 18<sup>th</sup> day of March 2020. The affidavit of service on Court record shows that service was effected on the 23<sup>rd</sup> day of March 2020 which was clearly still in the ambit of the 21 days that are statutorily provided.
22. Service of summons revolves around the principles of natural justice among which is a person being entitled to a fair hearing which includes a right to be heard in any matter.
23. The Applicant in this case got to know about the pending suit against him and he duly filled a written statement of defence which accordingly gave him audience before this Honourable Court.
24. It's this Court's findings that the service was effective and hence the matter should proceed for hearing on its merits.
25. For those reasons, this Application fails and the same is dismissed.
26. Costs to abide the outcome of the suit. 

**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**11/3/2024**