

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 0791 OF 2020
(ARISING FROM CIVIL SUIT NO. 0887- OF 2019)

1. JOHN KAWERE
2. JOYCE NAMULI MUWANGA

(Sued through their Lawful agent HARRIET KYAGABA) APPLICANTS

VERSUS

NYONDWA GEOFFREY RONALD RESPONDENT

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING



I have carefully heard the submissions of both Counsel on the issue before this Court as to whether H.C.C.S NO. 887/2019 is incompetent for want of service of summons and should be struck out.

The law on service of summons is very clearly stated under Order 5 Rules 1 & 2 of the Civil Procedure Rules and the wording of Rule 3 thereof is cauched in mandatory terms that service shall be effected within 21 days from the date of issue and may be extended on application to the court made within 15 days after the expiration of the twenty one days by showing sufficient reason for the extension.

The Procedure of lodging the application is provided for under Rule 32 of Order 5 f the Civil Procedure Rules which is by way of chamber summons.

The argument by counsel for the Respondent that form is immaterial and a party seeking justice should be heard on the merits of the case to dispense substantive justice and undue regard to technicalities ought not to be considered is untenable.

Article 126 (2 (e) of the Constitution of the Republic of Uganda, 1995 as amended provides that... subject to the law, substantive justice shall be administered

5 without undue regard to technicalities and there are a plethora of cases on the interpretation of the principle that substantive justice shall be administered without undue regard to technicalities; the proposition of the law is that rules of procedure are hand maidens of justice and not a band wagon.

10 In the instant matter, the Rules prescribe the form which in my considered view requires a formal application so as to enable court to establish whether sufficient cause has been shown by the party seeking for extension of time as required under Order 5 Rules 2 and 32 of the Civil Procedure Rules and a letter would not serve this purpose definitely.

15 The procedure adopted by the Respondent to seek leave of court to issue fresh summons by way of a letter is not proper and offends the Rules of procedure provided under order 5 Rules 2 and 32 of the Civil Procedure Rules.

The objection raised by Counsel for the Respondent that the application before this honourable court is incompetent due to non- service upon the Respondent is misconceived.

20 The Applicants were ordered by this Honourable court to serve the Respondent with the original notice of motion in the absence of proof of service upon the Respondent and upon the finding of court that the amended notice of motion purportedly served upon the Respondent was not proper, the Applicants having filed without seeking leave of court to do so.

25 The Respondent upon service, filed an affidavit in reply dated 25/11/2020 after the court order to the Applicants herein to serve the Respondent, was made on 9/11/2020 and the Applicants filed an affidavit in rejoinder dated 14/12/2020.

30 The Respondent therefore subjected itself to the proceedings in this application by filing an affidavit in reply and entering appearance today and cannot be seen to evade this proceeding on ground that there was non-service of the application upon the Respondent.

I hereby find that service upon the Respondent was in respect of a court order which the Applicants complied with.

35 This application is properly brought before court and the preliminary objection by Counsel for the Respondent is dismissed.

5 In the absence of an application by way of chamber summons for extension of time within which to serve fresh summons upon the Applicants, I find that Civil Suit No. 887 of 2019 is incompetent for want of service of summons.

This application is allowed with the following orders: -

- 10 1. Civil Suit No. 887 of 2019 is dismissed
2. Costs of this application and the suit are granted to the Applicants/Defendants.

I so order.

15 SUSAN ABINYO

JUDGE

6/4/2021

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