

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC.APPLICATION 96/2002
(ARISING FROM C.S. NO. 132/02)
ROBINAH ISUMBA RUHARA

(MRS):.....APPLICANT

VERSUS

DIANA

BULYA:.....

RESPONDENT

BEFORE: HONOURABLE MR. JUSTICE MOSES MUKIIBI

RULING.

This is an ex parte application brought by Robinah Isumba Ruhara, the applicant/plaintiff (here in after to be called “the applicant”) under order 5 rules 19 and 33 of the Civil Procedure Rules and Section 101 of the Civil Procedure Act. The applicant is seeking for order that the summons to file a defence be served upon the defendant by substituted service. The application is brought by chamber summons and it is supported by two affidavits:

- (i) One sworn by the applicant dated 23rd July, 2002; and
- (ii) Another sworn by one Peter Muleba, a Court process server, dated 23 July, 2002.

When the application came up for hearing the applicant was represented by learned Counsel Mr. Byarugaba of M/s Ayigihugu and Co. Advocates. Learned Counsel Mr. Byarugaba informed court that he was holding brief for Mr. Ayigihugu, Counsel for the Applicant. I have carefully examined the court record but failed to find any document indicating that Mr. Ayigihugu was counsel for the Applicant, or that the applicant was previously represented by an advocate.

I have examined the plaint and found that it was signed by the applicant personally as plaintiff. It is shown to have been drawn and filed by the Applicant her self as plaintiff. All other documents accompanying the plaint are shown to have been drawn and filed by the Applicant as plaintiff. I have examined Parag.2 of the plaint which covers service of process on the defendant. It states as follows:

“2. The defendant is a female adult Ugandan believed to be of sound mind of Kasubi or Luzira. Court process will be effected on her by the plaintiff’s advocates”

If the plaint was drawn and filed by the applicant personally she knew that she had not engaged any Advocate to handle service of court process on her behalf. So, in my view, the statement contained in parag. 2 of the plaint was a lie.

I find it reasonable to draw an inference from the said lie that from the start the applicant was not committed to effecting personal service of court process on the defendant. In parag. 2 of the plaint the applicant as plaintiff named two places: “Kasubi or Luzira” in relation to the defendant. It was not indicated whether any of them was a place of residence or place of work. The impression I got from reading Parag. 2 of the plaint was that the plaintiff was uncertain. I have examined the summons to file a defence which was issued by this court, Nakawa circuit, on 25 June, 2002. The summons was directed to one Diana Bulya, the defendant, but no address was given. It is possible that the court had been misled by parag. 2 of the plaint to believe that the plaintiff had counsel who could be trusted to effect service of the summons on the defendant.

I have looked at the affidavit which was sworn by the applicant. It is my view that the applicant was not the proper person to try effecting service of the summons on the defendant, and she is not the proper person to swear an affidavit explaining why service of summons cannot be effected in the ordinary way. In the said affidavit the applicant did not state who received the summons from court for service on the defendant. Apparently, the said summons was not handed to any court staff that is authorized to serve court process. The applicant did not state that she deposited any money into court for that purpose. The plaint had not been filed by an Advocate. So the question arises:

Who received the summons from court and took responsibility for effecting service on the defendant?

The applicant, in her affidavit, did not answer that question.

I have examined the affidavit sworn by Peter Muleba. It is indicated that this affidavit was drawn by M/s Ayigihugu and Co. Advocates. However, it is important to note that the chamber summons was taken on by the applicant personally. The application shows that it was drawn and filed by the applicant personally. Even the applicant's affidavit is shown to have been drawn and filed by the applicant personally.

So, who is Peter Muleba?

In parag. 1 of his affidavit he states that he is a High Court Process Server. He does not say that he is an employee of the Judiciary. However, the place where his affidavit was drawn suggests that he was attached to M/s Ayigihugu and Co. Advocates. May be he is a law clerk of the said law firm. Assuming that this is the correct position the question arises: Is a law clerk, who is presented by a law firm to court for approval as a court process server, at liberty to act on behalf of a litigant without the authority of his Advocate/boss?

In other words, can a law clerk who is approved to be a court process server for a particular law firm, work privately for a litigant who is not represented by his law firm?

Peter Muleba, in his affidavit did not state that he received the summons to file a defence from any Advocate in the law firm of M/s Ayigihugu and Co. Advocates. Nor did he state that he was doing the work of that law firm. He did not state that he received the summons from court on

behalf of his Advocate/boss or the law firm. In parag. 2 of his affidavit Peter Muleba stated: “2. that on the 25 June, 2002 I received summons on plaint from this Honourable court for service on Diana Bulya the defendant in this suit”.

It is apparent that he was practicing the work of a law clerk privately and independently. However, he swore an affidavit which he represented as having been drawn by M/s Ayigihugu and Co. Advocates, whereas not. It would appear to me that this is one case of a law clerk purporting to do legal work without authority or supervision from the Advocate. This may be the reason why the plaintiff stated in parag. 2 of the plaint that “court process will be effected on her (the defendant) by the plaintiffs advocates” when she knew very well that she had not engaged any Advocate.

On the question of delivery or transmission of summons for service 0.5 rule 8 (1) of the Civil Procedure Rules Provides:

“8 (1). Where the court has issued a summons to a defendant

(a) It may be delivered for service _____

(i) to any person for the time being duly authorized by court;

(ii) to an advocate or an advocate’s clerk who may be approved by the court generally to effect service of process; or _____

Peter Muleba did not state that he received summons from court as an Advocate’s clerk duly approved by this court generally to effect service of process. There is nothing in his affidavit to show that he was acting on behalf of the Advocate or with the latter’s authority. However, in order to make his affidavit readily acceptable he showed that it had been drawn by M/s Ayigihugu and Advocates. The affidavit purports to support the application which was filed by the applicant personally. In my view this renders Peter Muleba’s affidavit suspect and clandestine.

In parag. 3 of his affidavit Peter Muleba stated that on 27/6/2002 he, in the company of the plaintiff went to Four Ways Properties Ltd at Luzira, a place known to the plaintiff as the

defendant's working place. In parag. 4 Peter Muleba stated that at the said place one Asiimwe informed him that the defendant was unknown in the company and the defendant's name was not in the company's registers. It was not stated what post Asiimwe held in the company. I am unable to rely on information from the said Asiimwe.

From parag. 5, 6 and 7 of his affidavit it is clear that Peter Muleba relied on information obtained from one Kakyebi James, a person well known to the plaintiff. It was not stated what post the said Kakyebi James held in the Institute of Accountancy and commerce.

I also find it surprising that the applicant knew some people very well at the suspected working places of the defendant, and that these are the only people Peter Muleba asked about the defendant's where — abouts.

Parags. 8 and 9 show that when Peter Muleba went to Kasubi Nabulagala he inquired for the defendant from one Mrs. Lwanga, a person known to the plaintiff. According to the affidavit of the applicant in parag. 9 Mrs. Lwanga was the Landlady of the defendant. However, Peter Muleba stated in parag. 10 of his affidavit that Mrs. Lwanga informed him that the defendant had abandoned the house long ago and that some of her property had been seized by the Landlord. The applicant did not explain in her affidavit how she had come to know the defendant's place of residence. It is however, clear that neither the applicant nor the process server sought the assistance of the local council officials of the area. In the plaint, in parag. 12 (t) as particulars of fraud the plaintiff pleaded that the defendant was supported by Nabulagala Local Council where the deceased did not reside. If the Local Council supported the defendant in her application for a grant of letters of Administration then they knew her. So, when the applicant went to trace her at Kasubi Nabulagala she should have sought the assistance of the Local Council officials. If the defendant abandoned the house she had been renting, leading to the seizure of her property, the Local Council officials would most probably know what happened.

I do not agree that the applicant and the process server carried out a diligent search for the defendant. They never made inquiries from any one else apart from the persons who were known

to the applicant. In my view the information obtained from such persons was not reliable or conclusive.

The defendant is alleged to be administering the estate of the late Isumba Ruhara. I do not think that she can disappear without any trace. I find that the two affidavits which were presented in support of the application are unreliable.

However, before I take leave of this application I need to point out that the summons in this case was issued by the Deputy Registrar on 25/6/2002. Under 0.5 rule 1 (1) (a) of the civil procedure Rules Service of summons has to be effected within twenty-one days from the date of issue. Time may be extended on application to court made within fifteen days after the expiration of twenty one days, showing sufficient reasons for the extension. In the instant case the first 21 days expired on 16/7/2002. Another 15 days expired on 31/7/2002. The present application was filed in court on 23/7/2002 within the 15 days' period. However, as Counsel Mr. Byarugaba rightly pointed out this is not an application for extension of time. So, the life of the summons to file a defence expired and there was no application for extension of time. 0.5 rule (1b) of the Civil Procedure Rules provides that in such circumstances the suit should be dismissed without notice.

In the result, and for the reasons given herein above, I find that this is not a proper case to order service of summons by substituted service, and I do dismiss the application. Order accordingly.

MOSES MUKIIBI

JUDGE

14/7/2003.