

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0152 -2008
(Arising from HCT-00-CC-CS-0818-2007)

BELFLOWERS LTD APPLICANT

VERSUS

BALTON (U) LTD RESPONDENT

BEFORE HON. MR. JUSTICE LAMECK N. MUKASA

RULING:

This is an application by Chamber Summons brought under Order 9 rule 3 (l) (f), (g), and (h) and Order 7 rule 14 (l) of the Civil Procedure Rules and Section 33 of the Judicature Act. The applicant Belflowers Ltd, who is the 1st defendant in Civil Suit No 818 of 2007, is seeking orders that:-

1. The suit against the first Defendant be dismissed
2. Costs of the Application be born by the Respondent and the Advocate of the Respondent or as directed by the Court.

The grounds for the application are that:-

1. The plaint in the main suit No. 818 of 2007 lodged by the Respondent/ Plaintiff is incurably defective for failure to produce the documents upon which the claim of US\$ 174,534.16 (One hundred seventy four five hundred and thirty four thousand United States dollars, sixteen cents) is founded.
2. The plaint in the main suit No. 818 of 2007 against the first defendant be dismissed being an abuse of Court process.
3. It is just and equitable that the Orders sought be granted.

The application is supported by an affidavit sworn by Mark Graves the Managing Director of the Applicant. The Respondent filed an affidavit In reply deponed to by Prackash Gor, its Finance Manager.

Representation was Mr. Enoth Mugabi for the Applicant and Mr. Paul Rutisya for the Respondent. When the application came up for hearing counsel for the Respondent raised a preliminary point of law that the Applicant had no locus to bring this application. Counsel argued that a defendant must first file a Written Statement of defence before there can be an objection to the jurisdiction of the Court. Counsel relied on Order 9 rule 3 (l) of the Civil Procedure Rules which states:

“3 (l) a Defendant who wishes to dispute the jurisdiction of the court in the proceedings by reason of any such irregularity as is mentioned in rule 2 of this Order or any other ground shall give notice of intention to defence the proceedings and shall, within the time limited for service of a defence, apply to the court for:-

- (a) ---
- (b) ---
- (g) a deceleration that in the circumstances of the case the court has no jurisdiction over the defendant in respect of the subject matter of the claim or the relief or remedy sought in the action.

Counsel submitted that the above rule should be read together with rule 2 of the Order, which states:

“The filing of a defence by the defendant shall not be treated as a waiver by him or her of any irregularity in the summons, or service of the summons, or in any order giving leave to serve the summons out of the jurisdiction or extending the validity of the summons for the purpose of service.”

Mr. Rutsya had raised a similar objection in another application also arising from this suit, Mark Graves (2nd Defendant) Vs Balton (U) Ltd Misc. App. No. 158 of 2008. In that application I held that filing a defence prior to filing an application under Rule 3 is optional. I still so hold. However, whether a defence is filed or not, to make an application under the rule the Applicant must:-

1. be disputing jurisdiction of the court,
2. prior to filing the application, give notice of intention to defend the proceedings, and
3. file the application within the time limited for service of the defence.

Secondly counsel for the Respondent submitted that the Applicant had not given the notice required by Rule 3(I) prior to filing the application. This requires a defendant who wishes to dispute the jurisdiction of the court in the proceedings to give notice of intention to defend the proceedings.

On court record is a letter dated 31st March 2008, by Counsel for the Applicant to M/s Kasirye Byaruhanga & Co Advocates, the firm of lawyers representing the Respondent, and copied to the Registrar of this court. The copy was filed in Court on 31st March 2008. The letter states:-

“Subject: NOTICE OF INTENTION TO DEFEND PROCEEDINGS
UNDER ORDER XI R 3 (I) CIVIL PROCEDURE RULES SI 71 – 1

BELFLORWERS LIMITED

VERSUS

BALTON (U) LIMITED & MARK GRAVES
H.C.C.S 818 OF 2008

We have received instructions to represent the first defendant in the above matter on whose behalf we notify you of our clients intention to defend proceedings under the above matter.”

Mr. Mugabi for the Applicant argued that the letter was sufficient notice for the purposes of the rule. On the other hand Mr. Rutisya argued that such was not the notice envisaged by the Rule. Mr. Rutisya was of the view that

the Notice should have been drafted in the standard format of pleading or Court papers. Counsel had in mind something like:-

“THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL COURT DIVISION

CIVIL SUIT NO 818 OF 2007.

BALTON (UGANDA) LTD ----- PLAINTIFF

VERSUS

BELFOLLOWERS LTD

MARK GRAVES DEFENDANT

NOTICE OF INTENTION TO DEFEND

TAKE NOTICE that the first Defendant intends to defend the proceedings in the above suit.

To be served on”

The above would be a matter of form. The same message that would be conveyed by a Notice drafted as above was the same message conveyed by the letter to both the Court and the Respondent. Substantive justice

shall be administered without undue regard to technicalities. In the spirit of Articles 126 (2) (e) of the Constitution I find that there was sufficient notice given.

Unlike in Misc. App. No. 158 of 2008 this Application was filed on 31st March 2008. In paragraph 3 of Mark Graves' affidavit in support of this application he avers that the Applicant got notice of the proceedings in the Main Suit No. 818 of 2008 on the 15th March 2008. The record shows that service of the Court summons in the main suit was by way of substituted service by publication in the New Vision Newspaper of 14th March 2008 whereby the defendant was required "to file the written Statement of defence within fifteen (15) days from the date of publication of this notice." I have looked at the calendar for 2008 and found that 15 days from 14th March 2008 lapsed on 29th March 2008 which was a Saturday. Order 51 rule 3 CPR provides that where the time for doing any act or taking any proceeding expires on a day when offices are closed such act shall be held duly done if done on the day on which the offices shall next be open. In Uganda Courts and Government offices are closed on Saturdays and Sundays. The Application was filed on 31st March 2008 which was a Monday and the day when courts were next open. This was the time within which service of a defence would have been made. In the premises I find that the Application was made within the time limits by law prescribed.

The preliminary objection raised by the Respondent accordingly fails. The same is overruled with costs to the Applicant.

Hon. Mr. Justice Lameck N. Mukasa
JUDGE
22nd August, 2008