

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

HCT - 00 - CC - MA - 341 - 2014
(Arising out of Miscellaneous Application No. 868 of 2013)
(Arising out of Civil Suit No. 0387 - 2013)

**BYAMUGISHA BABY COACH &
SONS TRANSPORT COMPANY ::**
APPLICANT

VERSUS

PAULINUS CHUKWU EJIOFOR ::
RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

This is an application by Byamugisha Baby Coach and Sons Transport Co. Ltd, the Applicant herein, against Paulinus Chukwu Ejiofor, as the Respondent, for orders that the order in Miscellaneous No. 68 of 2013 directing the Applicant to deposit Ugx. 110,000,000/= (Uganda Shillings One hundred ten million only) before setting aside an exparte judgment and granting them leave to file a Written Statement of Defence out of time be reviewed or varied.

They also seek the costs of the Application.

The application is grounded on the following;

1. That the condition of payment of Ugx. 110,000,000/= (Uganda Shillings One hundred ten million only) attached to the Applicants

filing a Written Statement of Defence in Civil Suit No. 387 of 2013 is onerous and unjust to the Applicant.

2. That it is in the interest of justice that this Application is allowed and the impugned condition be reviewed or varied.
3. That the Applicant is able and willing to provide another adequate and sufficient security to cover the interest of the Respondents in Civil Suit No. 387 of 2013.

The background to this application can briefly be described as follows:-

The Plaintiff/Respondent on 12th July 2013 filed Civil Suit No. 387 of 2013 against the Applicant/Defendants. Service of Court process was effected on 29th August 2013. The Applicant failed to file a defence in time and the Respondent obtained judgment on 23rd September 2013.

On 1st October 2013, the Applicant filed Miscellaneous Application No. 868 of 2013 in which it sought the Court to set aside the default judgment and extend the time within which to file a defence. The application was disposed off on 7th May 2014 and the Court allowed it on the condition that a deposit of security of Ugx. 110,000,000/= (Uganda Shillings One hundred ten million only) be effected within 14 days.

The Applicant/Defendant, aggrieved with that decision, filed the current application for review under Order 46 Rules 1 and 2 seeking a review or variation and extension of time within which to file a defence.

Counsel for the Applicant submitted that they were willing to provide an alternative security and suggested that a bus worth Ugx.

300,000,000/= (Uganda Shillings three hundred million only) registered in the names of Charles Byamugisha, the Managing Director of the Applicant, registered as UAR 296J be substituted for the Ugx. 110,000,000/= (Uganda Shillings One hundred ten million only) that the Court had ordered.

The reasons for such substitution were given in the affidavit in support of the application that the company was unable to mobilize the sum of Ugx. 110,000,000/= (Uganda Shillings One hundred ten million only) due to the poor economic conditions prevailing in the country. They suggested an alternative adequate and sufficient to cover the interest of the Respondent but not in cash.

In reply, Counsel for the Respondent submitted that for a review to be granted, the Applicant should have discovered new and important matters of evidence which he had previously overlooked, that there had to be some mistake or error apparent on the record or other sufficient reason and that none of these had been shown by the Applicant.

He added that the financial position of the company was not a new issue and therefore could not form an integral part of these proceedings.

Furthermore, that the “economic downturn” referred to by the Applicants had not been explained to show how it had affected their company and that the bus had not been valued, no logbook had been produced so it was difficult for one to say it belonged to Charles Byamugisha. He prayed that the Application be dismissed.

These submissions were supported by the affidavit in reply of the Respondent in which he deposed that the conditions set out in the order of Court of depositing the requisite sum within 14 days had not been fulfilled and therefore this application should be dismissed.

In the circumstances, he deposed, the Applicant had failed to raise proper grounds upon which the review/variation would be done.

In an application for review, the Applicant is expected to bring forth new and important matters that could have been overlooked by excusable failure. The other aspect that would lead to review is for the Applicant to point out mistakes or errors which are apparent on the face of the record.

Lastly, he may obtain a review if he puts forward other sufficient reasons which are analogous to the two reasons aforementioned.

In the instant Application, the Applicant did not bring forth any new and important matters nor show to Court any mistake or error apparent on the face of the record.

As for any other sufficient reason, Counsel for the Applicant submitted that the company was in a financial squeeze due to the prevailing economic conditions in the country.

In Paragraph 7 of the Affidavit in Rejoinder, Byamugisha Charles had deposed that they were undergoing financial problems which were private in nature and which they would tell the Court by seeking leave to adduce them in camera.

This leave was not sought and neither was the Court told of the financial status of the company that would have been referred to as “other sufficient” reason justifying a review of Court’s earlier order. Moreover, the financial status was not a kind analogous to new and important matters or mistake and error apparent on the face of the record. **Yusuf V Nokrach (1971)EA 104; Equator Sun Ltd V Heetal Shah Nairobi High Court Civil Case 2169/1996**

Lastly, I find the security of a bus without proper valuation and depreciating all the time because it is on the road with attendant risks of accidents not a suitable security. In the circumstances, the Applicant having failed to fulfill the requirements of review, I do not find this case fit for review. The application is therefore denied and dismissed with costs.

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David K. Wangutusi
JUDGE

Date: 17/12/2014