

THE HIGH COURT OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL COURT]

MISC. APPLICATION No. 104 OF 2015

[Arising out of CIVIL SUIT No.707 of 2013]

PATRICK BAGARUKAYO ::: APPLICANT/DEFENDANT

VERSUS

ANDREW MAGONA ::: RESPONDENT/PLAINTIFF

BEFORE: THE HON. JUSTICE B. KAINAMURA

RULING

This is an application by Chamber Summons brought under Order 9 rules 3(1-3) of the CPR, sections 96 and 98 of the CPA seeking orders that; time be extended for the filing and entertainment of an application under the provisions of Order 9 rule 3(1) CPR, a declaration that in the circumstances of the case, the court has no jurisdiction over the defendant in respect of the subject matter of the claim as sought and costs of the application be provided for.

The grounds of the application are set out in the affidavit in support of the application deposed by the applicant and are briefly that;

He was out of the country for a while and only made contact with his Counsel on Thursday 12th Feb 2015 who advised that the application should have been filed by 8th November 2014.

He was unable to sign the affidavit till he returned hence the delay in filing the same.

He is aware that all the transactions which are the basis of the main suit arose in the U.K and this court has no jurisdiction over the matter.

The delay in filing the application has been largely due to the fact that he is hardly in Uganda.

It is in the interest of justice that the time within which to file and entertain the application as well as declaration sought be granted.

In an affidavit in reply deposed by Ms. Zulaika Kasajja one of the advocates in personal conduct of the matter, Ms. Kasajja matter opposed the application stating that;

The respondent filed the main suit Civil Suit No. 707 of 2013 in November 2013 and served the same on the applicant who filed his defence within the time prescribed by the rules.

The suit proceeded to mediation and the applicant through his lawyers participated in it which therefore makes it false to suggest that since 2013 the applicant was not able to give proper instructions to his lawyers.

There is no reason therefore why time should be extended.

That this honorable court does have jurisdiction in this matter.

Counsel for the applicant submitted that the applicant's period to make an application to dispute jurisdiction under **Order 9 rule 3 of the CPR** expired on the 8th of November 2014 thus the need to apply to court is in accordance with. Under Section **96 of the CPA** for extension of time. Counsel further submitted that the applicant disputes the jurisdiction of court on grounds that all transactions the basis of C.S No. 707 of 2013 happened in the United Kingdom as pleaded in the plaint and as such according to **Section 15 of the CPA** this court has no jurisdiction over the matter. Counsel relied on the case of **Sebagala & Sons Electric Center Limited Vs Kenya National Shipping Lines Limited Civil Suit No.431 of 1999** where it was held that the question of jurisdiction is dependent on where the cause of action arose, where the contract was made or where it was performed or completed or payment was

effected. Counsel quoted paragraph 4(b) of the plaint where it was stated that the plaintiff would advance money to the defendant in the United Kingdom and the defendant was expected to remit that money to the plaintiff's Pound sterling Account in Uganda. Counsel thus prayed that the court declares that it has no jurisdiction over the matter in these circumstances and costs be awarded to the applicant.

In reply Counsel for the respondent submitted that the application be dismissed on basis that the application should have been filed within fifteen days from the filing of the suit but was filed after four hundred and ninety three days which is seventy weeks. Counsel submitted that the argument that the applicant lives abroad cannot hold in this day and era of internet and other inventions of communication and as such the application should be dismissed with costs. Regarding jurisdiction of this court, Counsel submitted that part of the transactions took place in Uganda. Counsel further argued that under **Section 15 of the CPA**, court has jurisdiction where a contract was made or was performed or where money was payable expressly or impliedly. Counsel relied on the case of **CMA CGM Uganda Limited Vs M/S H Ssekatawa International Ltd H.C. C.A No. 27 of 2013** where it held that jurisdiction is a question of law and prayed that the court makes a declaration that in the circumstances of this case the court has jurisdiction in respect of the subject matter and costs be awarded to the respondent.

RULING

This is an application brought under **Order 9 rule 3(1) of the CPR** contesting the jurisdiction of this court to entertain the matter. Counsel for the applicant appreciates that this application was brought out of time and therefore applied for extension of time under **section 96 of the CPA**. The applicant in support of the application stated that he is not resident in Uganda and therefore took time to instruct Counsel hence the failure to apply within the required time.

Section 96 of the CPA provides;

“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act the Court may, on its discretion from time to time enlarge that period, even though the period originally fixed or granted may have expired.”

Counsel for the respondent submitted that the applicant took seventy weeks from the time he should have filed to make this application and argued that extension of time is not justifiable in an era where communication means are readily available this I agree with him. The inordinate delay by the applicant in filing this application cannot be justified. The United Kingdom may be far but the world is a global village today. It is therefore a flimsy excuse that the applicant failed to file the application in time because he was not in the country.

Order 9 rule 3(1) of the CPR provides that a person who wishes to dispute the jurisdiction of Court shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence apply to the court.

In **Victorious Education Services Vs Mega Consults Limited HCT-OO-CC-MA-1058-2013** court while addressing enlargement of time under **section 96 of the CPA** held;

“Time will be enlarged when the applicant shows sufficient reason for his failure to do the act expected of him within the time given.”

The Court of Appeal of Tanzania in **Yusufu Same & Anor Vs Hadija Yusufu C.A T C.A No.1 of 2002** relied on the case of **Felix Tumbo Kisima Vs TTC Limited & Anor** in which Court held that;

“It should be observed that the term sufficient cause should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant’s power to control or influence resulting in the delay to take the necessary step.”

In my view, the applicant has failed to show any cause outside his influence or power that could have stopped him from filing within the time required.

In the circumstances the applicant has failed to show sufficient reason to warrant court to exercise its discretion to enlarge the time under S.96 CPA and as such the application cannot be considered on its merits.

Accordingly this application is dismissed with costs.

I so hold.

B. Kainamura

JUDGE

14.06.2016