

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO. 925 OF 2016
(ARISING FROM CIVIL SUIT NO. 781 OF 2015)

RONNIE TWASSE:..... APPLICANT

VERSUS

**FROLI INVESTMENTS (U)
LIMITED:.....RESPONDENT**

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

This Application filed by Ronnie Twasse called the Applicant “herein after” against Froli Investment (U) Limited “called” the Respondent in these proceedings, seeks to set aside an exparte judgment and or grant of extension of time within which to file a written statement of defence.

It is grounded on the following;

1. That the Applicant got to know of the case against him after the expiration of time for filing the defence.
2. That the Applicant works and resides in the United Arab Emirates (Dubai), and did not get to know of the summons and suit against him in time until a friend in Uganda called him.

His advocate Ssebuyna Samuel in an affidavit supporting the Application deponed that the Applicant called him on the 19th September 2016 and told him that he had learnt from a friend in

Uganda that an advert in the news paper had named him as a Defendant. That on receiving the information from the Applicant, the deponent went to the Commercial Division Registry and found a suit filed by Froli Investment (U) Ltd seeking recovery of money.

He also discovered that the court had allowed the Respondent to serve by substituted service which it did on the 31st August 2016. The Applicant's advocate also deponed that on the 19th September 2016 when he perused the court file, he found that the Respondent had already applied for judgment, and that fearing that a judgment might be entered any time, he also applied to set aside exparte judgment although it had not been yet entered at the time.

Counsel also deponed that the Applicant actually got to know of the suit on the 17th September 2016 and it was because he was outside of the country that he had not filed a defence in time.

In reply John Fred Kiyimba a Director of the Plaintiff/ Respondent contended that the Applicant was an employee of the 1st Defendant and was served by substituted service on the 31st day of August 2016.

In an Application such as this one, the court sets aside an exparte judgment only when its convinced by the Applicant that there was sufficient ground for not filing the defence in time or that service was not effected upon him or her under Order 9 r 27 of the Civil Procedure Rules.

I have carefully perused the court files Misc Application 809 of 2016 of the Application for substituted service, and that of suit 781 of 2015.

The suit file has an affidavit of service which attempts to show that service of Plaintiff was effected on 30th November 2015. Mubiru Moses of M/s Kizito, Lumu & Co. Advocates who purportedly effected service in his affidavit of service dated 30th March 2016 deponed in paragraphs 2,3,4, 5, 6 as follows;

“2. That on the 25th day of November 2015, I received copies of the plaint and summons to file defence in the above suit from this Honourable court for service upon the Defendant.

3. That on the same day I proceeded to Entebbe Road on a building next to Kamu Kamu Plaza where the Defendant's office is.

4. *That on reaching there I found a secretary in the office who refused to disclose her names to me, I explained the purpose of my visit and I served her with two copies of the plaint and summons to file defence.*

5. *That she received the documents but advised me to come back later for my signed copy.*

6. *That I went back on the 30th day of November 2015 and the same lady handed over to me a copy of the signed summons and plaint.”*

The foregoing suggests that the Plaintiff's advocates accessed the Defendants work premises and effected service which was duly acknowledged as stated in the affidavit of service filed in the court on 4th July 2016.

The Registrar declined to enter *ex parte* judgment based on the manner of service the Respondent stated in its affidavit of service. The Respondent then decided to effect service through substituted service. The Application for substituted service was grounded on the following;

1. That the process server served the Defendants with court process but they declined to acknowledge receipt of the same.

In my view one or both the documents carry a lie. In the affidavit of service of Plaintiff the process server deposed that service had been acknowledged and yet in the Application for substituted service he says they refused service. This contradiction points to untruthfulness and creates doubt as to whether the process server even made an effort to effect service on the Applicant personally.

From the Plaintiff, it is clear that the Plaintiff/Respondent knew that the Defendants also had an office in Dubai. To effect upon the Applicant by substituted service it was upon the Respondent to establish that the paper had wide physical circulation where the Applicant was. There is nothing to show in the affidavit of service that attempts were made to personally serve the Applicant. The doubt raised by the conflicting affidavits on its own shows that the service was not effectively and satisfactorily done.

For the above reasons, the judgment and decree of the Registrar are set aside. The Applicant is given 10 days within which to file a defence. Costs shall abide the results of the main suit.

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David K. Wangutusi

JUDGE

Date: 28th March 2017.