

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

**MISC. APPLICATION NO. 1233 OF 2017
(ARISING FROM CIVIL SUIT NO. 391 OF 2017)**

SAM AKANKWATSA:::APPLICANT

VERSUS

UNITED BANK OF AFRICA:::RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

This Chamber summons filed by Sam Akankwatsa herein called the Applicant against United Bank of Africa (U) Ltd referred to as the Respondent seeks Court to;

1. Dismiss the Respondent's Civil Suit No. 391 of 2017 for non-service.

It is grounded on the following, that there is an illegality on the face of the record. That the service of summons was ineffective and 21 days expired before service was attempted. Also that the orders of the Registrar dated 20th September 2017 were issued out of time. That the suit was in any case res judicata.

The Applicant therefore sought the dismissal of the suit.

The background to the application is found in Civil Suit 391 of 2017.

The Respondent sued the Applicant in a bid to recover UGX126,120,898 as money lent.

The suit was filed on the 26th May 2017 and summons were issued by the Registrar for service on the 26th May 2017.

It is clear from Miscellaneous Application 678 of 2017 seeking leave for substituted service that the Respondent had difficulty in tracing the Applicant. In paragraph 5 and 6 Sewanyana Steven who is the Process Server deposed;

“5. That I have been informed by Counsel in personal conduct which information I verily believe to be true that the Plaintiff informed him that they are not aware of any contact, address or place of business of the 2nd Defendant.

6. That I looked for the 1st Defendant and I failed to locate him. I called his telephone number 0701103025 several times and he never picked my calls and as such I failed to serve the 1st Defendant.”

This application for substituted service was filed on the 29th June 2017.

It was heard and an order allowing substituted service was issued on 20th September 2017.

It is the procedure adopted by the Respondent when they could not trace the 1st Defendant which forms the basis of this application.

Service of Court process is clearly provided in Order 5 of the Civil Procedure Rules. It is pertinent in my view to produce the relevant portion here;

“1. When a suit has been duly instituted a summons may be issued to the defendant-

a) ordering him or her to file a defence within a time to be specified in the summons; or

b) ordering him or her to appear and answer the claim on a day to be specified in the summons.

2. Service of summons issued under subrule (1) of this rule shall be effected within twenty one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after the expiration of the twenty one days, showing sufficient reasons for the extension.

3. Where summons have been issued under this rule, and-

a) service has not been effected within twenty one days from the date of issue; and

b) there is no application for an extension of time under subrule (2) of this rule; or
c) the application for extension of time has been dismissed, the suit shall be dismissed without notice.”

The foregoing means that when the summons are issued, the Plaintiff or whoever applied for them, must serve the other party within 21 days. The rules have envisaged situations where the intended Defendant or Respondent may not be traced. So in Order 5 rule 1(2) extension of time to effect service may be sought. The Application for extension must be made within 15 days after the expiration of the first 21 days mentioned above.

Order 5 rule 1(3) (b) states that if the application for extension of time is not filed within the 15 days pursuant to O.5 r. 1(2), the suit shall be dismissed without notice.

In the instant suit summons to file a defence were issued on the 26th May 2017. They should have been served within 21 days, which in this case was by the closure of 16th June 2017. It is clear from the application seeking substituted service that by 29th June, 2017 service had not been effected on the 1st Defendant because as the Respondent claims, he had not been traced.

In such a situation since the 21 days had expired, the next step was to seek extension of time within which to serve the summons. It is only after grant of such extension, that a platform upon which leave to serve by way of substituted service would be created.

As it is the order of substituted service was granted without the necessary authority.

The order of substituted service was therefore done outside the law and cannot stand.

In this I am fortified by their Lordships' observation in ***Rwabuganda Godfrey versus Bitamissi Namudu Civil Appeal No.87/2009*** arising from a similar situation from Nakawa High Court. The facts were on all fours. The Respondent in that case had obtained an order of substituted service before seeking extension of time within which to serve. Their Lordships observed;

“The Land Tribunal acted illegally when they issued summons/hearing notices in March 2005 without complying with the law.

The Land Tribunal erred when they entertained an application for substituted service and went ahead to order issuance of fresh summons in contravention of the law, and without jurisdiction. The order of substituted service was thus made without jurisdiction and was a nullity ab initio and absolutely of no effect. The Land Tribunal was required by law to have dismissed the suit under order 5 Rule (2), of the Civil Procedure Rules.”

I am in full agreement of that finding. Where a procedure is provided for, the parties are obliged to follow them.

In the instant case since the Respondent did not seek extension of time within which to effect service, all subsequent action in respect of the Applicant are null and void.

Furthermore it is now several months since the time for service upon the 1st Defendant expired. This suit should have lasted only 36 days from date of issue of summons and last date of application for extension of time to serve. No action having taken place in that regard within that period, this suit must and is dismissed with costs in as far as the Applicant is concerned.

Dated at Kampala this 17th day of August 2018.

**HON. JUSTICE DAVID WANGUTUSI
JUDGE**