

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

MISC. APPLICATION No. 975 OF 2017

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(Arising From Civil Suit No.420 of 2017)

1. KIDDAWALIME BAKERY LTD

2. KAMYA RONALD

3. BUTEERA RICHARD



..... APPLICANTS

VERSUS

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UNGA MILLERS (U) LTD RESPONDENT

BEFORE: HON. MR. JUSTICE B. KAINAMURA

RULING

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The applicant filed this application by Notice of Motion brought under Sections 96 and 98 of CPA and order 51rule6 of the CPR, seeking for orders that;

- a. An order extending time within which to file a defence in Civil Suit No. 420 of 2017 by the applicant
- b. Costs of the application be granted

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The application was supported by affidavit deposed by KAMYA RONALD, BUTEERA RICHARD, and LUKIKAMUZI JAMES the applicants.

The respondent filed Civil Suit No. 420 of 2017 against the applicants.

Service was effected on 8th June 2017 the applicants to file a defence within 15 days as required by law.

The applicants failed to file a defence within the 15 days after service of summons to file a defence as specified in the summons.

The applicants in their affidavit in support of the application contend that upon receipt of the summons, the 2nd and 3rd applicant contacted lawyers from MS Illukor & Co. Advocates and instructed them to file a written statement of defence but they were surprised to find out after 15 days that the lawyers had failed to file a written statement of defence as they had been instructed, even after making a deposit of UGX 400,000/= (Four Hundred Thousand Shillings) remaining with a balance of UGX 4,600,000/= (Four Million Six Hundred Thousand Shillings).

That upon finding out that the former lawyers had failed to file the WSD, they now hired the services of the current lawyers M/S Odokel Opolot & Co. Advocate.

Counsel for the applicants in prosecuting the application raised two issues

1. Whether there exists sufficient cause to merit extension of time to file a defence out of time.
2. Whether there was effective service of summons on the 1st applicant.

Counsel for the applicants in resolving the first issue cited section 96 of CPA, which is to the effect that where any period fixed or granted by court for doing any act prescribed or allowed by the act, the court may, in its discretion from time to time, enlarge that time, even though the period originally fixed or granted may have expired.

Counsel for the applicants further relied on Order 51 rule 6 of CPR SI.71, stating the fact that court has power to enlarge time upon such terms as the justice of the case may require.

Counsel in his submission referred to paragraph 4 of the 2nd applicant's affidavit in support which clearly states that "they contacted their lawyers Illukor & Co. Advocates for the purpose of defending the suit and filing written statement of defence, and that they deposited a sum of UGX 400,000/= (Four Hundred Thousand Shillings) as part pay for the services.

Counsel cited the supreme court decision in the case of ***Godfrey Magezi & Anor Vs Sudhir Rupparaila SCCA NO. 20 of 2002***, where court held that where there is a mistake, error or

misunderstanding of the legal advisor, however negligent, it ought to be interpreted as constituting sufficient cause for court to consider granting an extension of time.

Similarly, counsel for the applicant cited the decision of court in the case of ***Nakilwoya Vs Attorney General Misc. Cause No. 320 of 2013***, where it was held..... “a litigant who has
5 shown interest to be heard should not be locked out or condemned unheard, for the ends of justice to be met”.

Counsel therefore submitted that the applicants, by giving instructions to the lawyers of Ms Illukor & Co. Advocates to file a written statement of defence exhibited their willingness to be heard ,and that they should not be condemned unheard.

10 In resolution of the second issue, counsel for the applicants referred to paragraph 4 of the 1st applicant’s affidavit which states that the 1st respondent was not served with the summons, and prayed that the 1st applicant be allowed to file his WSD.

Counsel in conclusion, prayed that the application be granted and the applicants allowed to file their WSD out of time.

15 The respondent avers in the affidavit reply that the applicants were served with summons to file a defence on 8th June 2017 as per the affidavit of service attached and marked annexture ”A”.

Counsel for the respondent in making his submissions , first raised a preliminary objection arguing that the applicants brought an application against a nonexistent party “UGANDA MILLERS (u)LTD” instead of “ UNGA MILLERS (U)LTD, and that the application should be
20 struck out .

Counsel for the respondent relied on the authority in the case of ***Benard Mweeteise and Anor Vs Uganda Telecom Ltd M.A No. 6 of 2008***, where court held that a preliminary objection can be raised at any point before judgment.

In response to the 2nd issue raised by counsel for the applicants, counsel for the respondent
25 submitted that summons were served on all the three applicants at their registered office according to the court process server and as per the affidavit of service on curt record.

That the applicant's claim that they engaged the services of lawyers from M/s Illukor & Co. Advocates is preposterous, since the summons and other pleadings were served on the applicants on the 8th June 2017 and that the applicants could not have instructed the lawyers from M/S ILLUKOR to represent them a day before they were served. Counsel for the respondent
5 prayed for the application to be dismissed with costs.

In rejoinder, Counsel for the applicants submitted in response to the preliminary objection that the error is minor and that it can be cured by an amendment.

He reiterates the earlier submission, stating that the application is based on a valid ground, that the applicants on receipt of summons demonstrated their willingness to be heard when they
10 instructed their former lawyers who failed to file WSD within the 15 days.

DECISION OF COURT

I have considered the pleadings and submissions of both Counsel. In application for extension of time within which to file a defence, the court has discretionary power under Section 96 of the CPA to enlarge time even though the period originally fixed has expired.

15 Further, **Order 51 rule 6** of the **CPR** grants court the power to enlarge time upon terms as the justice of the case may require.

Alive to the position of the law, I find the applicant's reason for their failure to file a written statement of defence, being negligence of their former lawyers M/S Illkuor & Co. Advocates, a valid reason to merit the grant of the **extension** as Counsels negligence should not be visited on
20 the client.

The applicants are therefore granted as extension of 7 days from the date of this ruling within which to file a defence.

Costs will be in the cause.

25 **B. Kainamura**
Judge

11.08.2018