

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
CIVIL APPEAL NO .24 OF 2022
ARISING OUT OF CIVIL SUIT NO. 0772 OF 2022**

KENFREIGHT UGANDA LTD::: APPELLANT

VERSUS

MARY KASIRYE::: RESPONDENT

Before Hon. Lady Justice Patricia Kahigi Asimwe

Judgment

Introduction

1. This is an appeal from the order/decision of the Learned Trial Chief Magistrate Her Worship Akullo Elizabeth Ogwal delivered at the Chief Magistrate's Court of Nakawa on 30th May 2020 in Civil Suit No.0722 of 2022.
2. The background to this appeal is that the Respondent sued the Appellant in Civil Suit No. 722 of 2020 at the Chief Magistrate's Court of Nakawa seeking to recover rental arrears in the sum of USD 29000 and Special damages of UGX. 13,518,000 for breach of contract and costs of the suit.
3. The Respondent lodged a Plaint in the Chief Magistrate's Court on the 23rd November 2020, and summons to file a Defence were issued. The Appellant (Defendant) was served with the Plaint and summons on 3rd December 2020. On the 14th of December 2022, the Appellant filed its first Written Statement of Defence in the Magistrate's Court. On 15th December 2022, the Respondent



(Plaintiff) filed an amended Plaintiff dated 11th December 2020, the basis of which summons to file a Defence on the amended plaintiff was issued for service upon the Appellant. The Appellant was served with the summons and an amended Plaintiff on 28th December 2020.

4. On 22nd January 2021, the Trial Magistrate, His Worship Dr. Singiza (as he then was) granted an Interlocutory Judgment on the basis that the Written Statement of Defence was not filed on time. On 28th January 2021, after the Interlocutory judgment was entered by the Court, the Defendant filed an amended Written Statement of Defence.
5. On 14th December 2021, the Appellants filed a Miscellaneous Application at the Chief Magistrates Court at Nakawa seeking to set aside the Interlocutory Judgment that was entered on 22nd January 2021 vide No. 659 of 2022. The application was supported by the affidavit of Hamu Mugenyi an advocate of the High Court. The parties filed submissions on the matter.
6. On 30th May 2022, the learned trial Chief Magistrate delivered a ruling dismissing the application on the grounds that the affidavit in support of the application had falsehoods and hearsay evidence hence being inaccurate and untruthful. The Application was dismissed on the basis of technicalities and not on the merits of the case.
7. The Appellant being dissatisfied with the decision of the learned trial Magistrate appealed to this Court on the following grounds:
 - a) The Trial Magistrate erred in law and fact when she failed to set aside the *ex parte* judgment against the Appellant having found that the Appellant had lodged two written statements of defence lodged on the 14th of December 2020 and 28th of January 2021 on the court record.
 - b) The Trial Magistrate erred in law and fact when she failed to establish that the *ex parte* judgment was entered in error

