

**MISCELLANEOUS APPLICATION NO. 0151 OF 2023
(ARISING FROM CIVIL SUIT NO. 417 OF 2019)**

VERSUS

(Before: Hon. Lady Justice Patricia Mutesi)

1. On 17th May 2019, the respondent filed the main suit against the defendant.
2. The respondent never served the applicant with summons to file a defence and instead filed a false affidavit of service sworn by a one Derrick Ngoye.
3. On 27th August 2019, this Court entered a default judgment against the applicant in a sum of USD 15,000 (United States Dollars Fifteen Thousand) plus thereon interest at 6% p.a. from the date of filing till full payment.
4. The default judgment was entered without the applicant being heard.
5. The applicant was prevented by sufficient cause from filing a defence and appearing to defend himself in Civil Suit No. 417 of 2019.

6. The applicant should not be condemned unheard as it violates his right to a fair hearing which is a cardinal principal of law.
7. The applicant has a good defence to the main suit and is therefore committed to defending this matter to its conclusion before this Court.
8. It is in the interests of justice that this application be allowed.

The application is supported by two affidavits sworn by the applicant. Briefly, he stated that he first learnt about the main suit on 19th January 2023 when the respondent's lawyers served him with a notice to show cause why execution should not issue. He claimed that he had never been served with a summons to file a defence in the main suit and that the affidavit of service of summons sworn by Derrick Ngoye in the main suit was false. He also affirmed that that he has a good defence to the main suit and that he should not be condemned unheard.

The respondent opposed the application through an affidavit in reply sworn by Musede John, an advocate working with the law firm representing him in this matter. He claimed that this application is meritless and that it is just intended to delay execution in the main suit. He confirmed that the applicant was duly served with summons to file a defence to the main suit on 5th June 2019 and that he duly acknowledged receipt thereof. He posited that the applicant failed to file a defence to the main suit simply because he had no defence to the claims therein.

Issue arising

1. Whether the impugned default judgment and decree should be set aside.

Representation and hearing

At the hearing of this application, the applicant was represented by Mr. Basiime Armstrong of M/S Basiime Advocates while the respondent was represented by Mr. Bwambale David of M/S Tropical Law Advocates. I have considered the materials on record, the submissions of the parties and the laws and authorities cited.

Determination of the issue

Order 9 rule 27 of the Civil Procedure Rules S.I. 71-1 ("CPR") allows this Court to set aside a decree passed ex parte upon being satisfied that the summons was not duly

served or that the defendant was prevented by sufficient cause from appearing when the suit was called on for hearing. The applicant has argued that he was not duly served with the summons to file a defence in the main suit which constitutes sufficient cause for his failure to file a defence within the time allowed. It is trite law that sufficient cause must relate to the inability or failure to take a particular step in time (see **Buso Foundation Ltd v Bob Mate Phillips, HCCA No. 40 of 2009**).

The success of this application wholly rests on whether or not there was effective service of summons to file a defence to the main suit upon the applicant. Effective service of summons means service of summons that produces the desired or intended result which is to make the defendant aware of the suit brought against him so that he has the opportunity to respond to it by either defending the suit or admitting liability and submitting to judgment (See **Geoffrey Gatete & Anor v William Kyobe, SCCA No. 7 of 2005**). The surest way of achieving that result is by serving the summons on the defendant in person.

In paragraphs 4 – 9 of the affidavit in support, the applicant denied being served with any summons in the main suit. He denied knowing Derrick Ngoye who swore the affidavit of service. In paragraph 3 of his additional affidavit in support, the applicant claimed that the signature on the summons attributed to him is not his. On the other hand, paragraphs 6 and 7 of the affidavit in reply assert that the applicant was properly served with the summons in the presence of Counsel Bwambale David and the respondent at Speke Hotel on 5th June 2019 and that he acknowledged receipt of the same by appending his signature on it.

Paragraphs 8 and 9 of the affidavit in reply disclose that on the same day and in the same manner, the said Derrick Ngoye served the applicant with summons in another case which the respondent had against him at the Civil Division vide HCCS No. 204 of 2019 and that he acknowledged receipt of the same by appending a similar signature which he has never contested. Paragraph 8 of the affidavit in reply further states that the applicant entered a consent in the said suit using the same signature and that he has been making payments to the Respondent under that consent ever since. The applicant did not file an affidavit in rejoinder to dispute these averments.


The impugned summons in the main suit were attached to the affidavit in support and the affidavit in reply as Annexure A. The summons and consent in HCCS No. 204 of 2019 were also annexed to the affidavit in reply as “B” and “C” respectively. An allegation of forgery is quite serious and the applicant should have produced evidence to validate that allegation. It should be noted that the applicant did not adduce any opinion of a handwriting/forensics expert to guide the Court on the alleged forgery. He omitted to point out the differences between his normal signature and that on the summons, yet there is a stark resemblance amongst all the signatures attributed to him on the copies of the summons in the main suit, the summons and consent in HCCS No. 204 of 2019 and his affidavits in this application.

It is a general rule that a party of full age and understanding is normally bound by his signature on a document whether he reads and understands the document or not. In the absence of evidence proving, at least on a balance of probabilities, that the applicant’s signature on the summons in the main suit was forged, and basing upon the stark resemblance amongst his signatures in the two summonses and the consent referred to above, this Court finds that the applicant was duly served with the summons to file a defence to the main suit and that there is no sufficient reason justifying his failure to file a defence within the time prescribed by law. Accordingly, the applicant’s claims of violation of his right to a fair hearing are redundant.

Consequently, I make the following orders:

- i. This application is hereby dismissed.
- ii. Costs of this application are awarded to the respondent.

Dated this 29th day of November 2023


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Patricia Mutesi

JUDGE