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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION No. 941 OF 2020
(ARISING FROM CIVIL SUIT No. 255 OF 2020)

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1. BUYINZA GEORGE
2. MUJUMBA RICHARD
3. WAMAKARE MOSES
4. WASHI RASHID
15 5. WATENYERA RONALD
6. KULOBA ISA
7. NAMANDA JAMES
8. NAMUDOLO AKIM
9. TEBANDEKE SOWEDI APPLICANTS

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VERSUS

1. HALIMA NAKAKANDE
2. ALISAT NALUWOZA RESPONDENTS

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

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RULING

Introduction

This application was brought by Notice of Motion under Order 36 Rule 4 of Civil Procedure Rules, SI 71-1, where the Applicants seek for orders that:

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1. Unconditional leave be granted to the Applicants to appear and defend the main suit.
2. Costs of this application be provided for.

5 Facts

This application is supported by the affidavit of Buyinza George, for and on behalf of the Applicants, and on his own behalf, deponed in paragraphs 1-11, and summarized as follows:

10 That it is not true that any of the Defendants (Applicants herein), owes money to the Plaintiffs (Respondents herein), and that it is the 1st Plaintiff (1st Respondent herein) who went missing with more than UGX 100,000,000(Uganda Shillings One Hundred Million Shillings only).

15 That the 1st Plaintiff was a treasurer of the Association of carrot sellers, and disappeared without accounting for more than UGX 100,000,000(Uganda Shillings One Hundred Million Shillings only).

That the Respondents are aware that there is no claim by the Applicants against them, and are only fighting them for what is known, and that it is in the interest of justice that this application is allowed.

The Respondents did not file any affidavit in reply.

20 Representation

This matter was fixed for hearing, and the Applicants were represented by Counsel Kalule Fredrick of M/S Fred Kalule & Co. Advocates while Counsel Muhumuza Rodgers of M/S Rwabwogo & Co. Advocates appeared for the Respondents.

25 Counsel for the Applicants was directed to serve Counsel for the Respondents with the application, which was not yet served upon the Respondents, and this Court directed Counsel for the parties herein, to file written submissions once the pleadings are complete on record.

30 This Court has looked at the affidavit of service filed with the Court Registry on 25th January, 2022, and finds that the process server averred in paragraph 2- 3 that he received hearing notices to be served upon the Respondents. That the Chairperson called the Respondents who informed him that they were outside but would pick the notices from his office upon their return, and that copies of the notices were left with the Chairperson who refused to sign the copy returned to
35 Court.

5 It is worth noting that Counsel for the Applicants served the Respondents with hearing notices, and did not serve the Respondents with the application as directed by this Court.

10 In the given circumstances, this Court finds that the Applicants did not comply with the order of the Court to serve the Respondents with the application; such conduct by the Applicants amounts to abuse of Court process. (**See Uganda Land Commission Vs James Mark Kamoga & Anor SCCA No. 8 of 2004** on what amounts to abuse of Court process)

The Applicants who seek justice must be seen to do justice.

15 In the result, this application is dismissed for non service under Order 5 Rule 3(1) (a) of the Civil Procedure Rules, SI 71-1.

Dated, signed and delivered electronically this 11th day of January, 2023.


SUSAN ABINYO
JUDGE
11/01/2023

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