

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
MISCELLANEOUS APPLICATION NO. 1989 OF 2023
(ARISING OUT CIVIL SUIT NO.0546 OF 2023)
CALVARY CHAPEL OUTREACH MINISTRIES=====APPLICANT
VERSUS
ACHEING VERONICA=====RESPONDENT
Before Hon. Justice Patricia Kahigi Asimwe

Ruling

Introduction

1. This Application was brought under Section 98 of the Civil Procedure Act, Order 51 Rule 6 and Order 52 Rules 1 & 3 of the Civil Procedure Rules SI 71-1 seeking orders that time within which to file a Written Statement of Defence be enlarged; the written statement of defence be validated and costs of the Application be in the main cause.
2. The grounds of the Application are laid down in the Notice of Motion and are further elaborated in the Affidavit in Support deposed by Kimbagaya Fred, Chairperson of the Board of Trustees of Calvary Chapel Outreach Ministries Limited. He stated that:
 - a) He got to know about the case on 20th August 2023 when a church member approached him and told him that some documents had been left behind at the Applicant's Cafe.

- b) At the time of service, the church members informed the Court processes server that the leaders of the organization and members of the Board of Trustees were not around, but the Process server just left the documents with them.
 - c) On 22nd August 2023 the Applicant's officials held a meeting and resolved to defend the suit and decided to hire M/S Vance Advocates.
 - d) Their Advocates advised them that the time within which to file the Defence had lapsed hence this Application.
3. When the matter was called for hearing the Respondent did not make an appearance despite having been served and neither did they file an affidavit in reply.

Representation

4. The Applicant was represented by M/S Vance Advocates who filed written submissions.

Issue

5. Whether there is sufficient cause to enlarge time within which to file a written statement of defence

Resolution

6. In their submissions Counsel for the Applicant relied on the case of **Hadondi Daniel v Yolam Engodi Civil Appeal No 67 of 2003** where it was held that time can only be extended if sufficient cause is shown. Counsel also cited the case of **The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman**

Bunju Village Government & Others quoted in **Gideon Mosa Onchwati vs Kenya Oil Co. Ltd & Another [2017] KLR** where it was held that the word sufficient cause should receive a liberal construction in order to advance substantial justice. Counsel reiterated the reasons advanced in the affidavit in support of the Application for failure to file the defence and prayed that the Application be granted.

7. Order 51 Rule 6 of the Civil Procedure Rules provides that:

“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by order of the court, the court shall have power to enlarge the time upon such terms, if any, as the justice of the case may require, and the enlargement may be ordered although the application for it is not made until after the expiration of the time appointed or allowed;...”

8. The **Black’s Law Dictionary 8th Edition at page 4496** defines sufficient cause as good cause. The same dictionary also defines good cause as “A legally sufficient reason. Good cause is often the burden placed on a litigant to show why a request should be granted or an action excused.” (Page 663)
9. In the case **Rehmat Khan Kherdin & Sons Ltd & another v Kenya Commercial Bank Ltd Civil Case Number 266 of 1996 GV Odunga 3rd Edition at page 8208** Court held that:

The Court in extending time must be satisfied that for sufficient reason an act which ought to have been done by a party seeking the Court’s discretion could not be done.

10. In the case of **Parimal Vs Veena Civil Appeal No.467 of 2011**, (<https://indiankanoon.org/doc/602824/>) the Indian Supreme Court defined sufficient cause as follows:

Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.

11. The Supreme Court further held that “sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straight-jacket formula of universal application.”
12. Order 29 of the Civil Procedure Rules provide for service on corporate bodies. Under Order 29 Rule 2 of the Civil Procedure Rules service on a corporate body shall be on the director, secretary or principal officer; or left at the registered office of the corporation.

13. In the present case, the summons was left with church members at the premises of the Applicant. The church members do not have the authority to receive summons on behalf of the Applicant. Court however notes that the summons was left at the premises of the Applicant. The question is whether this was effective service.
14. The position of the law on what amounts to ‘effective service’ was established by the Supreme Court of Uganda in the case of **Geoffrey Gatete and Angella Maria Nakigonya vs. William Kyobe SCCA No. 7 of 2005** where **Mulenga JSC**, held that:

The Oxford Advanced Learners’ Dictionary defines the word “effective” to mean “having the desired effect; producing the intended result”. In that context, effective service of summons means service of summons that produces the desired or intended result. Conversely, non-effective service of summons means service that does not produce such result. There can be no doubt that the desired and intended result of serving summons on the defendant in a civil suit 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. [Emphasis added]

15. In the present case, service was not effective as it did not produce the intended result of the Applicant file its defence in time.
16. Court also notes that there was no inordinate delay in filing the present Application. The chairperson in the affidavit in support of the Application stated that the summons was called to his attention on 20th August 2023, a board meeting was held on 22nd August 2024 at which the decision was taken hire lawyers to

prepare a defence. This Application was then filed on 24th August 2023.

17. In conclusion, therefore, court finds that there is sufficient cause to enlarge the time within which to file a defence. The Applicant is directed to file its defence within 15 days from the date of this ruling. Each party shall bear its costs.

Dated this 12th day of January 2024

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Patricia Kahigi Asiimwe

Judge

Delivered on ECCMIS