

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
MISCELLANEOUS APPLICATION NO.0870 OF 2023
(ARISING FROM CIVIL SUIT NO 412 OF 2021)
ENTEBBE MUNICIPAL COUNCIL=====APPLICANT
VERSUS
BASIMA CONSULT LTD=====RESPONDENT
Before Hon. Lady Justice Patricia Kahigi Asimwe

Ruling

Introduction

1. This Application was brought under Section 98 of Civil Procedure Act Cap 71, Section 33 of Judicature Act Cap 13, Order 9 Rule 12, and Order 52 Rules 1 & 3 of the Civil Procedure Rules seeking orders that: the default judgment and decree entered in Civil Suit No. 412 of 2021 be set aside; the Applicant be granted leave to file a written statement of defence out of time; suit be set down for hearing interparty and costs of the Application.
2. The Application was supported by an Affidavit deposed by Aisha Kitenda, the deputy town clerk of Entebbe Municipal Council who stated that:
 - a) Sometime in April 2023 the Applicant was informed in a letter from M/S Ssemwanga, Muwazi & Co. Advocates that judgment had been entered in Civil Suit No 412 of 2021 and costs were taxed.

- b) Judgement was entered against the Applicant to pay the Respondent UGX 56,380,962, general damages of UGX 15,000,000, interest of 8%.
- c) She is the focal person tasked with Court cases of the Applicant, and she was not aware of the suit. She consulted from their Office Registry, Assistant Town Clerks of Divisions A and B Entebbe Municipal Council, the Procurement Office, the Finance Office, the Town Clerks Office, and also the Mayor's Office and none of them had any knowledge about the suit.
- d) She then consulted their lawyers, M/S Osilo & Co. Advocates as to whether they knew about the suit.
- e) The lawyers checked their records and came across a letter dated 11th August 2021 from M/S Ssemwanga, Muwazi & Co Advocates informing them of a suit, and the need to renew summons but they had not attached a plaint as was stated in the letter.
- f) The said lawyers had informed the Respondent's lawyers that the plaint was not attached to the letter.
- g) The said lawyers also did a search at this Court's Registry, and they discovered that the summons was stamped but the plaint was never stamped.
- h) The letter requesting for default judgment and submissions made therein, contained falsehoods because the Respondent never at any time approached the Applicant or the Town Clerk.

3. The Respondent opposed the Application through an Affidavit in Reply deposed by Ddembe Shaffic, Managing Director of the Respondent Company. He stated that:

- a) The Applicant's Affidavit is fatally defective and shall at the time of hearing the Application, shall raise a preliminary objection.
- b) The deponent of the Affidavit in Support is not the Accounting Officer therefore not the focal person on Court matters thus, no authority to depone this affidavit.
- c) All proceedings between the parties were done with the knowledge of the Town Clerk and that service was done on the Town Clerk.
- d) The Town Clerk directed them to serve their lawyers M/S Osilo & Co Advocates at the 2nd Floor Agip House Plot 9 Kampala Road, so they served the letter and the plaint on the said Advocates on 11th August 2021.
- e) On 7th September 2021, Martin Nsubuga an advocate with M/S Ssemwanga Muawazi & Co. Advocates, and the process server proceeded to M/S Osilo & Co Advocates at 2nd Floor Agip House Plot 9 Kampala Road and served a copy of the summons to file a defense and a photocopy of the Plaint who acknowledged receipt by stamping and signing the said documents.
- f) The Applicant has never communicated with the Respondent any information about the pleadings in this matter.

- g) The Applicant's lawyers received the said letter and also acknowledged it and there is no way they could receive the letter without the accompanying pleadings.
- h) The Applicant deliberately refused to file a defense and the Court gave judgment on 22nd December 2022.
- i) That this Honorable Court is functus officio and it cannot set aside this judgment by an application of this kind.

Representation

4. The Applicant was represented by M/S Osilo & Co Advocates Plot 9 Kampala Road, and the Respondent was represented by M/S Ssemwanga Muwazi & Co. Advocates. Both parties filed written submissions.

Issue

5. Whether there is sufficient ground to set aside the default judgment granted in Civil Suit No 412 of 2021

Resolution:

Preliminary Objections

6. The Respondent raised the following preliminary objections:
- a) This court is functus officio
 - b) The Applicant used the wrong procedure to file the Application
 - c) The affidavit was deposed without authority.

1st Preliminary objection: This court is functus officio

7. Counsel submitted that the default judgment was entered on 13th August 2022, and the suit was set down for formal proof. The Respondent filed scheduling notes, witness statements, and a trial bundle, and the matter was fixed for hearing. The Respondent's witnesses testified and were cross-examined by the court. Thereafter court made judgment on 22nd December 2022 and the decree was issued on 3rd March 2023. Counsel submitted that this court is functus officio because the Court heard the matter and made its final judgment on 22nd December 2022.
8. Counsel for the Respondent relied on the case of **Goodman Agencies Ltd v Attorney General Constitutional Petition No. 3 of 2008** in which the Court cited Magadeline Makinta v Fostina Nkwe, Court of Appeal No 26 of 2001 where the court also relied on Odneste Monanyana v The State Criminal Appeal No 9 of 2001 where Court held that once a Court has duly pronounced a final judgment it has itself no authority to correct alter or supplement it because it becomes functus officio.
9. **The Black's Law Dictionary 11th Edition** at page 815 defines functus officio as "having performed his or her office without further authority or legal competence because the duties and functions of the original commission have been fully accomplished."
10. In the case of the State of **Punjab Versus Davinder Pal Singh Bhullar & Ors. Criminal Appeal No. 2258-2264 of 2011** the Supreme Court of India held that "Court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error."
11. In the case of **Re VGM Holdings Ltd 1941 (3) ALL. ER 417** it was held that once a judge makes an order, neither that judge

nor a judge of equal jurisdiction has jurisdiction to vary the terms of such order, it can only be varied by an appellate court.

12. In this case, the default judgment was entered and the suit was set for formal proof. The matter was heard and evidence was adduced. Lady Justice Jeanne Rwakakoko entered judgment for the Plaintiff on 22nd December 2022. This was the final decision of the Judge. That decision cannot be set aside by this court as it is functus officio. This preliminary objection is therefore upheld.
13. In view of the above court has not deemed it necessary to consider the other preliminary points of law as doing so would be moot.
14. In conclusion the Application is hereby dismissed with costs to the Respondent.

Dated this 12th day of January 2024


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Patricia Kahigi Asiimwe

Judge

Delivered on ECCMIS