

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
MISCELLANEOUS APPLICATION NO 1631 OF 2022
(ARISING FROM CIVIL SUIT NO 416 OF 2021)
WORLDWIDE LOGISTICS LTD=====APPLICANT
VERSUS
CARE FREIGHT SERVICES LTD=====RESPONDENT
Before Hon. Lady Justice Patricia Kahigi Asiimwe

Ruling

Introduction

1. This Application was brought under Order 9 Rules 12 and 29, Order 52 Rules 1 and 3 of the Civil Procedure Rules Cap 71-I, and section 98 of the Civil Procedure Act Cap 71 seeking orders that:
 - a) The interlocutory judgment entered on 30th March 2022 be set aside.
 - b) Leave be granted to the Applicant to file a defence out of time.
 - c) Costs of the Application
2. The Application was supported by an Affidavit deposed by Mr. Jimmy Kutosi, Director of the Applicant. He stated that:
 - a) The Respondent instituted Civil Suit No. 416 of 2021 against the Applicant. On 18th June 2021, the Respondent effected service of summons on a one Faith

Massa, the Office Administrator. He was advised by his Counsel that a company is served through its directors, a secretary, or other principal officer and that the office administrator is not a principal officer of the company. Neither he nor any other director or principal officer was made aware of the suit.

- b) On 9th June 2021, he was hospitalized with COVID-19 and was bedridden. He was only made aware of the suit when the Applicant was served with a hearing notice dated 12th October 2022. The Applicant is not indebted to the Respondent and due to COVID-19, the Applicant was prevented from making payments promptly. The Applicant has a good defence.

3. The Respondent filed an Affidavit in Reply deposed by Justus Ndiraba Director of the Respondent. He stated that:

- a) Service was effected on Faith Massa who is a principal officer of the company because throughout their communications via email she signed off as a country manager. The suit was filed on 18th June 2021, which is the same day he was discharged from hospital.
- b) The Applicant is indebted to the Respondent and that the Applicant acknowledged this debt in a letter dated 29th March 2021.
- c) The economy opened up after the lockdown in 2020, therefore the defence of failure to pay money due to COVID-19 is not sustainable. The written statement of defence shows no triable issues.

Representation

4. The Applicant was represented by M/s Jabo & Co Advocates and the Respondent was represented by M/S Ssemwanga, Muwazi & Co. Advocates.

Resolution

Issue: Whether there is just cause to set aside the interlocutory judgment under Order 9 Rule 12 of the Civil Procedure Rules

5. The parties filed submissions which court has duly considered. Order 9 Rule 12 of the Civil Procedure Rules SI 71-1 stipulates that:

Where judgment has been passed pursuant to any of the proceeding rules of this Order, or where judgment has been entered by the registrar in cases under Order 50 of these Rules, the Court may set aside or vary judgment upon such terms as maybe just.

6. In the case of **The Registered Trustees of Madi West Nile Diocese vs Lucia Eyotaru and others MA No. 43 of 2021** Serunkuma J held that to succeed in an application under Order 9 rule 12 one has to show good cause. (see **Sserubiri Frank & Other vs Salama Jaques & Others HCMA No 205 of 2021**)

7. In this case the Applicant's contention is there was no proper service of summons on the Applicant since service was effected on the office administrator who is not a principal officer under Order 29 of the Civil Procedure Rules. On the other hand, the Respondent argues that the summons were served on a one Faith Massa who is a principal officer since she signed off her emails as a country manager of the Defendant. The key question then is whether the service of summons on Faith Maasa was effective service.

8. Under Order 29(2) of the Civil Procedure Rules it is provided that:
Subject to any statutory provisions regulating service of process, where the suit is against a corporation, summons may be served;-

(a) On the secretary, or on any director or other principal officer of the corporation or

(b) By leaving it or sending it by post addressed to the corporation at the registered office or if there is no registered office, then at the place where the corporation carries on business.

9. As pointed out in the case of **Spencon Services Ltd V Onencan Habib Civil Appeal No 0092 of 2016** the above provision does not define who a principal officer is. However, in the same case, Justice Mubiru held that:

.... considering the mischief aimed at by the provision, ... the determination of who the Corporation qualifies as such [principal officer] must be determined on basis of the nature of the duties the person performs in the corporation.

Interpreting the provision on ejusdem generis basis, it includes such persons in the corporation who are authorized to exercise substantial executive or managerial powers such as signing contracts and making major business and administrative decisions as distinguished from regular employees.

10. While the job description of the country manager has not been provided, ordinarily a country manager oversees a foreign company's operations in a country and therefore should have substantial executive and managerial duties. A country manager is therefore a principal officer. However, court notes that while Faith Maasa signed off the first email as country manager, in the subsequent emails she just signed off as Faith, and no position was stated. It is therefore not clear if indeed she was the country manager and therefore a principal officer at the time of the service of the summons.

11. In an application for setting aside ex parte judgment, the court must consider not only the reasons why the defense was not filed but also whether the Applicant has reasonable defence (triable issues). (See **Tree Shade Motors Limited V DT Dobie & Company (K) Limited & Joseph Rading Wasaombo, Civil Appeal No. 38 of 1998; Patel V Cargo Handling Services Ltd [1974] EA 75.**)
12. In the case of **Ceneast Airlines Ltd v Kenya Shell Ltd, Civil Appeal No. 74 of 1999** it was held that courts have wide discretion to set aside ex parte judgment so as to ensure that justice is done.
13. Court also notes that while the Applicant acknowledges that they owe the Respondent money, they dispute the amount claimed. There is therefore a dispute as to how much money is owed. In the circumstances and in the interest of justice court finds that there is just cause to set aside the interlocutory judgment.
14. In conclusion the interlocutory judgment is set aside. The Applicant is granted leave to file the written statement of Defence within 15 days from the date of this Ruling. The costs shall be in the cause.

Dated this 29th day of January 2024

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Patricia Kahigi Asiimwe

Judge

Delivered on ECCMIS

