

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA.**

**CIVIL SUIT NO. 613 OF 1990**

LETITHIAN MAGEMBE:::::::::::::::::::::::::::::PLAINTIFF

VERSUS

UGANDA ELECTRICITY BOARD:::::::::::::::::::::::::::::DEFENDANT

BEFORE: HON. MR. JUSTICE G.M. OKELLO

RULING

This application is by Notice of Motion brought under order 47 r. 6 of the CPR. whereby the applicant sought an order of enlargement of time within which to file his Written Statement of Defence. The application is grounded on the fact that in July 1990 when the Legal Manager of the defendant corporation entered appearance in this suit, he soon went abroad for a short course leaving instruction to his junior officers to refer the matter regarding this case to the corporation's counsel M/S Hunter and Greig for action. But that the junior officer did not act on the instructions secondly that the applicant corporation has good defence to the Plaintiff's claim.

The application was supported by an affidavit which was sworn by the Applicant corporation's Legal Mpanyo Kakuba on 14/2/91.

At the commencement of the hearing of the application, neither Counsel for the Respondent /Plaintiff nor the Plaintiff himself appeared though there was evidence that counsel for the Respondent was duly served with Hearing Notice of the application. In those circumstances I allowed the application to be heard exparte as applied for by counsel for the applicant.

In his address to me, counsel for the applicant argued that the applicant/defendant was prevented by sufficient cause to file its W.S.D. within the stipulated period. That the legal Manager in the

legal Department of the Defendant Corporation after entering the necessary appearance in this case left for a short course abroad after instructing a junior officer under him to refer the matter to the defendant corporation's counsel for action. That this instruction was however never carried out by the junior officer thus resulting into the failure to file the defendant's corporation's W.S.D. within the stipulated period in this case. He submitted that this constituted sufficient cause to justify enlargement of the time within which the defendant can file its W.S.D. Counsel relied on K.C.C.Vs. Apolo Hotel Corporation (1985) HCB 77.

The learned counsel farther argued that the defendant/Applicant has good defence to the plaintiffs claim and he pray that his application be allowed.

0.47. R 6 of the CPR clearly empowers this court to enlarge the time fixed for filing pleadings under this Rules. This being a judicial discretion it must be exercised judicially. Counsel urged me to take a liberal stand especially where the defaulting defendant is a secretary of a corporate body with multifarious duties to perform. That court should draw a distinction between such a defendant and an individual defendant, I had the chance of reading the ruling of Odoki.J as he then was in Kampala city council vs. Apollo Hotel Corporation above. I also read the Judgment of Sebei District Administration Vs. Casyali and others (1968) SA 300. Both these cases dealt with application to set aside exparte judgment. The Applicant in each case was a secretary of a corporation. In each case he defaulted in entering appearance and the court in each case held, that a distinction should be drawn between such defendant and an individual defendant. That a liberal approach should be taken against a defendant who is a Secretary of a Corporation.

I agree with that view though of course each case must be taken on its facts.

The instant application is seeking enlargement of time. I think 0.7.r.6 of the CPR. gives the court wider power than 0.9 r. 24 CPR. does. The latter order

applies where "sufficient cause" is shown. 0.47 r.6 CPR does not make such requirement.

Having heard counsel for applicant upon this application and having perused the Notice of Motion and the supporting affidavit, I am satisfied that the interest of justice demands in the circumstances of this case that the case be heard and determined on its merits. The application would therefore be allowed in the time would be enlarged to enable the applicant to file in his W.3.D.

I should however like to observe that counsel for the applicant raised as his second ground for the application that the defendant has good defence to the Plaintiff's claim. The alleged good defence was not attached or incorporated in the Notice of Motion. It is my view that for applicant to succeed under that ground, he should produce the purposed defence or incorporate it in the Notice of Motion. This is important to assist the court to assess whether or not the defendant has good defence. It is not enough merely to allege that the defendant has rood defence to the Plaintiff's Claim.

**In** the whole the application is allowed and the **applicant is to file his WSD within 30 days from the date of this Ruling,**

G.M. OKELLO

JUDGE.

**5/2/92.**

Ruling delivered in my chamber in the presence of Kanyemibwe counsel for the applicant, and Mr. Wagaba Court Clerk.

G.M. OKELLO

JUDGE.

**5/2/92.**