

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL SUIT NO. 1195 OF 1998**  
**MUHAMOOD WANULA BUSULWA ::::::::::::::: PLAINTIFF**

**INTERSTATE FINANCE CO. & 2 OTHERS ::::::::::::::: DEFENDANTS**

Before: The Hon. Principal Judge Mr. Justice J.H. Ntabgoba

**RULING**

This is an application brought, by notice of Motion under Order 9 rule 9 of the Civil Procedure Rules as well as Order 48 rules 1 and 3 of the Rules. The application also employs S. 101 of the Civil Procedure Act. The application seeks an order that the interlocutory judgment passed against the applicant in H.C.C.S. NO. 1195 of 1998 be set aside for the reasons that: —

- (a) the respondents' application for the interlocutory judgment was not proper as there was no service effected on the applicant.
- (b) the affidavit of service filed on record is based on falsehoods as the applicant was never served with court summons as alleged and the process server is not known to the applicant.
- (c) the applicant has a good defence to the suit and the suit raised triable issues in law and fact.

The application is supported by the affidavit of the applicant. In the affidavit the applicant says that though she knows the respondent she does not know the process server, in which case the server's affidavit is false in so far as it avers that he served the applicant. And although the summons allegedly served on the applicant bear a signature purported to belong to the applicant, she categorically denies having been served and therefore having acknowledged the summons by signing them. In paragraph 7 of her affidavit she depones that

“I learnt of a suit against me by the respondent/ plaintiff through my lawyers M/s Sebalu & Lule Advocates who saw the cause list where a Miscellaneous Application by the Respondent/Plaintiff against myself, Interstate Finance Company Ltd, and Muramuzi Enterprises has been fixed for 3rd March 1999. That on perusing the Court file, I found that an interlocutory judgment had been entered against the defendants on 8th January 1999 for failure to enter appearance and the matter is to be set down for formal proof.”

At the commencement of hearing of the application it never proceeded to the substantive issues because Counsel for the respondent, Mr. Makada, raised preliminary objections. The major objection raised by Counsel was based on the provisions of order 5 rule 17 of the Civil Procedure Rules which are that:-

“The serving officer shall, in all cases, in which the summons has been served under rule 15 of this Order, make or annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which the summons was served and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the summons.”

Mr. Makada was of the strong view that a breach of this provision was committed in view of the absence of the person who identified the applicant from paragraph 4 of the affidavit of service sworn by Alfred M. Kahangire, the process server which depones: —

“I then went to Karen Stores at Ben Kiwanuka Street where I met the second defendant ROBINA KARUNGI and served her with the Court papers which she too accepted by signing on my copies thereof now returned in Court.”

In view of the affidavit of Robina Karungi denying having been served by the process server, one would have expected a rebuttal of this averment. To answer this Mr. Rwakafuzi, Counsel for the respondent pointed out that the respondent, in his affidavit in reply did clarify the omission, when he pointed out that paragraph 4 of the respondent in reply depones:—

“The applicant/defendant was served by ALFRED M. KAHANGIRE who was directed by myself up to Karen Stores at Ben Kiwanuka Street where she works and pointed out her to him by myself.”

Since the applicant by her own words deponed that she knows the respondent, then Mr. Makada’s preliminary objection no longer have any weight.

A more serious and fatal omission, however, was in the failure of the Commissioner for Oaths who administered the Oath to the process server to comply with the provisions of S.8 of the Oaths Act, Cap. 52 of the Laws of Uganda which are that:

“Every Commissioner for Oaths or Notary Public before whom any Oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the Oath or affidavit is taken or made.”

The affidavit sworn by Mr. Alfred M. Kahangire on 31st December 1998, which was relied on by the Registrar to enter an interlocutory judgment against the applicant and co-defendants did not state at what place it was made. This was a serious defect that renders the affidavit incurably defective. This kind of error or omission has been the cause of striking out a number of affidavits, thereby also striking out the applications they have purported to be sworn in support. I would, in this regard, refer to the recent decision in the case of KENFREIGHT (U) LTD - VS - HENRY SEBUNYA Miscellaneous Application No. 353 of 1998 (arising from H.C.C.S. No. 988 of 1998).

In the circumstances, I decided that the Registrar was wrong in relying on the defective affidavit of service sworn on 31st December 1998 by Alfred M. Kahangire to enter an interlocutory judgment against the defendants. I set aside the judgment with costs to the applicant/second defendant.

J.H. Ntabgoba  
Principal Judge

**28/5/1999**