

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-MA-0063-2003

(From HCT-05-CV-MA-063-2003)

1. FRANCIS XAVIER RUGUNDA)
2. EFRA CO. LTD) APPLICANTS

- VS

JOHN AMWINERESPONDENT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

RULING

The applicants in this matter are the defendants in the main suit while the respondent herein is the plaintiff. This application by chamber summons seeks the following orders:

1. That the service upon the applicants/defendants is bad in law and the same should be set aside.
2. The suit be dismissed.
3. Costs of this application be provided for.

The genesis to this application is as follows. On 11th April 2003 the respondent/plaintiff filed the main suit and summons to file a defence were issued the same day. Those summons were never served on the applicants/defendants. On 5th May 2003 counsel for the respondent/plaintiff wrote to the Deputy Registrar, High Court, Mbarara essentially as follows;

‘Attempts to serve the defendants within the statutory period has not been possible. In the premise we pray for the issue of fresh summons to enable us serve the defendants as we have already known his whereabouts.’

That letter was received in the Registry on 6th May 2003, the same day fresh summons were issued and later served on the applicants/defendants who proceeded to file their defence.

It is now contended by the applicants that they were never served with proper summons. Hence this application. The response of the respondent is that service was properly effected as fresh summons had been issued by court following an application duly made for issuance of the same.

Order V rule 1 (1) (a) of the Civil Procedure Rules provides:

‘Service of summons issued under sub-rule (1) shall be effected within twenty one days from the date of issue, except that the time may be extended on application to court, made within fifteen days after the expiration of the twenty one days, showing sufficient reasons for the extension.’

Summons had been issued on 11th April 2003. The expiry of the twenty one days mentioned in the above provision was on 2th May 2003. An application for extension of time could properly be made to court on or before 17th May 2003. That being the case, if the relevant application was duly made on 6th May 2003 as is being argued on behalf of the respondent such application would be within time and would be proper. But before I go to that aspect I should refer to the letter which was written to the Deputy Registrar relevant extracts of which I have quoted earlier on. With due respect I do not find therein sufficient reasons shown to merit grant of extension. Even if I were wrong in coming to this finding, an application to court under order V requires formality. Order V rule 33 of the Civil Procedure Rules states that applications under the order shall be by summons in chambers. As I find no such application on record the purported issuance of fresh summons had no basis. I agree with the submission of counsel for the applicants/defendants that as there was no application for extension of time no proper summons were available for service then or after.

Having so found, this application must succeed. The suit is dismissed with costs to the applicants/defendants.

P. K. Mugamba

Judge

12th February 2004

Mr. Bazaare for respondent

Mr. Kahungu-Tibayeita holding brief for Mr. Babigumira for applicants

Ms Tushemereirwe court clerk

Court:

Ruling read in open court.

P. K. Mugamba

Judge