

THE REPUBLIC OF UGANDA
IN THE HIGH COURT UGANDA AT MUKONO
MISCELLANEOUS APPLICATION NO.199 OF 2023
ARISING OUT OF CIVIL SUIT NO.24 OF 2023

ATC UGANDA LTD:::::::::::::::::::::::::::::::::APPLICANT

VERSUS

1.MARJORIE NAKANDI LWANIRA

2.NTAMBI EPAPHRUS:::::::::::::::::::::::::::::::::RESPONDENTS

BEFORE: HON.LADY JUSTICE JACQUELINE MWONDHA

RULING

This application brought before me by Counsel for the applicant Under Section 98 of the CPA, 0.52 r 1& 3, 0.9 r 12, 0.7 r 1819 of CPR having been filed in 2023 for Orders that;

1. The Order issued in Civil Suit No.24 of 2023 on the 15th day of March,2023 in favour of the respondents to proceed ex-parte be set aside.
2. The written statement of defence filed on the 15th day of March,2023 on behalf of the applicant be validated; and
3. Costs of this application be provided for.

The notice of motion was accompanied by the affidavit of the applicant's senior legal manager a one Kansiime Timothy but briefly are that;

1. On the 28th day of February, 2023 the applicants' senior legal manager was informed by the respondents' lawyer Mr. Noah Omollo that the respondents had instituted Civil Suit No. 24 of 2023 against the applicant in the High Court of Mukono.
2. Mr. Noah Omollo further informed the applicants' senior legal manager that the summons and plaint had been served on the applicant but the latter had not filed a defence. He however informed him that he was in the process of obtaining instructions from the respondents since the matter had been filed by M/s Kabuusu Muhumuza & Co. Advocates.
3. That the applicants' senior legal manager upon receiving the above information, requested the respondents' lawyers to send him a copy of the summons and plaint such that he could verify whether the same had been served and received by the applicant.
4. That in the interim, the applicants' senior legal manager also instructed external Counsel to crosscheck the above information at the Court registry and obtain copies of the plaint and summons.
5. The applicants' senior legal manager further crosschecked with the applicants' then front desk coordinator Ms. Faith Awori, who informed him that she had never received the summons and did not have any record of receiving the summons in the instant suit matter. As such the applicants' in-house legal team was never made aware of service of the summons and plaint.

6. That the plaint was later shared by the external Counsel who then issued instructions to Counsel to file a written statement of defence and the said written statement of defence was filed on 15th day of March, 2023.
7. That owing to the fact that the summons and plaint were never properly served on the applicant was not in position to file its defence in time and the same was filed a few days outside the time ordered by the summons.
8. When the applicant served the respondent with its Witness Statement of Defence it was informed that the respondent had applied on the 9th day of March, 2023 to proceed ex-parte which application was granted on 15th day of March, 2023 on the same date the applicant filed its witness statement of defence.
9. The applicant has a good defence to the respondents claim in HCCS No.24 of 2023.
10. That it's in interest of Justice that the case be heard on its merits.

Furthermore, considering the affidavit of service by the first Counsel of the respondent Benon Karuhanga in brief reads;

1. That on the 15th day of February, 2023, I received a copy of the summons accompanied with a copy the plaint and a summary of the evidence in the present civil suit No.24 of 2023 from this Honourable Court for service onto the defendant. (copies of plaint, summons and summary of evidence are attached and collectively marked A1).

2. That on the 15th day of February, 2023 I proceeded to the offices of the defendant located at Rwenzori Towers, 6th Floor Plot 6 Nakasero Road, Kampala- Uganda with a copy of the summons, plaint and summary of evidence.

3. That on arrival at the said offices, I met a lady who identified herself as Awori Faith a front desk secretly to the said company.

4. That I explained to Awori Faith the reason as to why I was there and handed over the documents to her letter which she asked me to take a seat and wait while she was consulting with legal before she would receive.

5. That shortly after, Awori Faith returned with the said documents and received them by fixing a copy of the stamp at the bottom right corner after which she returned to me my copy endorsed with a stamp of the defendant (attached is a copy marked A)

6. That I depone this affidavit as proof of having duly effected service of the aforesaid copy of the summons accompanied with a copy of the plaint and a summary of the evidence in the present civil suit No.24 of 2023.

In considering the applicant's application, I have perused the affidavits of both the application and that of the respondent.

The affidavit have from the applicant has a lot of inconsistencies and contradictions for instance under paragraph 6 of the application the applicants Senior Legal Manager states that summons and plaints were shared by external Counsel whereas in paragraphhe says

that Mr. Noah Omollo informed him that summons and plaint had been served on the applicant.

He further contradicts himself when he says that summons and plaint were never served properly under paragraph 7 whereas the process server for the respondent in his statement states under paragraph 3.0 that he proceeded on the 15th day of March, 2023 to the office of the defendant located at Rwenzori Towers, 6th Floor, plot 6 Nakasero Road Kampala-Uganda where he met a lady identified as Faith Awori a front desk secretary of the applicant who on consultation with legal received the documents and affixed a copy of the stamp at the bottom right corner and returned to him a copy endorsed with stamp of the defendant paragraphs 3.0 - 6.0.

In the case of;

Sirasi Bitaitana

Vs

Kananura (1977) HCB

It was held that;

- i. The inconsistencies in affidavits can not be ignored however minor, since a sworn affidavit is not a document to be treated lightly. If it contains an obvious falsehood, then it all naturally becomes suspect.
- ii. An application supported in affidavits can't be ignored however minor since a sworn affidavit is not a document to be pleaded lightly. If it contains an obvious falsehood, then it naturally becomes suspect.

- iii. Since the applicants had been served with summons to enter appearance they failed to respond to them, then they had, by that failure put themselves out of the court and had no locus standi.

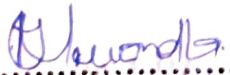

An application supported by a false affidavit is bound to fail because the applicant in such a case does not come to Court with clean hands to tell the truth as equity demands.

This brings us to the consent executed on the 2nd day of March, 2023 first verbally and later on asked by court to be put in writing so that it can be received by court and filed.

On perusing the consent,

1. I pronounce that it is partially allowed paragraph 2 the WSD is validated as it is to be used in the main suit decision,
2. paragraph 3 costs of the application to be provided for by the applicant,
3. whereas paragraph 3 the Order issued in Civil Suit No.24 of 2023 on the 15th day of March, 2023 in favour of the respondents to proceed ex-parte be set aside is dismissed

Right of Appeal explained.


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JACQUELINE MWONDHA
JUDGE
03/10/2023 

19/10/2023