

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**MISC. APPLICATION NO. 0025 OF 2022**

**(ARISING FROM CIVIL SUIT NO. 010 OF 2022)**

**5KYEGEGWA DISTRICT LOCAL GOVERNMENT :::::::::::::::APPLICANT**

**VERSUS**

**AHARIKUNDIRA MARGARET. ::::::::::::::: RESPONDENT**

**BEFORE: HON. JUSTICE VINCENT WAGONA**

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**RULING**

**Introduction:**

This ruling relates to an application brought under Section 98 of the Civil Procedure Act and 33 of the Judicature Act, Order 51 rule 6 and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules for seeking orders:

- 15 (a) That the Applicant be granted leave to file the written statement of defense out of time.
- (b) That the costs of taking out the application be made in the cause.

**The History:**

The grounds supporting the application are contained in the affidavit of Kisembo 20Grace, the Chief Administrative Officer of the applicant stating:

1. That the Respondent filed Civil Suit No. 010 of 2022 against the applicant challenging her interdiction and delay in lifting the interdiction.

2. That the applicant was served with summons to file a defense on 15th February 2020. That on the 17th of February 2022, the applicant duly  
25 instructed the Attorney General's Chambers to file a defense.
3. That the applicant, as advised by the Attorney General's Chambers, referred the matter to the District Service Commission, where it was administratively settled; that by the time the matter was concluded, the statutory time within which the applicant was to file a defense had lapsed.
- 30 4. That the applicant has a plausible defense that raises triable issues for determination by Court to wit: that the respondent was lawfully interdicted, and following investigations, the respondent was invited for a hearing. That due to death of a Commission Member and COVID-19 restrictions, the Commission sitting delayed, but the respondent's issue was later handled  
35 and the interdiction was lifted; and the respondent's lawyer was accordingly informed on 8.2.2022 prior to instituting the suit on 14.2.2022.
5. That the applicant was delayed by sufficient cause in filing the defense in time. That it is in the interest of justice that the applicant is allowed to file a defense and defend the suit. That the Respondent shall not be prejudiced by  
40 the grant of this application and the delay to institute the same is not inordinate and it is in the interests of justice that the application is allowed.

**Representation:**

The applicant was represented by the Attorney General's Chambers while the Respondent did not file an answer to the application within the time provided for.

**45 Issue:**

**Whether the applicant should be granted an extension within which to file a written statement of defense.**

***Applicant's submissions:***

It was submitted for the applicant citing ***Kaawa James & Anor Vs. KabodiDanie*** 50***Misc. Appln No. MBD 101 of 2019*** where His Lordship Dr. Joseph Mulagira noted that court may for good cause grant an extension of time within which a party can file its pleadings out of time. That the discretion to grant may be exercised so that the suit or matter is heard on merits and the dispute is settled; that the discretion must be exercised judicially on proper analysis of the facts and the 55proper application of the law to the facts of the case.

That mistakes of counsel should not be visited on the innocent litigant and should not be used a bar to one obtaining extension of time and administration of justice (***Mary Kyomulabi Vs. Ahmed Zironde, Civil Misc. Application No. 41 of 1979***). That administration of justice normally requires that the substance of all 60disputes are investigated and decided on merits and that errors and lapses should not debar a litigant from pursuit of his rights (***Andrew Bamanya Vs. Shamsheali Zaver, SCCA No. 70 of 2001; Essaji Vs Solanki (1968) E.A 218 cited with approval in Bishop Jacinto Kibuuka Vs, The Uganda Catholic Lawyers Society & Anor supra***).

65That sufficient cause for purposes of extension of time relates to the inability or failure to take the particular step in time (Rosette ***Kizito Vs. Administrator General & others SCCA No. 9 of 1996***). That sufficient cause is an expression which has been used in large number of statutes. That the meaning of the word sufficient is adequate or enough in as much as may be necessary to answer the 70purposes intended. Therefore, the word sufficient embraces no more than that which provides a platitude which when the act is done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of curius man (Hon Justice

Musa Ssekaana in *Bishop Jacinto Kibuuka Vs. The Uganda Catholic Lawyers Society & Anor MA 696 of 2018*)

That the applicant was prevented by sufficient cause from filing a defense on time on ground that the Respondent's interdiction had to first be handled with the District Service Commission which was not fully constituted after loss of one of its member. That the applicant thought the issue could be handled administratively without recourse to the courts of law and that this delayed the filing of the defense. That the applicant has a plausible defense to the Respondent's claim as demonstrated in the affidavit on support of the application.

Counsel thus submitted relying on the above authorities that the applicant was prevented by sufficient cause from filing the written statement of defense within the statutory 15 days and invited court to invoke its inherent powers under section 98 of the Civil Procedure Act to extend the time within which to file a defense. That the applicant has a plausible defense to the Respondent's claim since the suit challenging her interdiction was prematurely filed on 14<sup>th</sup> February 2022 after applicant's lawyer had guided that the interdiction was lifted. Thus the applicant should be granted leave to file her written statement of defense to have the matter determined on merits and to ensure that the ends of justice are met.

#### **Consideration by Court:**

Order 51 Rule 6 of the Civil Procedure Rules provides that:

*“Where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by order of the court, the court shall have power to enlarge the time upon such terms, if any, as the justice of the case may require, and the enlargement may be ordered although the application for it is not made until after the expiration of the time appointed or allowed; except that the costs of any*

application to extend the time and of any order made on the application shall be borne by the parties making the application, unless the court shall otherwise order.”

The power to grant or not to grant an extension of time is discretionary. The primary consideration should be seeing to it that substantive justice is done without undue regard to lapses, mistakes or faults.

105 In *Hadondi Daniel vs Yolam Egondi Court of Appeal Civil Appeal No 67 of 2003* it was held that:

110 “it is trite law that time can only be extended if sufficient cause is shown. The sufficient cause must relate to the inability or failure to take necessary step within the prescribed time. It does not relate to taking a wrong decision. If the applicant is found to be guilty of dilatory conduct, the time will not be extended”.

The term sufficient cause is not defined in the CPR but has been discussed in decided cases. In *The Registered Trustees of the Archdiocese of Dar es Salaam Vs The Chairman Bunju Village Government & Others* quoted in *Gideon Mosa Onchwati vs Kenya Oil Co. Ltd & Another [2017] eKLR* the it was stated that:

115 “It is difficult to attempt to define the meaning of the words ‘sufficient cause’. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant.”

120 In the same Kenyan authority of *Gideon Mosa Onchwati* (supra) reliance was made on the Supreme Court of India case of *Parimal vs Veena* which attempted to describe what amounts to “Sufficient cause” thus;

*"Sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously" (See also Bishop Jacinto Kibuuka Vs. The Uganda Catholic Lawyers Society & 2others, Misc. Appln No. 696 of 2018).*

The case law appears to leave the meaning of "sufficient cause" to judicial discretion and determination based on the facts, surrounding circumstances and the merits of each particular case and to ensure the ends of justice. The conduct of the parties, for example, whether or not, a party has been grossly negligent, careless, reckless or palpably indifferent in prosecuting the case, would be a consideration.

A delay that is beyond the full control of the party or due to occurrence of facts that could not be contemplated by the party, should favour an extension of time in appropriate cases. Where the denial to grant an extension would occasion an injustice to the applicant or lead to multiplicity of suits or where justice can be

better served after hearing from both sides, these factors may favour an extension  
150of time in appropriate cases.

In this case, the applicant indicated under paragraphs 5 and 6 of the affidavit in support of the application that they relied on the guidance from the Attorney General to handle the matter administratively. That the Commission was not fully constituted after the death of a member and COVID-19 restricted operations; that  
155after the constitution of the District Commission, the issue was presented before the Commission and the Respondents interdiction was lifted. That by the time the suit was filed, the interdiction had been lifted.

I have made a careful review of the annexures attached to the Applicant's affidavit in reply. Annexure B is a letter dated 1<sup>st</sup> November 2021 signed by Justice Ralph  
160W. Ochan, the Chairperson Public Service Commission approving the appointment of members of Kyegegwa District Service Commission. Annexure C is a letter by the Chief Administrative Officer of the Applicant addressed to the Secretary Kyegegwa District Service commission dated 31<sup>st</sup> January 2022 asking the Commission to lift the interdiction per the findings of the investigations. Annexure  
165D is a letter to the Respondent's lawyers dated 8th February 2022 informing the Respondent that the District Service Commission was not fully constituted after losing a member and that COVID-19 stifled the operations of the Commission and that the same was constituted and that before the end of February 2022 the issue would be handled by the Commission. In due course, on the 14<sup>th</sup> of February 2022,  
170the Respondent filed a suit against the Respondent challenging her continued interdiction. The Applicant averred that they delayed to file a defense because they thought the issue would be handled administratively since the interdiction had been lifted.

The applicant in my view was very honest in its dealings and took steps to have the  
175interdiction lifted as indicated. However, in my view the fact that interdictions  
were ongoing could not stop the Applicant from filing a defense and inform court  
of how far the District Service Commission had gone with the same. To this extent,  
the advice of the attorney General was limiting in advising the applicant to pursue  
the issue administratively instead of at the same time filing a defense. It is trite law  
180as expounded in the case of *Banco Arabe Espanol Vs. Bank of Uganda, SCCA  
No. 8 of 1998* which position has been adopted in a number of authorities that  
mistake of counsel cannot be visited on the innocent litigant however negligent or  
reckless it can be. I find that the delay to file a defense was premised on the advice  
of the applicant's lawyer which was limiting because the process by the District  
185Service Commission could not bar the applicant from filing their defense in time. I  
find that it should not be visited on the applicant.

Further to the above, the applicant contends that the interdiction was lifted before  
the main suit was filed and thus the same was filed prematurely and it's  
incompetent at law. This is a triable issue that needs to be substantiated through a  
190trial.

In addition, I find that the delay was not inordinate. The 15 days within which the  
applicant was to file a written statement of defense expired on the 3<sup>rd</sup> of March  
2022 and the application for leave to file a defense out of time was filed on the 23<sup>rd</sup>  
of March 2022. Therefore the delay of 20 days is not inordinate and thus  
195excusable.

I therefore grant this application with the following orders:


- 1. That the applicant shall file and serve their Written Statement of Defense within 10 days from the date the ruling is delivered.**



2. That the Respondent shall file her reply to the Written Statement of  
200 Defense if any within 10 days from the date of service by the applicant.

3. Each party shall bear own costs.

I so order.

A handwritten signature in black ink, appearing to read "Vincent Wagona". The signature is written in a cursive style with some loops and a horizontal line at the bottom.

Vincent Wagona  
205 High Court Judge  
Fort-portal  
23.01.2023