

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
MISC. APPLICATION NO. 85 OF 2021
(Arising from Civil Suit No. 003 of 2017)

KINYARA SUGAR LTD ::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

KYOMUHENDO PAMELA ::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENT

RULING

[1] This Application by the Applicant, Kinyara Sugar Ltd is for orders that:

1. The exparte Judgment entered against the Applicant in **C.S. No. 03 of 2017** be set aside;
2. Time within which to file a Defence in **C.S. No. 03 of 2017** be extended; and
3. Costs of this Miscellaneous Application are provided for.

[2] The Application is based on grounds set out in the Affidavit of **Russel Moro**, the company secretary of the Applicant which are as follows:

- (a) *That on 28th July, 2020, while following up on another company matter at the High Court at Masindi he was informed by one of the clerks that a Judgment had been delivered against the Applicant in C.S. No. 03 of 2017.*

- (b) That since he was not aware of the suit, he made an effort to peruse the Court file and found that the summons to file a defence in the main suit bore the stamp similar to that of his office.*
- (c) That he therefore, made inquiries within his office to ascertain how the summons bore his office stamp yet he was not aware of the suit and he is the one with authority to receive all legal documents.*
- (d) That his office Administrator denied ever receiving the said summons and that it did not bear her signature.*
- (e) That the Applicant having failed to file a defence, Counsel for the Respondent applied for default Judgment in the main suit which was granted and the suit was set down for formal proof without the Applicant being served with any hearing notice for the hearing of the formal proof. Judgment in the main suit was subsequently passed on 23rd July, 2020.*
- (f) That the service by the Plaintiff is bad in law since the company secretary is the one who ought to be served and receive Court process.*
- (g) That the Applicant has a good defence against the claims by the Respondent in C.S. No. 03 of 2017 and it is therefore important that the main suit is heard on its merits.*
- (h) That the Application to set aside the Judgment was filed without undue delay, and that in the interest of justice and*

equity, this Application be granted and the Applicant be allowed to defend the suit.

- [3] Through her lawful Attorney **Mugisha Edson Kiza**, the Respondent filed her Affidavit in reply which is to the effect that the present Application was filed **14 months** after Judgment was entered and therefore ought to fail for being brought with delay, that the summons to file a defence was duly served on the Applicant who chose not to file a Written Statement of Defence (WSD), and that the Applicant acknowledged receipt of the summons through the Personal Secretary of **Mr. Russel Moro**, the company Secretary, who stamped it to confirm receipt of the summons in **C.S. No. 03 of 2017**.

Whether the Applicant is guilty of dilatory conduct:

- [4] In the instant case, the Respondent/Plaintiff filed **C.S. No. 03 of 2017** against the Applicant/Defendant for compensation and recovery of general damages, punitive, exemplary and special damages arising from breach of contract, costs of the suit and interest thereon on **1st February, 2017**.
- [5] According to the affidavit of service on record dated **28th February, 2017** deposed by **Mugahya Henry**, Court Process Server, the Applicant was served with summons to file a defence on **7th February, 2017**. Upon failure to file the WSD, a default Judgment against the Applicant was granted on **15th May, 2017** and the suit was set down for formal proof on **24th October, 2017**. Judgment in the main suit was passed on **23rd July, 2020**. The foregoing events as they unfolded in this suit were not disputed by the Respondent/Plaintiff.

- [6] The Applicant filed **Miscellaneous Application No. 61 of 2020**, to set aside the exparte Judgment on 1st September, 2020 two months after the exparte Judgment, but the same was on 4th **November, 2021** dismissed with costs because it was incompetent for it had not been signed by an authorized Court official and sealed with the making of **O.5 r 1(5) CPR**.
- [7] On **9th November, 2021**, five days later, the Applicant filed a fresh Application, the present Application, to set aside the exparte Judgment. In my view, the above clearly show how the Applicant was prudent enough and interested in pursuing her rights. I find that she acted with lot of vigilance and therefore, it cannot be said, humanly, that the Applicant is guilty of dilatory conduct in regard to the matter now before Court. In the premises, I find that it has not been shown that the Applicant in this Application is guilty of dilatory conduct.

Whether there are grounds to set aside the exparte Judgment

- [8] Under **O.9 r 27 CPR**, it is provided thus:

“In any case in which a decree is passed exparte against a defendant, he or she may apply to the Court by which the decree was passed for an order to set it aside; and if he or she satisfies the Court that the summons was not duly served, or that he or she was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall made an order setting aside the decree as against him

or her upon such terms as to costs, payment into Court, or otherwise as it thinks fit”.

[9] Counsel for the Applicant submitted that under **O.29 r 2 CPR** the provided mode of service on corporation like the Applicant is thus:

“Subject to any Statutory provision regulating service of process, where the suit is against a corporation, the summons may be served -

(a) On the Secretary, or on any Director or other Principal Officer at the corporation; or”

[10] In agreement with the above position of the law, I have looked at the affidavit of service upon which the Applicant was allegedly served with the summons to file a defence, I find that the name of the person who purportedly received Court process on behalf of the Applicant is not indicated. The Return of service itself does not bear any signature of the person who received the summons appearing on the stamp of the Applicant thereon.

[11] In this case, it has not been denied that the said **Russel Moro** is the Applicant company secretary. It has not been shown that the Court process was served on him as the Applicant Secretary, or on the Director or other Principal Officer of the Applicant Corporation.

[12] It is my contention that under **O.5 r 1 CPR**, service is to be on the Defendant in person or his or her agent. It is trite that the Secretary referred to in **O.29 r 2 CPR** does not mean a Secretary or Receptionist. A Secretary or Receptionist of a company is not

a duly authorized and agent of a company for purposes of receiving Court process; **Augustine Okurut Vs. Gerald Lwasa & Anor (1988-1990) HCB at 164.**

[13] In the premises, I find that the service of summons on an unnamed person found at the reception of the applicant company as was done in the instant case, was not proper and effective service of summons. As a result, I grant the application and the exparte Judgment passed against the Defendant in **C.S. No. 3 of 2017** has to be set aside and it is accordingly set aside. Costs shall abide the outcome of the main cause.

[14] The Applicant is to file a defence within 14 days from the date of this Ruling/Order.

Order accordingly.

Dated at Masindi this 27th of **October, 2023.**

Byaruhanga Jesse Ruyema
Judge