

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT ARUA

CONSOLIDATED MISCELLANEOUS NO. 0119 & NO. 0108 OF 2023

ARISING FROM CIVIL SUIT NO. 020 OF 2023

YOVELA HOLDINGS LIMITED:..... APPLICANT

10

VERSUS

WESTNILE RURAL ELECTRIFICATION COMPANY:.....RESPONDENT

RULINGBEFORE HON. JUSTICE COLLINS ACELLAMBrief Introduction

15

These two applications were consolidated by court on its own motion to aid expeditious disposal of the same. Miscellaneous Application No. 0119 was brought by Notice of Motion under Section 98 of the Civil Procedure Act (CPA), Order 6 Rules 8, 10 & 30, Order 9 Rules 6, 10 & 11(2) and Order 52 Rules 1 & 3 of the Civil Procedure Rules (CPR) seeking orders that:

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- 1. That the defence filed by the Respondent on the 28th day of July, 2023 in Civil Suit No. 020 of 2023 be struck out for offending Order 6 rules 8, 10 & 30 of the Civil Procedure Rules.*
- 2. Judgment be entered on liquidated sums of money claimed by the Applicant/ plaintiff against the Respondent / Defendant.*
- 3. Costs of this Application be provided for.*

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Grounds in support of the Application

The grounds of the application are contained in the Notice of Motion and in an affidavit in support deposed by GEOFFREY ARIJOLE NYAKUNI, the Managing Director of the Applicant Company. Briefly, the grounds are that:

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- a) The Respondent filed a written statement of defence in Civil Suit No. 020 of 2023 wherein it denied generally the claims put forward by the Applicant, it put forward evasive denials of the claims and the statement of defence, and the statement of defence*

5 *does not disclose a reasonable defence thereby offending Order 6 rules 8, 10 & 30 of the Civil Procedure Rules.*

b) *Judgement be entered on liquidated sums of money claimed by the Applicant / plaintiff against the Respondent / defendant.*

c) *It is in the interests of justice and fairness that this Application is granted.*

10 Grounds in Opposition of the Application

The Respondent opposed the application through an affidavit deposed to by KENNETH KIGUMBA, wherein he stated that the Application is incompetent, irregular and an abuse of court process and ought to be dismissed with costs. The Respondent contends that the Written Statement of Defence responded to claims by the plaintiff and does not contain general denials
15 and that it clearly responds and denies the Applicant's claim presented in the plaint.

The Respondent further adds that her defence is not evasive as it raises a reasonable defense against the claim in the plaint and that this application is a deliberate attempt to waste court's time and it's an afterthought after the Respondent seeking to strike out the Applicant's suit on the basis of this court lacking jurisdiction to try the suit filed by the Applicant.

20 Representation

At the hearing, the Applicant was represented by *Ederu & Gama Advocates and Solicitors* while the Respondent was represented by *Maven Advocates*. The hearing proceeded by way of written submissions wherein both parties filed.

Issue

25 *Whether or not the Written Statement of Defense filed by the Defendant/Respondent offends Order 6 Rules 8, 10 and 30 of the Civil Procedure Rules.*

Determination/ Resolution

I have had the privilege to read through both the Applicant and Respondent's submissions which I have considered in coming up with this Ruling.

30 I will now go ahead to deal with the merits of the Application.

Position of the law.

5 The provisions of Order 6 Rules 8, 10 and 30 of the CPR. Rule 8 thereof provides –

Denial to be specific

10 *It shall not be sufficient for a defendant in his or her written statement to deny generally the grounds alleged by the statement of claim, or for the plaintiff in his or her written statement in reply to deny generally the grounds alleged in a defense by way of counterclaim, but each party must deal specifically with each allegation of fact which he or she does not admit the truth, except damages.*

Rule 10 thereof provides –

Evasive denial

15 *When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he or she must not do so evasively, but answer the point of substance. Thus, if it is alleged that he or she received a certain sum of money, it shall not be sufficient to deny that he or she received that particular amount, but he or she must deny that he or she received that sum or any part of it, or else set out how much he or she received. If the allegation is made with diverse circumstances, it shall not be*
20 *sufficient to deny it along with those circumstances.*

Rule 30(1) thereof provides –

Striking out pleading

25 *(1) The court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defense being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgement be entered accordingly, as may be just.*

Regarding the allegation of lack of a specific denial, the court needs to examine the plaintiff's allegations as contained in the plaint vis a vis the traverses in the WSD.

30 In paragraph 3 of the plaint, the plaintiff stated that their cause of action against the defendant is for Negligence, causing economic loss and it seeks for orders of special damages as a result of loss of businesses, general damages, an order that the defendant reconnects the plaintiff's power

5 at no Additional cost, interests on general damages and special damages at court rate and costs of the suit.

In paragraph 2 of the WSD, the defendant set out the following traverse:

“The Defendant generally denies the contents of paragraph 3, 4, 5, 6 of the complaints and the plaintiff shall be put to strict proof thereof.

10 In reply to paragraph 4, the Defendant states that the Plaintiff has never made an application to the Defendant for connection of three power line and the Plaintiff shall be put to strict proof thereof at trial’.

In paragraph 4 of the Complaint, the Plaintiff sets out the facts constituting the cause of action against the defendant as follows:

- 15 a) *Sometime in the year 2020, the Plaintiff through its managing Director Mr. Nyakuni Geoffrey made an Application to the defendant for connection of three phase power line at its factory dealing in machine made concrete blocks, pavers, Kerbs located at Ocoko Dubai in Arua District.*
- 20 b) *That on the 18th day of December, 2020, the defendant replied with the cost of connection, testing and commissioning of the said power line at Ugx. 3,694,634/= which money was duly paid by the plaintiff and a receipt issued.*
- 25 c) *The defendant on the day of installation of the power line supplied and installed overhead cables instead of underground cables and the said overhead cables were installed underground and the plaintiff's agent immediately protested the same, but the agents of the defendant insisted that the cables were going to work well underground.*
- 30 d) *That in the month of October, 2021, the said power line broke down and all the repeated communication to the defendant to make it good fell on deaf ears, the power line was not restored, and the defendant instead issued a fresh quotation to the plaintiff for another connection when the plaintiff had already discharged its obligation for the connection.*
- e) *That the plaintiff received several orders for Road Kerbs and Mark Stones from Reddys Borehole and Technical Services amounting to Ugx. 36,900,000/= , for Assorted Blocks from Drichiru Luigia Ayiba at Ugx. 94,650,000/= for blocks from Engineer*

5 *Olea Herbert at Ugx. 108, 500,000, for blocks from Springs College Arua at Ugx. 80,000,000/= and for Solid Blocks and Hollow Blocks at Ugx. 40,500,000/= from Interlink Inc. which orders the plaintiff was unable to make and deliver to the clients as a result of lack of power at the factory caused by the negligence of the Defendant who deliberately refused to connect the recommended power leading to economic loss*
10 *of Ugx. 360,550,000/=.*

To all the above averments set out in paragraph 4 of the plaint, the defendant replied:

“In reply to paragraph 4(b), the defendant denies having received payment from the plaintiff and the plaintiff shall be put to strict proof thereof at trial.”

15 *‘In reply to paragraph 4(d), the defendant shall aver and contend she has never been contracted by the plaintiff to install cables to her premises.*

‘In reply to paragraph 4 (d) the breakdown of the power lines if any was not due to the fault of the defendant and the plaintiff shall be put to strict proof thereof at trial .

20 *‘In reply to paragraph 4 (e)the same are denied and the defendant shall aver and contend that she has never caused the plaintiff the claimed loss and the defendant shall put the plaintiff to strict proof at trial.*

25 In Cases & Materials on Civil Procedure by David Crump, 2007, 4th Edn. Lexis Nexis, pg. 23, in responding to a pleading, a party must;

(a) state in short and plain terms its defenses to each claim asserted against it,

(b) admit or deny the allegations asserted against it by an opposing party.

Relating the above criterion to the defence presented by the Defendant, it is clear they did
30 specifically deny having received money from the then plaintiff and contend she has never been contracted by the plaintiff to install cables to her premises.

Article 126 (2) (e) of the Constitution of the Republic of Uganda provides that,

5 *“...in adjudicating cases of both civil and criminal nature, the courts shall, subject to the law apply the following principles- substantive justice shall be administered without undue regard to technicalities”*

It follows therefore, that striking out the entire defence would be a fundamental error which would deny the Defendants access to substantive justice.

10 In the result, this application is denied and the cost of this application shall abide by the outcome of the main suit.

I now proceed to resolve Miscellaneous Application No. 108 of 2023, it is an application by the Respondent, West Nile Rural Electrification Company Limited who is the Applicant in this Application, this is an Application brought by way of Chamber summons under Order 5
15 Rule 1(2), (3) (a) , (b), (c) , Order 9 rules 3(1) (a),(g), (h), (2) of the CPR SI 71-1 and section 98 of the Civil Procedure Rules for orders that ;

1. Civil Suit No. 0020 of 2023 be dismissed for service of expired summons on the Applicant.
2. Cost of the Application be in the cause.

20 **Grounds in the support of the Application**

The grounds in support of the Application are contained in the Affidavit in Support of the Applicant, a one **KENNETH KIGUMBA**, a General Manager of the Applicant. Mr. Kenneth contends that Summons to File a Defence in Civil Suit No. 020 were extracted on the 5th June 2023 and the said summons to file defence was served on the Applicant on the 13th July 2023,
25 18 days after they had expired. The Applicant contends that this is irregular, and the effect of such service renders the main suit bad in law. He further adds that failure to serve summons within 21 days from the date of issue invalidates the summons, main suit and this honorable court is dispossessed of the jurisdiction to the hear the suit.

In reply, the Respondent, **GEOFFREY ARIJOLE NYAKUNI**, Managing Director of the
30 Respondent swore an Affidavit in Reply that the Application is itself superfluous, unmeritorious and stands to abuse court process intended to waste court's time warranting dismissal with costs. He further contends that on the 6th day of June, 2023, the Applicant through the said General Manager, Kenneth Magumba was duly served with the Summons to File a Defence which was

5 only one day from the date of issuance of the Summons to File a Defence. That a Hearing Notice was subsequently extracted for the 11th day of July, 2023 and the same was served on the Applicant though no representative appeared at court. The Respondent further relates that on the same day, the Deputy Registrar directed re-service of the summons to file a defence on the Applicant that was done leading to the Applicant filing its written statement of defence on the
10 28th day of July, 2023.

The Respondent further add that the summons to file defence by the applicant were automatically renewed by the Deputy Registrar when she directed re-service of the summons on the Applicant and even if the summons were expired by the time of service, no prejudice has been done because the Applicant submitted to the jurisdiction of court by filing a written
15 statement of defence to the plaint and waived its objection and forthwith.

In rejoinder, the Applicant contends that service was never made on him and the affidavit attached contains falsehoods and that is evident by the rejection of the Affidavit of Service of this court. That the effect of the rejection was confirmation by court that the Applicant was not served with the summons as claimed by the Respondent and the purported affidavit of service
20 alleged that the process server served the Applicant at its office on Koboko Road next to KKT Bus Terminal and yet the office of the Applicant is on Rhino Camp Road.

That on the 11th July when the matter came up before the Registrar, the 21 days had elapsed, and the registrar could only issue an order upon an application to enlarge the time to serve the summons out of time. The Applicant contends that without the resultant order to extend time,
25 the Respondent had no legal basis to serve the summons after the 21 days and the Registrar cannot order service of expired summons and the court had no such powers until an order to renew the summons is made.

Issue

*Whether Civil Suit No. 0020 of 2023 should be dismissed for service of expired summons on
30 the Applicant.*

Determination

5 Having perused the record, listened to the submissions of both counsel and addressed my mind to the law, I undertook to explain the detailed reasons for the order in this ruling. Order 5 of the Civil Procedure Rules provides for Service of court process.

Order 5 rules 1 (2) of The Civil Procedure Rules provides as follows;

1. When a suit has been duly instituted a summons may be issued to the defendant-

- 10 *a. ordering him or her to file a defence within a time to be specified in the summons; or*
- b. ordering him or her to appear and answer the claim on a day to be specified in the summons.*

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

3. Where summons have been issued under this rule, and-

- a) service has not been effected within twenty-one days from the date of issue; and*
- 20 *b) there is no application for an extension of time under subrule (2) of this rule; or*
- c) the application for extension of time has been dismissed, the suit shall be dismissed without notice."*

The foregoing means that when the summons are issued, the Plaintiff or whoever applied for them, must serve the other party within 21 days. The rules envisaged situations where the intended Defendant or Respondent may not be traced. So, in Order 5 Rule 1(2), extension of

25 time to effect service may be sought. The Application for extension must be made within 15 days after the expiration of the first 21 days mentioned above.

Order 5 rule 1(3) (b) states that if the application for extension of time is not filed within the 15 days pursuant to O.5 r. 1(2), the suit shall be dismissed without notice.

5 In the instant suit, summons to file a defence were issued on the 5th, June 2013. They should have been served within 21 days, which in this case, it is contended under paragraph 4 of the affidavit in support that the summons was served on the 13th July 2023, 18 days after the summons had expired.

10 However, on perusal of the affidavit of service of AYARU MARY filed on the 10th July 2023, she states in her affidavit of service that she received copies of Plaint together with summons to file defense to be served on the defendant. She proceeded to the office of the defendant located on Koboko Road next to KKT BUS terminal on the 6th day of June 2023 at around 2:23pm .

15 That on reaching the office, she found the receptionist to whom she introduced herself and the purpose of her visit. The deponent contends that she refused to introduce herself but requested to peruse through the document which she handed over to her, upon perusal, she asked her to have a sit as she consults the manager on the document, on her return, she informed the deponent that the document is to be received by the Human Resource Manager who at the time was in Nairobi.

20 The deponent further states that she requested to speak to the manager upon which she made a phone call, and she was later escorted to the Manager who was seated in one of the rooms within the same building. On reaching the office, she found a one KENNETH KIGUMBA who is a General Manager holding one of the documents. Kenneth Kigumba is the deponent for the affidavit in support of this application.

25 The deponent, Ayaru Mary contends that the General Manager is well known to her, she introduced herself once again and the purpose of her visit, he informed her that he had read through the documents but it is to be acknowledged by the Human Resource Manager who is in Nairobi. The General Manager refused to acknowledge on the court copy. The deponent contends that all these was in the presence of the receptionist and bodyguard who refused to introduce themselves.

30 The question to be answered is to who must service be effected for it to amount to effective service.

5 Order 5 rule 7 of the CPR provides that when court has issued the summons, it may be delivered for service

(i) *to any person for the time being duly authorised by the court.*

(ii) *to an advocate or an advocate's clerk who may be approved by the court generally to effect service of process; or*

10 (iii) *it may be sent by post or messenger to any magistrate's court having jurisdiction in the place where the defendant resides.*

Service of summons is by delivering and tendering a duplicate copy signed by the judge or an officer (a Registrar of the Court) on his behalf. The requirement that a duplicate be delivered or tendered is mandatory and if not complied with, the service is bad. Summons must be
15 accompanied by a copy of the plaint and served on the defendant.

Service must be effected on the person upon whom the summons is directed unless they have an authorised agent. Order 5 rule 11 provides that whenever it is practicable, service will be on the defendant in person unless he or she has an agent empowered to accept service in which case service on the agent shall be sufficient.

20 Order 5 rule 14 envisages that where a duplicate of the summons is duly delivered or tendered to the defendant personally or to an agent or other person on his or her behalf, the defendant or agent or other person shall be required to endorse acknowledgement of service on the original summons except that if the court is satisfied that the defendant or his agent has refused so to endorse, the court may declare the summons to have been duly served.

25 In light of the instant facts, it is contended by one AYARU MARY vide her affidavit of service that when she arrived at the defendant's offices, she met the general manager together with his receptionist who both perused through the documents, the General Manager refused to acknowledge the document on grounds that the Human Resource Manager is the one to acknowledge. I wish to point out that company policy is not the legal policy. The law is well
30 settled that the defendant or an agent can receive the document.

5 Order 29 rule 2 (a) provides for service on corporations. It envisages that service of court process where the suit is against a corporation, the summons may be served on the secretary or on any director or other principal officer of the corporation.

In the instant case, the corporation is West Nile Electrification Company Limited upon which service was complete upon reception by the general manager even though he refused to endorse
10 an acknowledgment on the court process. There is no where under the law that stipulates that service ought to be specifically on the Human Resource Manager, even if that were to be the case, that would be a company policy, and not a legal policy.

In that light, I declare that service was effective on the 6th day of June 2023 as I find no reason to doubt the affidavit of service of AYARU MARY filed on the 10th July 2023.

15 Without further ado, I now proceed to determine the legality of the WSD filed on record on the 28th July 2023. Having confirmed that service of summons to file a defence was effectively done on the 6th day of June 2023, its only right to correct whatever irregularity that strikes court direct on the face.

Order 8 rule 1 of the CPR provides that the defendant may and if so required by the court at
20 the time of issue of summons or at any time thereafter shall, at or before the first hearing or within such time as the court may prescribe file his or her defence.

Sub rule 2 of the same envisages that where a defendant has been served with summons in the form provided by rule 1 (1) a of order 5 of these rules, he or she shall unless some other order or further order is made by the court, file his or her defence within *FIFTEEN DAYS after service*
25 *of the summons.* (The emphasis is mine) .

Section 34 (1) (a) of The Interpretation Act states that in computing time, a period of days from the happening of an event or the doing of any act of thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done. Having confirmed that service was effected on the 6th of June 2023, the defendants filed their defence on the 28th of July 2023. This
30 was after one month and 15 days. The only logical conclusion therefore is that the WSD is illegal on record for failure to file their defence within the 15 days.

5 Summons is issued requiring the defendant to file a defence within 15 days of service. Where the defendant does not respond, the plaintiff can obtain a default judgment for liquidated demands/damages, or an interlocutory judgment for damages that require formal proof (unliquidated damages), or the suit can set down for hearing ex parte and proceed as if the defendant had filed a defence (as per Order 9 rules 6, 8 and 10 of the Civil Procedure Rules.)

10 In the instant case, the court is mindful of the mischief sought to be cured by the requirement for strict compliance with the periods of time stipulated in Order 5 of *The Civil Procedure Rules*. The entire scheme of that Order aims at only one thing; to obtain the presence of the defendant to a claim and to provide full information about the nature of the claim made against him or her expeditiously without undue delay. This is consistent with the requirement of Article 28 (1)
15 of *The Constitution of the Republic of Uganda, 1995* to the effect that in the determination of civil rights and obligations, a person shall be entitled to a fair, speedy and public hearing.

The rationale behind service is to notify the other party about the pending suit in court. The rule would create an absurdity if a person duly appears in court and then seeks an order declaring that the summons has not been duly served on him or her.

20 The timelines in the rules are intended to make the process of judicial adjudication and determination swift, fair, just, certain and even-handed. Indeed, public policy demands that cases be heard and determined expeditiously since delay defeats equity and denies the parties legitimate expectations. (see *Fitzpatrick v. Batger & Co. Ltd* [1967] 2 All ER 657).

It is not too strict to lock ignorant parties out, each case is determined independently. I am not
25 convinced that the Defendant was not aware of the pending suit, they only neglected to act on grounds of company policy or a tactic of evasiveness.

However, relying on Article 126 and the case of *Iron & Steel Wares Limited Vs C.W Martyr & Company* (1956) 23 E.A.C.A 175 at pg 177, the East African Court of Appeal held thus :

30 *'Procedural rules are intended to serve as the handmaidens of Justice, not to defeat it, and we think the high court in its inherent Jurisdiction to control its own procedurehas a duty to ensure that each party is given a fair opportunity to state its case and the answer the case against it .*

5 I agree that in deserving cases, the court may rightfully exercise its discretion to overlook the failure to comply with the rules of procedure upon such conditions as it may deem fit.

However, each case is to be decided on its own facts depending on the prevailing circumstances.

I find no merit in this application as well; I therefore dismiss it with no orders as to costs.

The main suit, Civil Suit No. 020 of 2023 hereby scheduled for mention on 9th July, 2024 at
10' 9:00am.

I so order.

Delivered at Arua this 6th day of June 2024


COLLINS ACELLAM

15' JUDGE