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The Republic of Uganda

In the High Court of Uganda holden at Soroti

Miscellaneous Application No. 0177 of 2023

*(Arising from Civil Suit No. 019 of 2022)*

10 Soroti District Land Board ..... Applicant

Versus

Okim Eric ..... Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

15

Ruling

1. Introduction:

This is an application brought by way of notice of motion under section 98 of the Civil Procedure Act. Section 33 of the Judicature Act, Order 9 Rules 1,2 and 52 Rules 1,2 & 3 of the Civil Procedure Rules for orders that the Applicant is given  
20 leave to file a written statement of defence out of time and costs of the application be provided for.

The grounds of application as set out in the application and affidavit in support sworn by Naikoba Rebecca the secretary of the applicant are briefly that the applicant is the 2<sup>nd</sup> defendant to the counterclaim in Civil Suit No. 19 of 2022 and  
25 has a plausible defence to defend the claim by the respondent.

That the applicants written statement of defence raises several triable issues which merit judicial consideration and a substantive hearing interparty.



5 That the applicant was not properly served with the subject counterclaim and there was never effective service of the counterclaim.

The respondent in reply submitted that the application is long overdue, bad in law and an abuse of court process.

10 That the applicant was rightly and sufficiently served with court process through its known physical address and official registry and was aware of the matter.

That the applicant having been made aware of the matter waived her right to participate in the suit by her own conduct.

In rejoinder the applicant in an affidavit in reply sworn by Naikoba Rebecca stated that the application was filed in time and in good faith.

15 That the applicant was never aware of the matter but only got to know it through counsel for the respondent.

2. Representations:

The applicant herein is represented by the M/s Attorney General's Chambers, Soroti Regional Office, while the respondent is represented by M/s Ilukor  
20 Advocates and Solicitors, Impala House (Annex) 2<sup>nd</sup> Floor, Room 4 Opposite KCCA Main Gate, Kampala.

3. Submissions:

and in Counsel in their submissions raised three issues for determination;

- 25 a) Whether the Applicant was rightly served with summons in Civil Suit No. 019 of 2022?
- b) Whether the Applicant has a justifiable cause to file her defence out of time?
- c) What remedies are available to the parties?



5 Regarding service counsel submitted that notices and documents required by the Act to be served on any person are to be served in the manner provided for the service of summons.

Counsel relied on Sections 20 and 21 of the Civil Procedure Act, Order 5 rule 1 and Order 29 rule 2 of the Civil Procedure Rules and the holding in the case  
10 Century ***Enterprises Ltd vs Greenland Bank (in liquidation) HCMA No. 916/2004.*** Further relying on Order 5 rules 9 and 10, counsel submitted that except otherwise prescribed where there is more than one defendant service of summons shall be made on each defendant in person unless he/she has an agent empowered to receive service.

15 Counsel submitted that in the instant case the applicant was never served as service was not done in manner prescribed by the law, that the service was not effected on the applicant in person but to the land registry of Soroti DLG. Counsel relied on ***Wakiso District Land Board Vs National Forest Authority MA No. 2060 of 2022*** where while considering order 29 rule 2 of the Civil Procedure Rules it was  
20 held that service on a statutory corporation is on the secretary or any director or other principal officer or by leaving it or sending it by post address to the corporation at the registered office.

Counsel concluded that the service was not made to the applicant and prayed court considers that and grant the applicant leave to file a defence to the counter  
25 claim in Civil Suit No. 19 of 2022 out of time.

Regarding justifiable cause to file a defence out of time counsel submitted that courts have held that what amounts to sufficient cause is inability or failure to take a particular step in time. (***Franco Mugumya Vs Total (U)Ltd Ma. No. 28 of 2013 and Rosette Kizito vs Administrator General and Others Supreme Court Civil***  
30 ***Application No. 52 of 1995)***)





5 Counsel further relied on *Trust Bank vs Portway Stores Ltd [2000] EA 296* where it was decided that the court in exercising discretion should consider why the default was committed, whether the applicant has a defence on merit and that denial of hearing should be a last resort.

Counsel added that under paragraph 6 the applicant states that she has a  
10 plausible defence against the respondent's counterclaim.

Further that under paragraph 2 the applicant averred that the counter claim was not served upon her as mandated.

That the applicant has therefore indicated that she defaulted to file her defence in time because of improper service.

15 Counsel prayed that in the event this court finds that the applicant was served, counsel invited it to consider Article 126 (2)(e) of the Constitution and consider the applicants not filing a defence in time as a mere technicality and consequently grant the application.

Counsel for the respondent in reply submitted that the applicant was properly  
20 served as Order 29 rule 2(b) of the Civil Procedure Rules states that a corporation may be served by sending or leaving summons at the registered office of the corporation.

That this is what was done in the instant case, where the applicant was served at its known registered office at the Lands Registry of Soroti DLG upon which a  
25 receiving stamp was affixed onto the receiving copies of the process server.

#### 4. Determination:

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

5 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.

The applicant herein is seeking an extension of time to file their defence to the counterclaim in Civil Suit No. 019 of 2022. The reason for delay in filing their defence is improper service. The applicant claims the summons to file a defence  
10 to the counter claim were never properly served on her rather irregularly served to an authorised office.

The applicant being a body corporate was entitled to service as provided under order 29 rule 2 of the Civil Procedure Rules which provides that;

**Subject to any statutory provision regulating service of process, where the suit is  
15 against a corporation, the summons may be served—**

**(a) on the secretary, or on any director or other principal officer of the corporation;  
or**

**(b) by leaving it or sending it by post addressed to the corporation at the registered  
office, or if there is no registered office, then at the place where the corporation  
20 carries on business.**

In this instance to prove service the respondent attached the affidavit of service sworn by Opolot John Paul and it indicates that he received copies of the written Statement of Defence and counterclaim on the 1<sup>st</sup> of August 2022 against the respondents filed by the applicant on the 28<sup>th</sup> of July 2022 at Court.

25 That he served the 2<sup>nd</sup> and 1<sup>st</sup> respondents on the 1<sup>st</sup> and 8<sup>th</sup> of August 2022 and the 1<sup>st</sup> respondent filed their defence and counter claim.

That however his attempts to serve the 3<sup>rd</sup> respondent was not successful. Attached to this affidavit is a copy of the Written Statement of Defence and Counter claim with the receiving stamp of Lands Registry Soroti DLG.



5 It should be noted that the affidavit of service bore the names of only two parties that is Amuge Gertrude Olungura as the plaintiff and Okim Eric as the defendant. There is no indication as to who the 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> respondent referred to in the affidavit are.

10 Furthermore, the deponent did not indicate as to whom he effected service of the counter claim and defence.

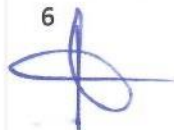
Order 5 rule 16 of the Civil Procedure Rules which provides for the affidavit of service provides that;

15 **The serving officer shall, in all cases in which the summons has been served under rule 14 of this Order, make or annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which the summons was served, and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the summons.**

20 In this instance this court cannot rely on the affidavit of service deposed by Opolot as the same is not clear on how he served the applicant or which officer in the Lands Registry received the summons. Consequently, I would find that the service on the applicant was not proper and in accordance with the law.

#### 5. Remedies:

25 Given the nature of the claim in Civil Suit No. 019 of 2022 in which the respondent herein and the plaintiff are all claiming ownership of the suit land allocated by the applicant, it is necessary that the applicant be allowed file her Written Statement of Defence to the counterclaim as this will enable court hear the matter interparty and determine all issues in contention once and for all. That is the proper judicial remedy available.



5      6. Order:

My conclusion above being so, this application is accordingly allowed and the following orders issued;

The Applicant is granted leave to file a written statement of defence out of time  
No order as to costs of the application.

10    I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

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26<sup>th</sup> June 2024