

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPLICATION 64 OF 2012

ARISING FROM CIVIL SUIT. 13 OF 2009

ATTORNEY GENERAL.....APPLICANT

V

EJULU JOHN.....RESPONDENT

BEFORE : HON. LADY JUSTICE H. WOLAYO

RULING

By notice of motion under order 9 rule 27 of the CPR and section 98 of the CPA, the applicant seeks to set aside the ex parte judgment dated 6th February 2012; for leave to defend the suit and to cross examine the respondent and his witnesses. The application is supported by the affidavit of Peter Masaba of Attorney General's chambers.

The respondent filed an affidavit in reply deponed by Linyira Juma of D& G Associated advocates opposing the application .

Both counsel filed written submissions that i have given due consideration.

I have examined the grounds of the application , the affidavit in support and affidavit in reply.

The main point raised by counsel for the applicant is that there was none compliance with rule 6 of the Government Proceedings Rules. According to counsel, under rule 6, a default judgment or order cannot be made against the Attorney General without the leave of court and that such leave is by a chamber summons to be served at least seven days before the due day.

Counsel submits that the order to proceed ex parte made on 10th February 2011 was made in contravention of rule 6 of the Government proceedings rules.

The respondent submits that the applicant was served with hearing notice and an affidavit of service showed that a counsel acknowledged service. Counsel for the respondent submitted that the case is res judicata as a decision determining rights of the parties was rendered.

I have studied the record of proceedings . On 10th February 2011, an order to proceed ex parte was made as the defendant's representative was absent. However, no evidence was recorded that day. The case was then adjourned to 20th April 2011.

On 6th April 2011, the file was called and Mr. Obedo Deogratious appeared on behalf of Mr. Peter Masaba for the Attorney General. The plaintiff and his advocate were absent. Counsel Obedi informed court that he and plaintiff's counsel had put in a joint scheduling memorandum. The matter was adjourned to 20th April 2011.

By the proceedings of 6th April 2011, the order to proceed ex parte had been overtaken by events as counsel for the defendant/applicant had been allowed to address court and he was informed of the hearing date of 20th April 2011.

On 20th April 2011, Mr. Alima Patrick appeared for the plaintiff/respondent but the applicant/defendant was not represented. Counsel Alima then made reference to the order to proceed ex parte made on 10th February 2011 and the case then proceeded ex parte. The plaintiff called two witnesses and judgment was delivered on 6th February 2012.

The omission to make another order to proceed ex parte means the applicant still has an opportunity to cross examine the plaintiff and his witnesses.

With regard to counsel for applicant's submission that there was non-compliance with rule 6 of the Government proceedings rules, rule 3 of the same rules extends the application of the CPR to proceedings involving government. The same rules do not exempt such proceedings from the operation of order 9. However, as I have found that no order to proceed ex parte was made on 20th April 2011, the applicant is entitled to cross examine the respondent and his witnesses.

With regard to counsel for the respondent's submission that the case is res judicata. I have addressed myself to the authorities cited. In the case of **Road master v Tarlock Singh Sagg Uganda Commercial reports 1997-2001, 378**, the order to dismiss was made in the presence of both counsel. It is therefore not relevant to the instant case where no order to proceed ex parte was made.

As for the case between **Salem Zaida v Faud Hussein Humeidan 1960 1 EA 92** the decision was based on the Indian civil procedure rules and therefore not binding on this court. I am therefore unable to hold that the judgment delivered on 10th February 2012 was a final judgment.

In the premises, I allow the application, set aside the ex parte judgment and order that a date be fixed for the case to proceed inter parte

Typed proceedings to be availed to both counsel.

DATED AT 13TH THIS MARCH DAY OF 2014.

HON. LADY JUSTICE H. WOLAYO

