

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA - NAKAWA CENTRAL CIRCUIT
MISC. APPLICATION NO. 007 OF 2014
(ARISING OUT OF SC NO. 253 OF 2013)

1. NAAVA YULIANA NAYIGA

2. MIKE KIZZA SENYONGA

3. KATUMBA DAVID MARK SENDAGIRE ::::::::::::::::::::::::::::::

APPLICANTS

V E R S U S

DRAKE SSEGAMWENGE ::::::::::::::::::::::::::::::::::::::

RESPONDENT

BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA

RULING ON FILING THE WRITTEN STATEMENT OUT OF TIME

This is an Application for filing a Written Statement of Defence out of time pursuant to S.98 CPA and 052, rr1 & 2 CPR. Having listened to the Submissions of Counsel Jackson Kafuuzi, detailing the circumstances that led the Defendants not to file a written statement of defence in time, I hold that the Applicants should be allowed to file their written statement of defence out of time as well as Affidavits in Reply to the two Miscellaneous Applications namely No. 446 & 447 of 2013. The reasons are given below. The Applicants through their Counsel have shown that they only got to know about the pending suit against them in respect of their land in Kkaaliti, Wakiso District on 10th January 2014. They moved with speed and filed this Application. Paragraphs 2 (a), 2(b), 2 (d), & 2 (e) of the Notice of Motion as supported by Mr. Mike Senyonga's Affidavit paragraphs 6, 7, and 9 render further attestation. The Respondent did not file any Affidavit in Reply. I can

only hold that what is contained therein has not been controverted or challenged.

In his Affidavit, Mr. Ssenyonga also refers to an Affidavit of Service dated 31st October 2013 which he says was false as per paragraph 9 of his Affidavit. It is my considered opinion that this is a case in respect of which I am inclined to exercise my discretion to enlarge the time within which to file a Written Statement of Defence. It is in the interests of justice to hear both sides. In the case of ***Daniel Itemba vs. Festo Zikanga, C. A. No. 67 of 1971 or 1972 EACA 12***, Hon. Mr. Justice M. Saied considered a similar issue of extension of time. He pointed out that the Court may exercise its discretion only if good cause is shown for the entire period of delay. He cited the case of ***Revici v PrentincE Hall Incorporated (1969) 1 All ER. 772*** in which Edmund Davies L J stated “[....] *The rules are to be observed; and if there is non-compliance (other than of a minimal kind), that is something which has to be explained away. Prima facie, if no excuse is offered, no indulgence should be granted.*” In the **Itemba** case, the reason given for the delay was that the Applicant was mostly out of town which Judge Saied considered flimsy. In the case before me there are cogent and serious reasons for not filing a Written Statement of Defence. Lack of service is crucial to a hearing. Notification accords each Party an opportunity to present their side of the story.

Counsel Kafuuzi relied on the case of ***Orient Bank Ltd v Avi Enterprises Ltd, Miscellaneous Application No. 37/2013***. I have perused it and Judge Madrama’s holding is persuasive to me. In that case, the Applicant’s Counsel cited the case of ***National Enterprises Corporation vs. Mukisa Food, C. A. No.42 of 1997*** in which Court of Appeal held that “*denying a subject a hearing should be the last resort of Court.*” I quite agree. In any case, the Respondent has not filed an Affidavit to oppose this application despite being served with the Notice of Motion. Counsel Kafuuzi showed Court proof of

service of the Notice Motion dated 14th January 2014 and indeed an Affidavit of Service dated 17th January 2014 and sworn by Kafuuzi Jackson was filed. This same Affidavit will also provide the necessary explanation as to why I have proceeded *ex parte* in this case. I find that the requisites of 05, r 16, relating to service have been met. Hence pursuant to S.98 CPA, 052 rr 1 & 2, I hereby grant this application. The Applicants should file their Written Statement of Defence within 15 days from the date of this Ruling and serve the Respondents. The Applicants are also permitted to file their response to the Affidavits filed in respect of Miscellaneous Applications No. 446 & 447. Costs to be in the cause.

Signed.....
HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA
JUDGE
17th January 2014