

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT Jinja

MISC. APPLICATION NO. 159 OF 2014
(ARISING FROM CIVIL SUIT NO. 143 OF 2012)

BAKUSEKAMAJJA WOMEN'S
DEVELOPMENT ASSOCIATION :.....:APPLICANT

VERSUS

KAZIBA JALALI JUMA:.....:RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

A Summary Suit was filed by the Plaintiffs against the Defendants seeking to recover Shs.65 million shillings allegedly extended as a friendly loan to the 1st Defendant payable not later than 5/10/2013. The said loan was allegedly guaranteed by the 2nd -7th Defendants.

On failure to file an Application for leave to defend, Judgment was entered and execution proceedings commenced.

The instant Application seeks to have the said Judgment set aside together with the Orders for execution.

The Application is based on grounds that:

1. The Applicant was not served with Summons to appear and defend the suit.
2. The members of the Defendant Organization were not aware of the transaction and never authorized the loan facility.

3. That the Applicant has a valid defence to the claim.
4. The Respondent is not a registered money lender.
5. That it is in the interests of justice that the said Judgment be set aside.

5

The application is supported by the affidavit of one EDITH BAPERRE – a Vice Chairperson of the Applicant – Association. Therein she avers that the Applicant Association was never served with the Summons in Civil Suit No. 143 of 2013 and
10 no Executive member of the Association was served.

The other grounds are that the transaction was not authorized by the Association management and that the Defendants are not signatories to the Association account.
15 That if they got the loan it was for their own personal interests. That in any case they guaranteed to pay the loan personally and hence the liability should not be passed on to the Association.

20 The Respondent filed an affidavit in Reply to the Application. In paragraph 3 thereof he avers that the members of the Executive acknowledged service by signing on the copy of the affidavit of service on Court record. He further avers that the Respondents had authority to receive the loan on
25 behalf of the Association as seen from the Loan Agreement. That the deponent of the Applicant's affidavit is not a member of the Applicant Association and therefore has no capacity to depone the affidavit.

30 In rejoinder, the deponent Edith Mupere reiterated that they only came to know about the matter in Court when Court Bailiffs went ahead and executed the Court orders.

It reiterates that the former Chairperson and the 7 other members should be personally liable to pay the loan.

5 The submissions at the hearing of this application mainly reiterate the contents of the affidavit in support and in reply to the application.

10 Counsel for the Respondent submitted in respect of service that the summons was only duly received and acknowledged.

15 That the Constitution of the Association gives the Chairperson all the powers to manage, oversee and represent all the interests of the Association with the outsiders. She had all the authority to receive and sign Court documents.

20 I have considered the pleadings and submissions by both parties.

Under Order 36 Rule 11 of the Civil Procedure Rules, the Court may set aside the Decree if satisfied that the service of the Summons was not effective, or for any other good cause which shall be recorded and if necessary set aside execution; and may give leave to the Defendant to appear and defend the suit if it seems reasonable to do so and on such terms as the Court thinks fit.

The main issues to decide here are:

- 30
1. Whether there was effective service of the Summons.
 2. Whether the Applicants have sufficient cause/or defence to the suit.

On Issue No. 1, an affidavit of service was filed in Court and it was deponed by one Esarait Robert Eseet – an Advocate with M/S Mangeni Law Chambers. Therein he deponed that on 17/10/2013, he set off to effect service on to the
5 Defendants at Luuka Town Council. He avers that the Defendants were introduced to him by the Plaintiff and that they acknowledged receipt of the same. He then attached a copy of the said Summons with some scribblings as against the names of the Defendants.

10

It is on the strength of the above position that the Plaintiff applied for default Judgment and it was granted.

Order 5 of the Civil Procedure Rules sets down an elaborate
15 process for service of Summons by Officers of Court. Rules 7, 8, 9 and 10, 11 (1) and 13 lay down the manner in which service is to be effected. In summary, the service is supposed to be effected on the recipient in person or on his or her agent, at the recipient's residence or place of
20 business.

Under Rule 14 of the Civil Procedure Rules, the recipient shall be required to endorse an acknowledgement either personally or other person on his/her behalf unless he/she
25 refuses to acknowledge service.

Under Rule 16 of the Civil Procedure Rules, the serving Officer shall, in all cases in which Summons has been served under Rule 14, make or cause to be annexed to the original
30 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.

5 The affidavit sworn by the said Mr. Robert Esarait is unfortunately lacking in all these details. All it states is that the Defendants were served in Luuka Town Council and they acknowledged service.

10 The manner of service, the individual circumstances of each service e.g. Place, time and mode are missing. Leave alone the place.

15 Each of the Defendants was supposed to receive their own Summons and duly acknowledge so. Place and time of such receipt should have been indicated. The Plaintiff claims he identified the Defendants, it is not clear when and how he knew them to be able to identify them to Lawyer/Process Server. Where were the Defendants and in what circumstances were they served?

20 It is not enough to make an omnibus claim that the Defendants were served as was done in the instant case. Court is unable to determine whether each of the Defendants were effectively served by a look at the affidavit
25 and the Summons on record.

It is however intriguing that the Applicant through the affidavit in rejoinder deposed by Edith Bapere acknowledges in Paragraph 3 that the former Chairperson of the Applicant
30 acknowledged receipt of the Summons on behalf of the Applicant Organisation but did not notify any other Executive member of the General Assembly.

In paragraph 4 she depones that she not only neglected to notify any Executive member of the Assembly, but she intentionally refused to apply for leave to defend the suit on behalf of herself and of the Organization so as to have the
5 properties of the Organization sold off to pay the loan. She was the head of the organization at the time.

The above averments therefore lead to the conclusion that it is not true that the Applicants were not served.
10 The ground that they were not served then collapses.

The other issue is whether the Applicants have a defence to the case. Ordinarily the applicants should have annexed a copy of the Intended written statement of defence to the
15 Application.

This should have enabled the Court to determine the nature of the defence the Applicants intend to set up.

20 This was not done. The Court therefore only has the grounds in the Application to determine whether they had a defence. The Applicants have tried to raise the fact that the transaction was not authorized by the Organization members.

25 Further that the Respondent is not a registered Money Lender.

For the Respondent, it was submitted that the Constitution of the Applicants gives authority to the Chairperson and her
30 Executive to fully manage the affairs of the Association and transact business on its behalf.

Indeed the agreement was signed between the Chairperson and her Committee on the one part and the Respondent on the other. It is preposterous for the Applicants to claim the Respondent should have sought the consent of the 400
5 members to transact business with the Executive Committee.

What is clear here is that the Association had its own internal management weaknesses which it cannot turn round and
10 visit on those they transacted with.

It is my finding that the transaction between the Applicant's Association Executive/Management team and the Respondent was valid. There is no defence to the claim.
15

This Application accordingly lacks merits. It is dismissed accordingly. The default Judgment and orders of the Court are accordingly upheld. Costs of this application will be met by the Applicant.
20

Godfrey Namundi

JUDGE

24/06/2015

25 24/6/2015:

Applicants present

Respondent absent

Esarait for Respondent

30 Court: Ruling delivered.

Godfrey Namundi
JUDGE
24/06/2015