

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HODERN AT ARUA  
CIVIL APPEAL NO. 0010 OF 2013**

**CENTENARY DEV'T BANK ----- APPELLANT**

**=VERSUS=**

**JURUA ISSA ----- RESPONDENT**

**BEFORE HON: JUSTICE OKWANGA VINCENT**

**JUDGMENT**

This appeal arises out of the ruling of the Grade I Magistrate, His Worship Matthew Longoli delivered at Arua on 11/03/2013 in Misc. Civil Application No. 0006 of 2013, in which the appellant's application to set aside an Exparte judgment and decree in Civil Suit No. 0048 of 2012 was rejected. The appellant had also sought for orders of stay of execution in civil suit No. 0048 of 2012 and costs of that application as well.

The Appellant's address of service was given as C/o M/s Manzi & Co. Advocates and Solicitors plot 2 Avenue, 1<sup>st</sup> Floor P.O Box 1100, Arua while that of the respondent is C/o M/s Ikilai & Co. Advocates, Ozu Plaza, Level I suite 19, Adumi Road, Arua.

Four grounds of appeal were filed in which the appellant contends as follows:-

1. The learned trial Magistrate erred in law and fact when he held that there was proper and effective service of the summons to file a defence in civil suit No. 0048 of 2012 on the appellant.

2. The learned trial Magistrate erred in law and fact when he held that Mr. Benard Leti, the branch Manager of the Appellant at Arua fell within the definition of Principal Officer under 0.29 rule 2 (a) of the CPR.
3. The learned trial Magistrate erred in law and fact when he misinterpreted order 29 rule 2 (b) of the Civil Procedure Rules to hold that service.

The background to this appeal is that the respondent filed civil suit No. 0048 of 2012 against the appellant in the Chief Magistrate's Court Arua. Summons to file the defence was served upon the branch manager of the appellant at Arua, Mr. Benard Brook Leti who apparently didn't bring this to the attention of his superiors on the job and consequently the appellant (defendant then) did not file their defence in the suit within the required time. The respondent's counsel consequently filed an affidavit of service to the effect that the summons to file a defense was duly served upon the appellant's who did not file its defense to the suit within the time required and so the matter proceeded ex-parte before the trial Magistrate.

The learned Magistrate who gave judgment against the appellant in default on 23<sup>rd</sup> November 2012. A decree was subsequently entered against the appellant dated 14/02/2013 and a warrant of Execution was also issued against the appellant to satisfy such a decree. The appellant then filed miscellaneous Civil application No: 061 of 2013 to set aside the Ex-parte judgment and decree in civil suit No: 048 of 2012 and also for orders of stay of execution of that decree.

That the application was rejected and dismissed with costs on 11/03/2013 hence this appeal.

Of the summons in civil suit No 048 of 2012 on the appellant's Arua branch was effective service within the meaning of that role.

4. The learned trial Magistrate erred in law and fact when he refused to follow the decisions of superior courts on service of court process on cooperative body such as the appellant.

The appellant pray for court for orders that:-

- (a) The ruling in miscellaneous civil application No: 06 of 2013 arising out of civil suit No 048 of 2012.
- (b) The ex-parte decree in civil suit NO: 048 of 2012 in chief magistrate's court Arua be set aside.

- (c) The appellant be allowed to file a defence in civil suit No: 048of 2012 in the chief Magistrate's court Arua and the suit heard afresh inter-parties, and.
- (d) Costs of this appeal and in the trial court with interests at cost's rate be awarded to the appellant, and.
- (e) Any other remedy this Hon. Deems appropriate in the interests of justice with the cost's leave the parties filed written submit ions and Manzi & o. Advocates request that there was no effective service of the summons to file a defence upon the applicants as provided for in the law governing service of summons on corporations such as the applicants. They argued further that Mr. Benard Brooke Leti the then branch manager of the Appellant at Arua did not all within the definition of principal officer rules. The applicant further attacked the finding of the trial Magistrate when he held that service of that summons upon Mr. Benard BROOKE Leti the applicant's branch manager Arua was effective service within the managing of 0.29 r. 2(b) of the CPR.

The appellant further attacked the trial Magistrate in this decision by not following Judicial decisions by superior courts in Uganda which were cited by counsel for the appellant before the trial court to support counsel augment that the branch manger of the applicant at Arua does not fall within the meaning of a secretary, director or other principal officer of the corporation within the meaning of 0.29 r 2 (a) CPR, therefore any service of summons upon Mr. Benard Brooke Leti, the Appellant's branch manager at Arua was not an effective service as envisaged under 0.29 r 2 (a) CPR. Counsels referred to the affidavit of one Innocent Kyakuha filed in support of the application before the trial court, particularly in paragraph 6 & 7 thereof to support their contention that Mr. Benard Brooke Leti the branch Manager of the appellant at Arua was not authorized to receive the summons as no such duty was delegated to him.

To counsel for the appellant, the principal officer of the appellant company as envisaged under 0.29 r 2 (a) of the CPR is either the appellant's company secretary or the Chief Manager legal services or the managing director. The branch manager of the appellant at Arua was neither the appellant's Secretary, nor a director or other principal officer of that corporation.

Counsel cited the case of **Kampala City Council =Vs= Apollo Hotel Corporation [1985] HCB 77** where it was held that;-

“.....such process must be served on senior officers of the corporation who are responsible for the management of the corporation. Therefore not any officer of the corporation may be served with process. In the instant case the person served as manager of the corporation was not a principal officer of the corporation competent to accept service of process. The service of summons was therefore defective and not in accordance with Order 26 r 2 (a) of the Civil Procedure Rules (now 0.29 r 2 (a))”.

“The courts draw a distinction between an individual defendant and an officer of a corporation with multifarious duties to perform fails to enter appearance on behalf of the corporation especially where the applicant has a defence on the merits of the case or where it appears that the applicant has not been trying to deliberately obstruct or delay the course of justice. In such circumstances the interests of justice require that the defendant be given a chance to appear and defend the suit. In the instance case there was no evidence or allegation that the applicant had been trying to obstruct- or delay the course of justice or that it guilty of carelessness or inactivity. As soon as the executive chairman became aware of the Exparte decree he took steps to rectify the position...”

Counsel relied on other authorities like *Ezinkaypater VS- Uganda 4 Libian Trail ug CO Ltd. { 1979} HCB 52; Gd Geoffrey Gatete.*

*And Another –VS-William Kyobu; civil appeal NO- 07 OF 2005; (sc) and Nicholas Roussers –VS- Gulam Hussein Habib Virasi and another; cinil suit Appeal No. 09 of 1993; (SC).*

The counsel for the appellant faulted the trial Magistrate for refusing to follow the decisions of the superior courts on service of court process on a cooperated body such as the appellant equated in the various authorities referred to adhere. Raged that the appeal be allowed, orders to set aside the Exparte judgment and decree of the trial court be made, the appellant be allowed to file its defence in civil suit No 048 of 2012 in the Magistrate court Arua and the said suit be heard afresh inter-parties and for costs of this appeal and the court deems appropriate in the in the interests of justice.

In reply the respondent' and Co. Advocates submitted that there was prayer and effective service of summons upon the appellant. They argued further that prior to the service of

Court summons upon the upon the appellant, the appellant was served with a notice of intention to sue through the same Branch officer Arua interspersed by Mr. Lati Bernard Brooke and the said officer asked on behalf of the Appellant by instructing M/s Manzi, Odama & Co. Advocates who duly replied to that notice of intention to sue. They cited and sought reliance on paragraphs 7,8,and 9 of the affidavit or reply by Nancy Masedi dated 21/02/2013, which contents the respondent's counsel agree were not rebutted by the appellant and consequently court must find that the facts depend there to be admitted by the appellant in their entirety.

The respondent committed this being the first appellate court, it has the duty to evaluate all the evidence adduced before the trial court and make its own conclusion on whether the findings of the trial court can be supplied or not I agree with that submission that this Hon. Court being the first appellate court has the duty to subject the entire evidence.

On record to an extensive scrutiny and re-valuation in order to arrive at its own conclusion. The court should do this while taking into account and giving due consideration and allowance to the fact that it did not have the benefit and the opportunity to observe the witnesses at the trial.

The counsel relied on the case of **Fredrick J.K. Zaobires VS Orient Bank Ltd and 5 others; (SC) Civil Appeal No. 04 of 2006 and Sanyu Lwagu Musoke –VS- Sam Galwaango ; civil appeal No.048 of 1995; SC** to support the bone propositions in him.

The respondent contents that the Bernard Brooke Leti the branch Manager Arua of the appellant fell within the meaning of a principal officer of the appellant company or envisaged and order 29 r. 2 (a) of the Civil Procedure Rule s.

**Section 2 of the Companies Act, 2012** defines an officer in relation to a body corporate to include a director, a manager or a Secretary.

Under Order **29 r 2 CPR**, where the suit is against a corporation, the summons may be served on the Secretary, or any director or other principal officer of the corporation.

I find that a branch manager at Arua branch of the appellant company is a principal officer within the meaning of Order 29 r 2 (a) of the Civil Procedure Rules. Such a Manager is responsible for overseeing, managing, and directing the operations of the Appellant's activities at the entire branch. If such a branch manager could legally receive and act of the Respondent's letter of intention to sue (exhibit 'A') on behalf of the Appellant and then go ahead to instruct a legal counsel to respond to such a letter on behalf of the Appellant, then his position properly falls within the meaning of a principal officer of that corporation. In receiving such a summons Mr. Leti Benard the branch manager Arua used an official stamp of the Appellant reading "Arua Branch".

I find that by the nature of his work as a branch manager to oversee, direct and manage the operations of the appellant's business in Arua, Mr. Leti Benard Brooke is a principal officer of the Appellant within the meaning of rule 2 (a) of Order 29 of the Civil Procedure Rules for purposes of service upon a body corporate like the Appellant. Any submission that he was not authorized to receive summons on behalf of the Appellant would be overstressing the interpretation of the words "principal officer" envisaged under order 29 rule 2 (a) too far. Grade I find that the various legal authorities cited are easily distinguishable from the scenario obtaining in the instant case.

In the case of **Kampala City Council =Vs= Apollo Hotel Ltd;** (SUPRA), the service of summons was effected on the Manager of the Hotel who refused to sign on the original copy thereof. In that case, Justice Odoki Benjamin (as he than was) decided that,

*"there was no evidence of what type of manager the person who was served was and what her/his status or duties were.....a liberal view is taken in cases where an officer of a corporation with multifarious duties to perform fails to enter*

*appearance on behalf of the corporation especially where the applicant has a defence on the merits of the case or where it appears that the applicant has not been trying to deliberately obstruct or delay the course of justice, or that it was guilty of carelessness or inactivity”.*

The decision in case of **E. Zikampata =Vs= Uganda Libian Trading Co. Ltd [1979] HCB 52**; is distinguishable from the instant case in that in the former case the sales manager who received the summons to enter appearance impetuously as managing director and left the company without bringing that service to the attention or notice of the applicant/appellant company.

The responsibility of a manager in charge of the branch like Arua is different from the responsibility of a sales manager within the Headquarters of the Appellant’s place of business; the former has the delegated authority to represent the corporation in all matters that pertains to the receipt of summons on the corporation if the said manager was not questioned or challenged on the instructions he gave to a legal counsel to reply to a letter of intention to sue then he can properly qualify as a principal officer within the meaning of service in this case.

The trial Magistrate held thus on that point; (Pg 17 of the Ruling)

“The cases are distinguishable from the present case in that while in the two cases (above) the operations were within their main offices where all the relevant authorities are within or presumed to be within the reach of the litigating public. In the instant case the applicant has branches all over the country including Arua.... These branches are managed by branch managers the so called company secretary, directors or any other principal officers are all at the headquarters in Kampala... Thus I do not said any relevance in applying the principles upon which the case cited by the applicant’s counsel were decided to the instant one. Instead the Case of **Kisubi High School =VS= NSSF- Misc. application No. 505 of 2012;and JF. Tjjala, =VS= Copiration Energo [1988-9 0] HCB 157** are instructive. Other prices of evidence that made this court to conclude that there was proper service are the documents or the court record. The notice of intention to sue dated 01/06/2012, reply to the Notice of intention to etc;”

Accordingly I said that the learned trial Magistrate did not err in refusing to follow the decisions of spurious courts on service of court processes on a corporate body such as the applicant as alleged, by the applicant.

With due respect , the trial court followed some of those decisions and distinguished others which he didn't follow their principles as above.

I also said that the trial Magistrate Grade I did not uninterruptedly order 29 r. 2 (b) of the CRB by holding service of summons in civil suit No. 048 of 2012 on the applicant's Arua branch was effective within the meaning of that rule.

Having held that service upon Mr. Benard Leti as the Branch manager Arua was an efficacious and proper service within the meaning of Order 29 r. 2(a) CRB- there was no need to consider the alternative option available for service of order r. 2 (2) CRB . I agree partly with the applicant's submissions that service order. 2(b) could only be done by leaving the summons at Arua branch of the respondent had tried and failed to serve the appellant in any other modes specified Order O. 29 r. 2(b) of the CRB. I agree that there was a misdirection on the part of the trial Magistrate GR.I However such a misdirection did not occasion any injustice to the appellant.

Accordingly, I said that the applicants' appeal on grounds 2,3 and 4 all fail as having no merits.

Having earlier as found held that service on Mr. leti Benard Brook the Branch Manager Arua was proper and effective service of summons to file a defence, I hold that ground I of the appeal also fails. In all in all I find that the four grounds of appeal argued on behalf of the appellant do not have any merits to ward this Hon. Court confirming the findings of the trial Magistrate on the other grounds save as the free going holding regarding the interpretation of r. 2(b) Order 29 of the CRB which I have already referred to above.

This appeal therefore fails on all grounds and is hereby dismissed with costs in this court and the court below.

It is hereby ordered!



**VINCENT OKWANGA**

**JUDGE**

**14/04/2015.**