

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HCT – 01 – CV – CS – 0016 OF 2015**

**RICHARD KYALIGABA .....PLAINTIFF**

**VERSUS**

**GODFREY KAGANDA..... DEFENDANT**

**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE.**

**Judgment**

The Plaintiff filed a Civil Suit against the Respondent for payment of UGX 92,500,000/=, damages, interest and costs of the suit.

**Background**

The Plaintiff sold land to the Defendant at an agreed sum of UGX 342,500,000/= whereof he paid UGX 250,000,000/= remaining with a balance of 92,500,000/=. It was also agreed that the said balance be paid off after the Plaintiff had acquired the land title and signing of transfer forms. In or around December 2014, the Plaintiff acquired the title in his names and informed the Defendant to pay the balance and transfer forms be signed for him. That several demands have since been made to have the money paid but have fallen on deaf ears and to make matters worse the Defendant is currently in occupation of the suit land. That the Plaintiff has been greatly inconvenienced by the acts of the Defendant

The Defendant from the date the Plaintiff was filed in Court that is on 29<sup>th</sup> April 2015 to date has never filed a written statement of defence despite being served several times, including substituted service whose proof is all on Court record.

Counsel for the Plaintiff prayed that ex-parte judgment be entered under **Order 9 Rule 6** of the Civil Procedure Rules in favour of the Plaintiff.

M/s J. Musana & Co. Advocates represented the Plaintiff.

**Resolution**

**Order 9 Rule 6** of the Civil Procedure Rules provides that;

*“Where the plaintiff is drawn claiming a liquidated demand and the defendant fails to file a defence, the court may, subject to rule 5 of this Order, pass judgment for any sum not*

*exceeding the sum claimed in the plaint together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8 percent per year to the date of judgment and costs.”*

In the instant case the Plaintiff has exercised all the due diligence possible to have the Defendant served but all in vain. Service was effected on three different occasions and the Defendant has still failed to put in his Written Statement of Defence.

Counsel for the Plaintiff in their submissions cited the case of **Uganda Baati Ltd versus Patrick Kalema, Civil Suit No. 126 of 2010**, where Court held that compliance with **Order 9 Rule 5** of the Civil Procedure Rules is sufficient safe guard in that the affidavit of service proves that the Defendant was served.

And the case of **Mwesigwa Geoffrey Philip versus Standard Chartered Bank (Uganda) Miscellaneous Application No. 2011**, where Court held that a Defendant has a legal duty to file and deliver the Written statement of Defence within the required 15 days, failure of which judgment should be passed for the Plaintiff.

In my opinion I do concur with Counsel for the Plaintiff and the cases as cited. It is on Court record that the Defendant has been served three times one of which was substituted service but has still not put in his defence. I therefore find it justifiable to pass judgment in favour of the Plaintiff for the sum claimed in the Plaint, interest of 10% p.a from the judgment date till payment in full, general damages to a tune of UGX 10,000,000/= and costs of the suit.

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**OYUKO. ANTHONY OJOK**

**JUDGE**

**18/10/2016**