

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CIVIL APPLICATION No. 0028 OF 2017
(Arising from Application No. 003 of 2017 and Civil Suit No. 0016 of 2016)

MAJI REAL ESTATES (U) LIMITED APPLICANT

VERSUS

**AULOGO COOPERATIVE SAVINGS AND }
CREDIT SOCIETY LIMITED, ADJUMANI } RESPONDENT**

Before: Hon Justice Stephen Mubiru

RULING

This is an application made under the provisions of section 98 of *The Civil Procedure Act*, section 333 of *The Judicature Act* and Order 36 rule 11 and Order 52 rules 1 and 3 of *The Civil Procedure Rules*. It seeks orders setting an ex-parte judgment and decree entered in favour of the respondent against the applicant, setting aside the execution of the decree, and order of refund of funds recovered by the respondent in execution of the decree

O 19 r 12 or r 27 of *The Civil Procedure Rules*, provides a specific remedy where an e-parte judgment is entered on account of an alleged lack of service or ineffective service of summons or hearing notice.

Counsel for the first applicant:

Ridehalgh v. Horsefield; Allen v. Unigate Dairies Ltd, [1994] Ch 205, [1994] 3 All ER 848, [1994] 3 WLR 462 thus;

An advocate has to make decisions quickly and under pressure, in the fog of war and ignorant of developments on the other side of the hill. Mistakes will inevitably be made, things done which the outcome shows to have been unwise. Advocacy is more an art than a science. It cannot be conducted according to formulae. Individuals differ in their style and approach. It is only when, with all allowances made, an advocate's conduct of court proceedings is quite plainly unjustifiable that it can be appropriate to make a wasted costs order. Threats of applications for wasted costs orders should not be used to intimidate opposing solicitors. He should ask three questions: Did he act improperly, unreasonably or negligently? Did that conduct cause unnecessary costs? Is it, in all the circumstances, just to make an order? In order to establish negligence it is necessary to show that the representative concerned acted in a way which no reasonably competent representative would act.

In the result, I find that the court below proceeded with material irregularity in the suit when on 17th February, 2014 it heard evidence ex-parte against the applicant without any proof of service of a hearing notice on the applicant

Delivered at Arua this 27th day of April 2017.

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Stephen Mubiru
Judge
29th March 2017.