

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISC. APPLICATION NO. 274 OF 2016
(ARISING OUT OF CIVIL SUIT NO. 038 OF 2016)**

BARLMART LOGISTICS LIMITED..... APPLICANT

SCARCE COMODITIES LTD.....RESPONDENT

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

Background and brief facts

The plaintiff filed this suit claiming damages arising out of a motor accident caused through negligence of the defendant's agent/servant. At the hearing of 10/5/18, the interlocutory judgment that had been entered in favour of the plaintiff on 11/1/2017 was set aside because it was sought under the wrong law and was not in the circumstances, available to the plaintiff. Plaintiff's counsel then indicated that service of the summons on the defendant, a foreign company, was by substituted service under O.5 rr18 CPR.

This is my brief ruling on whether that was effective service.

My decision

On 1/9/2016, the plaintiff sought and was granted leave to effect service of court process upon the defendant, stated to be a Kenyan Company through substituted means. They were permitted to advertise in the East African Newspaper, which is deemed to be a newspaper with regional circulation, and the Daily Nation which circulates in Kenya. The order was executed when notices of the summons appeared in the East African Newspaper of 17/9/2016 and the Daily Nation of 6/12/16 respectively.

Substituted service is provided for under O.5 rr 18 CPR. I note however that that mode of service falls under the general title of “*issue and service of summons*”. In my view, it was meant to cater for circumstances where ordinary service upon a defendant within jurisdiction deems impossible. Such service entails that the summons are placed at a conspicuous place on the defendant’s known residential or work address. My understanding of the end phrase “...or in such other manner that the court thinks fit”, was meant to be synonymous with that service in general. It would be stretching it too far, to allow substituted service, the type envisaged in this rule to fairly cater for defendants resident outside jurisdiction.

Having said so, and noting the identity and nationality of the defendant, the correct law followed should have been service upon a foreign common wealth national. Counsel mentioned in his submissions that the application for substituted service was sought under Rule 18 but argued under Rules 22, 24 and 26, and that it was for that reason that the Registrar allowed the application ordered for service in widely regional and country specific media. With due respect I see nothing in the counsel’s submissions made on 1/9/16 to support that argument.

The above notwithstanding, counsel’s submissions, I deem that the affidavit in support of the application for substituted service satisfied the requirements of the correct procedural law. Sufficient detail was given of the plaintiff (or their agent’s) efforts to tract down the defendant in Uganda. It was stated how Mr Kalyango the assigned process server came to know of the defendant’s nationality and postal address after their efforts to serve a known agent in Uganda failed. The defendant being a Kenyan company is deemed to be a “commonwealth ‘citizen’”.

Under Order 5 rr 26, where leave to serve out of jurisdiction has been granted, the Court has a discretion to determine the actual mode of service.

In my view, both the Daily Nation and East African Newspaper are widely circulating newspapers in the Republic of Kenya. An advert of the notice in either paper would be effective service against the defendant, only limited if they were ever to raise up an objection to it.

In summary I agree with counsel Kawesi Kakooza that service of summons upon the defendant, a Kenyan company was effective.

This case may proceed to hearing. Plaintiff's counsel is ordered to file his scheduling notice within 21 days of this ruling.

I so order.

.....

EVA K. LUSWATA

JUDGE

17/01/2019