

**THE REPUBLIC OF UGANDA**  
**INTHE HIGH COURT OF UGANDA AT FORT PORTAL**  
**MISCELLANEOUS APPLICATION NO. 046 OF 2018**  
**(Arising from HCT – 01 – CV – CS – 0015 of 2018)**

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**FORT PORTAL MUNICIPAL COUNCIL.....APPLICANT**

**VERSUS**

**GLOBE WORLD ENGINEERING (U) LTD.....RESPONDENT**

10 **BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE**

**Ruling**

The Applicant Fort Portal Municipal Council brought this Application by Notice of Motion under **Sections 96 and 98** of the Civil Procedure Act, **Order 51 Rule 6** and **Order 52 Rules 1 and 3** of the Civil Procedure Rules against the Respondent Globe World Engineering (U) Ltd. The Application seeks for the following orders;

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1. That the order to hear the suit ex-parte made on 4<sup>th</sup> June, 2018 be set aside.
2. That the time within which to file a written statement of defence be enlarged.
3. That the costs of this application be provided for.

The Application is supported by an affidavit sworn by the Deo Ndimu the Applicant's Town Clerk and the ground briefly are as follows;

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- i. That there was no proper service of the summons to file a defence to the Applicant.
- ii. That there has been no inordinate delay to file the Written Statement of defence by the Applicant.
- 25 iii. That it is just and equitable that the order to hear the suit ex-parte be set aside and the time within which to file a Written Statement of Defence be enlarged since the Applicant has a good defence and Counter Claim which have high chances of success.
- 30 iv. That no miscarriage of justice would be occasioned against the Respondent if the order to hear the suit ex-parte is set aside and time within which to file a defence enlarged.

The Respondent opposed the Application through an affidavit in reply sworn by Kiiza Joseph.

**Brief Back Ground:**

The Respondent instituted HCT – 01 – CV – CS – 0015 OF 2018 against the Applicant for a declaration that the Applicant is in breach of contract of revenue collection from street parking, seeking an injunction to maintain the status quo, general damages and costs of the suit.

5 On 10/5/2018, Court issued summons against the Applicant to file a Written Statement of Defence and the same was allegedly served upon an unnamed woman in the Applicant’s central registry and as a result on 4/6/2018 court issued an order that the suit be heard ex-parte against the Applicant hence this application to set aside the said order and that the times within to file a Written statement of defence be enlarged.

10 M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates represented the Applicant, whereas M/s Ahabwe James & Co. Advocates represented the Respondent. By consent both parties filed written submissions.

Counsel for the Applicant submitted that whereas the Respondent insisted that service was effected by Nyakahuma Andrew was proper service and the Applicant was guilty of  
15 inordinate delay to file this application, that **Order 5 Rule 10** of the Civil Procedure Rules which provides that whenever it is practical, service shall be made on the Defendant in person, unless he or she has an agent empowered to accept service, in which case service on the agent shall be sufficient. And that according to **Regulation 26(1)** of the Local Government Councils Regulations contained in the 3<sup>rd</sup> Schedule to the Local Governments  
20 Act, it provides that any summons, notice or other document required or authorised to be served on a district, urban or sub-county Council shall be served by delivering it to or by sending it by registered post addressed to the Town Clerk, Chief Administrative Officer or Chief of the Sub-County of the Council.

Counsel for the Applicant added that there was no proper service because the woman whose  
25 identity is not ascertained in the affidavit of service is not an agent of the Applicant and is not empowered to accept service on behalf of the Applicant. That the Applicant was not aware that Court had issued summons against it because the Respondent served a person who was not empowered to accept service of Court process on behalf of the Applicant hence a Court order that the suit be heard ex-parte was issued in error and misrepresentation. That the  
30 Applicant became aware of the main suit instituted by the Respondent when it was served with an interim injunction order and the hearing notice of the main suit for 30/8/2018. Therefore the Applicant is not guilty of inordinate delay to file this application and hearing of the main suit has not started. The Applicant has a valid and strong defence and Counter-claim to the main suit with high chances of success.

35 Counsel for the Respondent on the other submitted that the Respondent was effectively served with Court summons through the secretary to the Office of the Town Clerk and the Applicant does not deny having receiving the interim injunction order which was served to the same person as evidence by the affidavits of service of the same.

In regard to the law as cited by Counsel for the Applicant in regard to service Counsel for the  
40 Respondent submitted that the Applicant’s agent is the Town Clerk who has an office which

office has a secretary. The Secretary to the Town Clerk for the Applicant who received the Court summons on behalf of the Town Clerk. Therefore, there was effective service of the Court process on the Applicant and the Applicant's Application was brought after inordinate delay and the Respondent is currently indebted to URA which taxes have accumulated fines.

5 This Court has carefully considered the submissions on both sides in this application to set aside the order that HCT – 01 – CV – CS – 0015 of 2018 be heard ex-parte against the Applicant, Fort Portal Municipal Council. The basis of the Application is that the Summons to file a Written Statement of Defence were served on an unnamed woman in the Applicant's central registry.

10 Counsel for the Applicant maintained that the proper person to have been served should have been the Town Clerk who is the responsible officer of the Applicant. **Regulation 26(1)** of the Local Government Councils Regulations in the 3<sup>rd</sup> Schedule to the Local Government Act Provides that any Summons, Notice or other document required or authorised to be served on the District, urban or Sub-County Council shall be served by delivering it or to or by sending  
15 it by registered post addressed to the Town Clerk, Chief Administrative Officer or Chief of the Sub-County of the Council.

I have studied the affidavit of service sworn by Nyakahuma Andrew on 15/5/2018. Under paragraph 3 thereof, he states that while in the Central Registry of Fort Portal Municipal Council, **he met a woman whom he served the documents.**

20 Counsel for the Respondent submitted that the Secretary to the Town Clerk who received the Court Summons is the same person who received the interim injunction order which the Applicant does not deny. I definitely agree with the submissions of Mr. James Ahabwe for the Respondent that the agent of Fort Portal Municipal Council is the Town Clerk who has an office and has a secretary. And I would have no problem with the Secretary to the Town  
25 Clerk receiving Court Summons on behalf of the Town Clerk and stamping on the copies the stamp and seal of the Town Clerk to the Municipal Council.

The problem with this case is with Mr. Nyakahuma Andrew. **He served a woman in the Central Registry of Fort Portal Municipal Council.** The affidavit of service does not state that he served **so and so by name**, who is a Secretary of the Town Clerk. But much as the  
30 process server did not state the name of the Town Clerk, since it is the same woman who received the interim injunction order which the Town Clerk Mr. Ndimio Deo under paragraph 4 of the affidavit in support concedes, then I find and hold that it is in the interest of Justice to admit the same service of Summons as was the interim order. Furthermore, and in my view a Central Registry of Fort Portal Municipal Council is part and parcel of the office of the Town  
35 Clerk.

In the premises, since it is the same person who received the interim injunction order also received and stamped the Summons, then the Applicant was properly served but failed to file a Written Statement of Defence in time. This Application is therefore hereby dismissed with costs.

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**WILSON MASALU MUSENE**

**JUDGE**

5 **10/9/2019**