

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI**  
**MISCELLANEOUS APPLICATION NO.61 OF 2020**  
**(ARISING FROM CIVIL SUIT NO.0003 OF 2017)**

**KINYARA SUGAR LIMITED ::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**KYOMUHENDO PAMELA ::::::::::::::::::::::::::::::::::: RESPONDENT**

**RULING**

**BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA**

- [1] The Applicant brought the present application by Notice of Motion under **Section 98 CPA, Section 33 of the Judicature Act, O.9 r 27 and O.52 rr 1, 2 and 3 CPR** seeking orders that:
1. The *ex parte* judgment entered against the Applicant in the *Civil Suit No.0003 of 2017* be set aside.
  2. Time within which to file a defence in the *Civil Suit No.0003 of 2017* be extended and,
  3. Costs of the Application be provided for.
- [2] The grounds in support of the application are contained in the affidavit in support of the Notice of Motion deposed by **Mr. Russel Moro**, the Applicant's Company Secretary which briefly are;
- a) That the summons was not duly served.
  - b) That the Applicant has a good defence against the Respondent's claim and this application has been brought without undue delay.
  - c) That it is in the interest of justice that this application is granted.

## **Counsel Legal Representation**

- [3] The Applicant was represented by **Mr. Mausio Andre** of **S&L Advocates- Kampala** while the Respondent was represented by **Counsel Zemei of Zemei, Aber Law Chambers-Masindi**.
- [4] The Respondent raised an objection in her affidavit in reply that the application is defective and was served prematurely because it was not sealed with a court seal.
- [5] Counsel for the Applicant submitted in reply to the preliminary objection that there is no legal requirement to sign or even seal a notice of motion by a Judge or Registrar of court. He added that the failure to seal the notice of motion with a court seal is an error that cannot be visited upon the Applicant since sealing and signing are a preserve of the court registry and omission of which does not render the notice of motion fatal.
- [6] To support his submission, the Applicant's counsel cited the authority of **DFCU BANK LTD Vs MEERA INVESTMENTS & ANOR, MISC.APPLCN NO.0283 OF 2018** where Justice Eudes Keitirima held that;

*"... although in practice the notice of motion carries a signature of a judicial officer and a seal of court, these are not legal requirements and omission of which does not render the notice of motion fatal. This is because a notice of motion is a distinct pleading similar to a plaint presented by an applicant to court and is not a summons envisaged under Order 5 Rule 1(5) of the CPR...If the Legislature had intended that a notice of motion should be signed and sealed by the court, the Legislature would have expressed that requirement under Order 52 of the CPR...The objection is therefore overruled."*

[7] Under **O.5 r.1 (b) CPR** it is provided that;

***“Summons.***

*1) When a suit has been duly instituted a summons may be issued to the defendant-*

*b) ordering him or her to appear and answer the claim on a day to be specified in the summons.”*

In terms of definition of summons, **Dictionary from Oxford languages**, it is;

*“An order to appear before a judge or Magistrate or the writ containing such an order.”*

In **Merrian-Webster dictionary**, it is;

*“A written notification to be served as a warning to appear in court at a day specified to answer to the plaintiff.”*

[8] A summons therefore, is **an official notice of a law suit**. It is the summons that invokes the power of the court to require an appearance by the defendant/Respondent. The defendant is “summoned” to appear or face default. The summons is the “voice of the court.”

[9] In the instant case, the Notice of motion initiating proceedings that was served upon the Respondent requiring him to appear and contest the application or face default, is a summons within the meaning of **O.5 r.1 (b) CPR**.

[10] Under **O.5 r.1 (5) CPR**,

*“Every summons shall be signed by the Judge or such officer as he or she appoints and shall be sealed with the seal of the court.”*

[11] In **ISINGOMA MICHAEL Vs L.D.C H.C.M.A No.234 OF 2019**, the Applicant who was self-represented acknowledged and conceded that the copies of the Notice of motion he filed on court record and the copies he served on the Respondent, did not bear the seal of court or the Registrar's endorsement. He nevertheless argued that his own copy of the Notice of Motion had the seal and the signature of the Registrar and attributed the error of lack of seal on the served copy, as foul play. Though he prayed that he be given time in order to "formalize" the application by rectifying the Notice of motion, While relying on the authorities of **KAUR Vs CITY MART [1967] E.A 108** and **FREDRICK JAMES JJUNJU & ANOR Vs MADHIVANI GROUP LTD & ANOR H.C.M.A No.688 OF 2015 (LD)**, court held that;

***"where a Notice of motion is not signed by a Judge or Registrar or officer appointed for that purpose and sealed by a seal of court, then that is a fundamental defect which is incurable and hence the application is incompetent and a nullity."***

[12] In **KAUR Vs CITY AUCTION MART LTD [1967] E.A 108**, an application to lift a caveat was commenced by Notice motion but the notice of motion had not been endorsed or issued by a Judge. The "summons" was neither signed nor sealed. It was held that this did not comply with **O.5 r.1 of the Civil Procedure Rules** and it was a fundamental statutory requirement. The application was dismissed with costs. Court observed that the law lays down that a document, such as a summons, must bear the seal of this court for obvious reasons that it is issued under proper authority and out of the proper office. The summons was required by law to bear the seal of the court.

- [13] Failure to comply with this requirement rendered the proceedings a nullity. A court official document issued from the High Court, initiating proceedings to be worth the name, must be endorsed by an officer of court and be sealed accordingly.
- [14] This requirement is amplified by the fact that the application has to be served upon the opposite party, the Respondent and therefore, the basis of its authenticity, source, is the signature of the Judge or such officer that is appointed for the purpose and seal. It therefore follows that for a document to qualify as a court process and or application, it must be signed by a Judge or such officer appointed for the purpose and bear a court seal.
- [15] The other importance of the seal and signature of the Judge or any such officer appointed for the purpose, is the bestowed power of court which carries with it the consequences of default by the Respondent. Therefore, absence of a seal offers the opposite party/Respondent upon whom the court process and or application has been served, liberty to exercise his/her right or option to ignore it. Failure to comply with the requirement may thus lead to an absurdity.
- [16] From the foregoing, it is therefore my view that the requirement of the Notice of motion to carry a signature of a judicial officer and a seal of court since it is a “summons” by itself, is not a matter of form but a legal requirement and the omission renders the notice of motion fatal. Besides, the failure to adhere to the requirements of **O.5 r.1 (5) CPR** may lead to other absurd consequences, for example where fraudsters may take advantage and use unauthenticated court processes to intimidate their adversaries for purposes of extortion. Tomorrow court may find themselves flooded with unauthentic

“official” court processes once compliance with **O.5 r.1(5) CPR** is swept under the carpet on grounds that it is a mere technicality.

- [17] In the instant case, the Notice of motion was not sealed with a court seal as conceded by the Respondent. I am persuaded by the decisions in **ISINGOMA MICHAEL Vs L.D.C H.C.M.A No. 234 OF 2019 (supra)** and **KAUR Vs CITY AUCTION MART (supra)** and the above reasons, that where a Notice of motion is not signed by an authorized court official and sealed within the meaning of **O.5 r.1(5) CPR** is a fundamental defect which is incurable. In the premises, I find the present application incompetent and it is accordingly dismissed with costs.

**Byaruhanga Jesse Rugyema**

**JUDGE.**

**3/10/21.**