

THE REPUBLIC OF UGANDA
IN THE HIGHT COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISC.APPLICATION NO 919 OF 2021

(ARISING OUT OF MISC. APPLICATION NO. 843 OF 2021)

(ARISING OUT OF MISC.CAUSE NO.287 OF 2021)

AN APPLICATION FOR SETTING A SIDE DIRECTION TO FILE SUBMISSIONS BEFORE CLOSING OF PLEADINGS WITHOUT PROOF OF EFFECTIVE SERVICE.

MALE H MABIRIZI K KIWANUKA:::APPLICANT

VERSUS

ATTORNEY GENERAL:::RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA.

RULING

The applicant brought this application under Article 28(1), 44(c), 126(1), of the Constitution, S.33 of the Judicature Act, section 98 of the Civil Procedure Act, Order 5 r 7-18, Order.9 r 1 (1), 11,12,20,27, Or 52r1, for Orders that;

- The Directions issued on 22nd December 2021 to file submissions before closing of pleadings without proof of effective service and ;
- Costs of the application to be awarded to the applicant personally, paid by Ms. Patricia Mutesi, Assistant commissioner and Mr. Jimmy

Oburu Odoi, Principal State Attorney in Ministry of Justice and Constitutional Affairs.

The grounds for this application briefly are set out in the Notice of Motion and also in his affidavit in support but briefly are the following;

1. That the applicant in Misc. causes No. 287 of 2021, MALE H MABIRIZI KIWANUKA V. CAPITAL MARKETS AUTHORITY, dismissed on 26th November 2021, and has since filed a notice of appeal.
2. The applicant had just come to know from a court staff that on 22nd December 2021 Judge Musa Ssekaana made direction to file submissions before closing of pleadings.
3. That the respondent did not exhaust all avenues of effective service of the applicant.
4. The respondent did not file a formal application of substitute service of the applicant.
5. There was no proof of service be of email or at the time of making Directives.
6. Parties had not completed their pleadings and the time to do so was still running.
7. Service by email is not one of the modes of service provided for under civil procedure rules.
8. That the applicant right to fair hearing was derogated.

And the respondents opposed this application and filed an affidavit in reply through Mr. Oburu Odoi Jimmy and responded as follows;

1. That the respondent was duly affected service of MA.843/ 2021 via an applicant's email address after which the applicant filed and served his affidavit in reply thereto on 27th December 2021.
2. The respondent filed and served our affidavit in rejoinder on 6th January 2022, after which pleadings closed.
3. The court had directed the A.G, to file submissions by 11th January 2022, the respondent to file submissions in reply by 17th January 2022 and submissions in rejoinder if any, be filed by 20th January 2022.
4. This application was taken by events and is a moot and a academic in as far the applicant filed his affidavit in reply and pleadings were closed before the scheduled dates for submissions.

Briefly there are only two main issues arising from this application, that is;

1. *Whether direction to file submissions before closing of pleadings was proper.*
2. *Whether service by email is proof of effective service.*

The applicant was self-represented while the respondent was represented by Ms Patricia Mutesi-Assistant Commissioner.

Like all the applications filed on 23rd December 2022, the applicant never appeared in court and did not file any submissions in support of his case. This court decided to proceed to determine the same on the evidence on record.

Whether direction to file submission before closer of pleadings was proper?

This matter came up for hearing on 18th January 2022 at 9:00am and the applicant did not appear in court. However, the respondent appeared and by that date had duly filed their affidavit in reply on 17th January 2022.

This court directed parties to file submissions after closure of pleadings. There was an application on duly filed and the respondent had on 17th filed their affidavit in reply. That was the closure of pleadings and nothing more was expected from the parties.

Order 52 of the Civil Procedure Rules under which the applicant brought this application provides;

3. Contents of notice

“ Every notice if motion shall state in general terms the grounds of the application, and, where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion”

The application once filed with supporting affidavit the pleadings for the applicant are closed at that stage. The respondent has a right to reply to the same by way of an affidavit in reply which also closes pleadings for the respondent. The applicant has no right to file additional pleadings in an application brought by notice of motion. Order 52 should not be substituted for Order 6 of the Civil Procedure Rules which governs pleadings and allows filing of pleadings by way of rejoinders or surrejoinders or rebuttals. Therefore pleadings are closed when the respondent files an affidavit in reply.

It's important to note that Section 98 of the Civil Procedure Act , is to the effect that nothing in this Act shall be deemed to limit or otherwise affect

the inherent powers of the court to make such orders as may necessary for the ends of justice or to prevent abuse of process of court.

The court could also exercise its inherent powers and give direction even before the pleadings are not closed depending on the circumstances of the case. The directions given by court where intended to facilitate an expeditious determination of the issues in dispute.

Also In the case of *Alice Akiror And Another v Global Capital Save 2004 And Another (Civil Suit No 149 Of 2010) Ugcommc 62 *14 June 2012*) It was observed that getting submissions from both sides would facilitate it to come up with a just and fair decision having fully listened to both sides of the dispute.

Whether service by email is proof of effective service.

The applicant failed to effect service on the respondent and they served themselves and it was on record that the applicant was avoiding service from court process server.

The applicant refused to appear in court on the day the matter was fixed for hearing on 14th December 2021, and the respondent moved court to effect service via any other mode of service. The court allowed the respondent to serve the applicant via email. The applicant was served via email and indeed this court deemed this effective service when the matter came up for hearing on 22nd December 2021.

This application is therefore devoid of any merit. It is hereby dismissed with costs.

SSEKAANA MUSA

JUDGE

27th JANUARY 2022.