

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
MISCELLANEOUS CAUSE NO. 54 OF 2021

SAIDA NASSUNA

NYAKATO ASHIMA SHAKILA

KALUNGI AMINAH

NYANGOMA BABIRYE FATUMAH ::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

MALENDE RONALD WANZU ::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON JUSTICE DAVID MATOVU

RULING

Introduction

1. This is an application brought by Saida Nassuna, Nyakato Ashima Shakilah, Kalungi Aminah, Nyangoma, hereinafter referred to as the Applicants, against Malende Ronald Wanzu hereinafter referred to as the Respondent.
2. The Application is brought under Order 25 rules 1& 3 of the Civil procedure rules, section 98 of the Civil Procedure Act, Section 33 of the judicature Act and Sections 140 (1) and 177 of the Registration of Tiles Act.

Background

3. The Applicants filed Miscellaneous Cause No. 54 of 2021 against the Respondent on the 12th day of October, 2021, seeking for orders that: -
4. The Respondent shows cause why the caveat he lodged under instrument number MKO 81471 dated 19th October, 2006, lodged on land comprised in Kyaggwe block 87 Plot 670 (now Plots 1400 & 1999), land at Namasiga, Mukono District should not lapse.

5. The Respondent's caveat be vacated/ removed from land comprised in Kyaggwe block 87 Plot 670 (now Plots 1400 & 1999), land at Namasiga, Mukono
6. The Respondent pays compensation/ damages to the Applicants for lodging the afore said caveat without lawful or reasonable cause.
7. Costs for the application
8. The application is supported by the affidavit of Saida Nassuna, the 1st Applicant herein, who swore the said affidavit on her own behalf, and on behalf of the other Applicants, with their authority.
9. The contents of the said affidavit shall not be reproduced herein; however, court has taken note of the evidence produced therein.
10. The Respondent filed his affidavit in reply, wherein he raised a point of law to the effect that this application was served upon him on the 06th day of June, 2022 and yet it had been signed by this Court on the 13th October 2021, which was way out of time.
11. The Respondent further stated that there was no application to extend time within which to serve him, upon the expiry of the 21 days from the date the application was signed and sealed.
12. The Respondent further denied having lodged any caveats on the said pieces of land.
13. The Applicants filed their affidavit in rejoinder on the 26th September, 2022 and claimed that the said application was signed and sealed on the 13th day of October, 2021 but was never fixed or given a date.
14. The Applicants further stated that their Advocates wrote several letters addressed to the Registrar, i.e. on the 3rd of December, 22nd April, however the same was never fixed, not until the 06th day of June, 2022.
15. However, on perusal of the Court file, there is only one letter requesting for a date, which was received in this Court on the 25th of April, 2022.

Representation

16. The Applicants were represented by Mr. Mugisa Ronald Ronnie of M/s Barungi Baingana & Co. Advocates while the Respondent was represented by Mr. Denis Nyombi of M/s Denis Nyombi & Co. Advocates.
17. When the matter came up for hearing on the 19th day of September, 2022, Mr. Denis Nyombi, Counsel for the Respondent informed this Honourable Court that the matter was coming up for ruling and that they had filed their written submissions.
18. However, upon perusal of the Court record, there were no submissions as contended by Counsel. The only submissions on file were filed on the 26th of September, 2022 by Counsel for the Applicants.

Issues

19. Whether the caveat lodged by the Respondent on land comprised in Kyaggwe Block 87 Plot 670 (1400 & 1909) at Namasiga, Mukono District on the 19th day of October, 2006 vide instrument number MKO 81471 ought to lapse and/ or be vacated.
20. What remedies are available for the Applicants?

Decision of Court

21. This Application was brought under Order 25 rules 1& 3 of the Civil Procedure Rules, Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Sections 140 (1) and 177 of the Registration of Titles Act.
22. However, in the Respondent's affidavit in reply, Counsel raised a point of law to the effect that the said application was served upon him out of time; that is the 21 (twenty-one) days as required by law in effect, the summons were expired and that there was no application to extend time within which to serve the Respondent.

23. It is important therefore to first resolve this pertinent issue of service before delving into the merits of the application.

24. Order 5 of the Civil Procedure Rules is instructive as to the issue and service of summons and the pertinent rules in this issue state: -

Summons.

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

(a) ordering him or her to file a defence within a time to be specified in the summons; or

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

(2) Service of summons issued under sub rule (1) of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after the expiration of the twenty-one days, showing sufficient reasons for the extension.

(3) Where summons have been issued under this rule, and—

(a) service has not been effected within twenty-one days from the date of issue; and

(b) there is no application for an extension of time under sub rule (2) of this rule; or

(c) the application for extension of time has been dismissed, the suit shall be dismissed without notice.

25. From the foregoing therefore, when the summons are issued, the Plaintiff, in this case the Applicant must have served the same upon the other party within 21 days from the date of issue.

26. It is not in dispute that the Deputy Registrar signed and sealed the said motion on the 13th day of October, 2021. This therefore means that the said

motion should have been served onto the Respondent by the 6th day of November, 2021.

27. However, the Respondent states that the same was served upon him on the 06th day of June, 2022.

28. This is a period of over 08 (eight) months from the date the motion was signed and sealed by the Deputy Registrar.

29. This is therefore a proper case where Order 5 Rule 2 of the Civil Procedure Rules should have been put to use by Counsel for the Applicant.

30. However, in the Applicant's affidavit in rejoinder, which was also filed very late, the Applicant in paragraph 4 states that it is indeed true that the notice of motion was signed by the Registrar on the 13th day of October, 2021.

31. The only action taken was on the 25th day of April, 2022 when Counsel for the Applicant wrote a letter requesting for a hearing date. This was an act done rather late.

32. Going by the above, I am inclined to agree with the Respondent as stated in his affidavit in reply at paragraph 3 that this application should be deemed dismissed by Court without notice as provided under Order 5 rule 3 (a) and (b).

33. Further, when the application was finally fixed by this Court on the 06th day of June, 2022 as stated by the Applicant in her affidavit in reply, Counsel ought to have filed an application to serve out of time and state the reasons and also bring his issue to the attention of Court, however, the same was not done.

34. Article 126 (2) (e) of the Constitution enjoins Courts to deliver substantive justice without undue regard to technicalities. The question of what amounts to "undue regard to technicalities" is to be interpreted by court. The rules and timelines for filing defences are not mere technicalities. They regulate the conduct of the court business and ensure fairness.

35. The Supreme Court had occasion to interpret article 126 (2) (e) of the Constitution in the case of **UTEX INDUSTRIES VS ATTORNEY GENERAL S.C.C.A. NO.52 OF 1995.**

36. In that case, there was no certificate indicating the time that had been taken to prepare the record. The Respondent had not applied for leave to extend time since the appeal had been filed after the stipulated 60 days.

37. The Supreme Court while discussing Article 126 (2) of the Constitution held that “the article seems to be a reflection of the saying that rules of procedure are handmaidens of justice- meaning that they should be applied with due regard to the circumstances of each case.

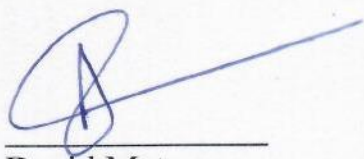
38. It is therefore clear that the said application was served out of time and the correct course for the counsel would have been to apply for leave to serve the same out of time, which was never done.

39. Having found that the application was served out of time, it is not necessary to delve into the merits of the same.

40. In the result, this application is dismissed with costs to the Respondent.

I so order.

Dated at Mukono this 24th day of October, 2022.



David Matovu
Judge