

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
MISCELLANEOUS APPLICATION NO. 918 OF 2021**

*(ARISING OUT OF MISC. APPLICATION NO.843 OF 2021)  
Arising out of Misc. Cause No. 287 of 2021*

**MALE H MABIRIZI K. KIWANUKA:.....APPLICANT**

**VERSUS**

**ATTORNEY GENERAL:.....RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

The applicant has brought this application under Articles 28(1), 44(c), & 126(1) of the Constitution, Section 33 & 39 of the Judicature Act, Section 98 of the Civil Procedure Act, and Order 5 rule 7 and Order 52 rule 1 of Civil Procedure Rules for orders that;

1. The Order that the applicant be served with Misc. Application No. 843 of 2021 through e-mail be set aside.
  
2. The costs of this application be personally and individually paid to the applicant by Mr. Jimmy Oburu Odoi, Principal State Attorney in Ministry of Justice and Constitutional Affairs.

The applicant laid out grounds on which he sought to rely in his affidavit in support to his application and they include;

1. That the applicant did not exhaust all avenues of effective service of the applicant.

2. The applicant did not file a formal application for substituted service of the Applicant.
3. Service by email is not one of the modes provided for under the Civil Procedure rules.
4. The applicant's right to fair hearing was derogated.

In reply, Mr. Jimmy Oburu swore an affidavit in reply in which he contends that this application is moot since the applicant was duly served with the respondent's application and affidavits in reply to which he duly responded.

The applicant was self-represented but never appeared in this court while the respondent was represented by *Ms. Patricia Mutesi-Assistant Commissioner*.

Like in all other applications filed on the same day, the applicant never appeared in court when they were called for hearing and did not file any submissions in support of his case. The court decided to proceed to determine the same instead of dismissing the same for want of prosecution.

## **ANALYSIS**

Order 5 rule 18 of the Civil Procedure Rules S.I 71-1 grants the court powers to order substituted service to a party. It provides as follows;

*Where the court is satisfied that for any reason the summons cannot be served in the ordinary way, the court shall order the summons to be served by affixing a copy of it in the conspicuous place in the courthouse, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit.*

The rules provide for personal service under Order 5 rule 10 of the Civil Procedure Rules, but personal service is only required wherever it is practicable.

The applicant in the main application for contempt informed court that it was not possible to effect service since the applicant was not picking their phone calls. It was upon this application that the court allowed the applicant to serve the respondent via his email which was conspicuously noted on his pleadings/affidavit in reply as part of his address of service.

Like in all other modes of service, service by email or facebook or whatsapp or any other technologically advanced means are calculated at providing parties with notice of existence of a suit or hearing date for their response or attendance. See *Civil Procedure and Practice in Uganda by M.Ssekaana & S. Ssekaana 2<sup>nd</sup> edition page 215*.

Service of court process electronically has come to be recognized in Uganda as one of the acceptable means of service through Companies Act – section 274 and also recently rules passed by the Rules Committee –*The Constitution (Integration of ICT into the Adjudication Processes for Courts of Judicature)(Practice) Directions, 2019*.

Under Objective 3(a) it is one of the objectives of the rules *providing for electronic service of court documents*.

Rule 5 provides for Use of Technology in Courtrooms;  
*In every judicial proceeding, the court and the parties to the case may, as much as possible, use technology to expedite the proceedings and make them more efficient and effective.*

Rule 5(5) provides; *The court reserves the power to direct parties to use information technology in appropriate cases.*

This court was within its powers when it ordered service on the respondent by email since he trying to avoid service of court process in order to delay the trial of the application for contempt.

Indeed, this service was effective and he filed affidavits in rejoinder and submissions after service by email.

Based on the reasons given above, this application is hereby dismissed with costs.

*Ssekaana Musa*

*Judge*

*27<sup>th</sup> January 2022*