

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISC. APPLICATION NO. 093 OF 2021
(ARISING FROM HCT – 01 – CS – 0038 OF 2019)

5 **BAKARWERENZA MOSES ::: APPLICANT**
VERSUS
GREAT LAKES COFFEE COMPANY LTD ::: RESPONDENT

BEFORE HON. JUSTICE VINCENT WAGONA

10 **RULING**

This ruling follows an application brought under Section 98 of the Civil Procedure Rules and Order 9 rule 12 and Order 52 rule 1 of the Civil Procedure Rules seeking orders that:

- 15 1. The interlocutory judgment/order if any issued in HCT – 01 – CV – CS NO. 0038 of 2019 be set aside and leave be granted for extension of time to the Applicant to file a defense out of time.

2. That the costs of taking out the application be provided to the Applicant

20 The Application is supported by the Applicant’s affidavit in which he contended as follows;

1. That he is the defendant in HCT – 01 – CV – CS No. 0038 of 2019 pending determination before this court. That he was served by way of substituted service on 19th September 2019.



2. That he was diagnosed with severe acute Brucellosis and Malaria and he was admitted at Kilembe Hospital in Kasese from 18th September 2019 to 2nd October 2019.
3. That soon thereafter, he was arrested and remanded to Mubuku Prison in the month of December 2019 and later released on bail in the month of May 2020 over charges of obtaining money by false pretense which is the same claim by the Respondent in the current suit.
4. That as a result he was unable to get notice/knowledge about the case and that he was informed by his friend Mugabi Innocent of Rubirizi District who told him that on 4th October 2021, he saw a cause list at the High Court at Fort Portal involving him and he quickly instructed a lawyer to file this application.
5. That whereas he would get money for delivery of coffee, every delivery was recorded and after a reconciliation, it was discovered that it was the Respondent who owed the Applicant UGX 100,000,000/=.
6. That he is not indebted to the Respondent, instead it is the Respondent who is indebted to him and the purported summary of analysis of payments and coffee supplied is a forgery and has no legal basis.
7. That the Respondent's claim in the head suit is misconceived and that the Applicant has a good defense to the Respondent's claim in Civil Suit No. 0030 of 2021. That it is in the interest of justice that the Application is granted and that the suit should be heard interparty.

Representation:

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The Applicant was represented by *M/s Bagyenda & Co. Advocates*. The Respondent was served per the affidavit of service deponed by Muhoozi Irumba dated 22nd November 2022 filed on 24th November 2022. The Respondent did not file an answer to the Application in the manner provided for under the civil procedure rules and thus I considered the application ex-parte.

Issues:

1. Whether the Applicant should be granted leave to file his written statement of defense out of time.
2. Remedies available.

Consideration of the Application:

Whether the Applicant should be granted leave to file his written statement of defense out of time.

Order 51 rule 6 of the Civil Procedure Rules gives court the discretion to extend time fixed for doing any act or taking any proceedings under these Rules or by order of the court upon proof of sufficient cause.

The rules do not define *sufficient cause* but there is case law. In *Hadondi Daniel vs Yolam Egondi Court of Appeal Civil Appeal No 67 of 2003* it was held that: “it is trite law that time can only be extended if sufficient cause is shown. The sufficient cause must relate to the inability or failure to take necessary step within the



prescribed time. It does not relate to taking a wrong decision. If the applicant is found to be guilty of dilatory conduct, the time will not be extended”.

In Mohan Kiwanuka Vs Aisha Chand SCCA no. 14 of 2002, court held that no
5 prejudice is suffered by a party if it can be compensated by costs.

This Court in *Kabarole District Local Government Vs. Gun Paper Industries Limited, Misc. Application No. 102 of 2022* stated that: “*It is my understanding that whether a particular cause is sufficient or not is a matter for judicial*
10 *determination taking into account the facts of the case. Each decision would depend entirely on the particular facts of the case. The events occurring before the expiration of the time provided for under the law may be relevant. Where a party has not been grossly negligent or palpably indifferent in prosecuting the case, the delay may be excused to afford granting an extension. It appears to me that in*
15 *circumstances where the denial to grant an extension would occasion an injustice or lead to multiplicity of suits, or where in the court’s consideration justice can be better served after hearing from both side especially in land matters, an extension should be granted. This is intended to ensure that justice is done to all no matter the faults, mistakes, lapses and minor procedural irregularities that do not go to*
20 *the roots of the administration of justice.”*

The Applicant in this case contended that he was prevented by sufficient cause from filing a written statement of defense in time on ground that he fell sick during the time he was meant to file a defense and he was later arrested. That he learnt of

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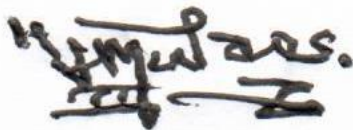
the suit through a friend who saw the case cause listed. That he has a good defense to the Respondent's claim.

5 I have taken time to peruse the record of proceedings in Civil Suit No. 0038 of 2019. On the 9th of April 2021, when the suit came up for mention, the trial judge gave the Respondent timelines to file statements and have the case set down for formal proof and the case was adjourned to 5th October 2021.

10 On the 5th of October 2021, the Applicant/Defendant was present and informed court that he has been sick and the trial judge noted that; "***let the defendant be given a chance to defend***" and the matter was accordingly adjourned to 1st February 2022 for mention. On the same day, that is on 5th October 2021, the defendant filed the current application seeking leave and the application was scheduled for hearing on the 1st of February 2022 when the main case was fixed for
15 mention.

In my view the minute of the trial judge of 5th October 2021 to the effect that; "let the defendant be given a chance to defend" implied that the defendant was given an opportunity to file a defense and have the case heard on merits. Therefore, the
20 present application in my view was unnecessary and I suppose the same was filed without making proper reference to the record of proceedings of court.

This application is hereby dismissed as leave to file a defence had already been granted. I make no orders as to costs as the Respondent did not respond to the
25 Application.

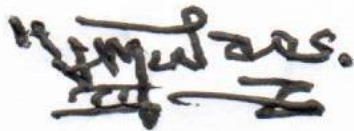
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I make the following orders to progress the main case:

1. The Applicant is given 15 days from the date of delivery of this ruling to file and serve his defense.

5 **2. Civil Suit No. 0038 of 2019 is accordingly fixed for mention on the 28th of April 2023.**

It is so ordered.



10 Vincent Wagona
High Court Judge
FORT-PORTAL
20.03.2023

