

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISC.APPLICATION NO. 304 OF 2022
(ARISING FROM MISC. CAUSE 24 OF 2022)

CENTURY HOTEL LIMITED :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

NGOBI ANTHONY :::::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA

RULING

Background

This Application is brought under O 52 r 1, 2 & 3 of the Civil Procedure Rules S. 1 71-1, Section 98 of the CPA Cap 71 and Section 33 of the Judicature Act seeking that: -

- a) The proceedings in Misc. Cause No. 24 of 2022 before this Court be stayed until the disposal and determination of Kamuli CRB 1122/2021 at the Chief Magistrate Court of Kamuli.
- b) The costs of this application be provided for.

Brief facts

The Respondent was an employee of the Applicant who was dismissed for allegedly being involved in criminal activities. In addition to the dismissal, the Applicant made a complaint against the Respondent at the Police Criminal Investigations Department (CID) Headquarters in Kampala. The CID headquarters liaised with Kamuli Police Station, conducted investigations in the matter and subsequently opened a criminal case against the Respondent under Kamuli CRB 1122/2021. The Police at Kamuli Police Station was directed by the Director CID, Police Headquarters to impound and detain Motor Vehicle Toyota Wish Reg. Number UBE 010L belonging to the Respondent. This case is currently proceeding at the Chief Magistrate Court at Kamuli.

The Applicant applied for an order of unconditional release of the said motor vehicle from police custody which the Applicant herein seeks to stay.



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Representation

The Applicant was represented by Counsel Edgar Kakona of Bloom Advocates while the Respondent was represented by Counsel Isabirye John of Isabirye & Co. Advocates.

In the affidavit in reply, the Respondent under paragraph 4 raised two preliminary objections on points of law to wit;

1. That Misc. Application No. 304 of 2022 was not served on the Respondent as stipulated by law.
2. The Applicant in the instant application is not a party in Miscellaneous Cause No. 24 of 2022 he seeks to stay and therefore has no locus to institute the present application.

Submissions

At the hearing, Court allowed both parties to orally submit on the points of law which submissions I have considered in this decision.

On the 1st objection, Counsel for the Respondent submitted that this Application was filed on 4th November 2022 and was endorsed by Court on 7th December 2022. Counsel submitted that despite filing this Application, the Applicant did not bother to serve the same on the Respondent Instead it was the Respondent who personally picked the Application from the Court record on 27th January 2023. Counsel further submitted that it is the duty of the Applicant to serve their pleadings on the Respondent. Counsel contended that the law dictates that service should be effected within prescribed timelines. Counsel referred to the law on service of summons under **O. 5 r 1 of the Civil Procedure Rules stipulates that service should be effected** within 21 days from the date of issue of the summons. Counsel referred to the case of **Victor Byangire & Anor. Vs Buregeya Aloysius HCMA No. 9 of 2018** in support of this position. On this ground Counsel prayed that the application be struck out with costs.

Counsel for the Respondent further submitted that in this case the application was endorsed by the Deputy Registrar on 7th December 2022 and that the 21 days would have lapsed on 28th December 2022. However, since the law excludes the period between 24th December and 15th January in the computation of time, the Respondent should have been served by 20th January 2023. Counsel submitted that by the time the Respondent picked a copy of the Application from the court record on 27th January 2023, the summons had already expired.

On the second issue, Counsel submitted that it is a principle of law that you only apply to stay proceedings when you were a party to the matter. Counsel relied on



the case of **Rakwo Roy and Anor. Vs. Santa Sarah Ocen (High Court Gulu) in Civil Appeal No. 086/2018.**

In reply, Counsel for the Applicant submitted that service and filing of affidavits in reply to these application does not follow the time lines stipulated under the Civil Procedure Rules. He relied on the case of **Dr. Lam Lagoro James Vs Muni University Misc. Civil Cause No. 07/2016.**

On the second ground, Counsel for the Applicant submitted that at the time of filing this application, pleadings had closed in Misc. Cause No. 24/2022, the Applicant had no opportunity to be added as a party. He prayed for Court to invoke its inherent powers to entertain this application.

In rejoinder, Counsel for the Respondent argued that inherent powers of Court can only be exercised in the absence of specific rules governing a particular subject. There are rules governing service of summons and pleadings which he cited and reiterated his earlier submissions on the issue of service

Counsel for the Respondent submitted that the Applicant was well aware that he had to apply to Court to be added as a party under **O. 1 r. 3 of the CPR.**

Issues

1. Whether Misc. Application No. 304 of 2022 is barred in for having not been served on the Respondent as stipulated by law.
2. Whether the Applicant in Misc. Application No. 304 of 2022 has no locus standi to bring the present application.

Analysis

- 1. Issue No. 1: Whether Misc. Application No. 304 of 2022 is barred in law for having not been served on the Respondent as stipulated by law.**

It is on record that this application was filed on 4th November 2022 and was endorsed by the Deputy Registrar on 7th December 2022. The same was never served on the Respondent until he received it from the Court record on 27th January 2023.

O. 5 r 1 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.

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- 2) Service of summons issued under subrule (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 reason for the extension.

Though the above order provides for summons issued to the Defendant, it also applies to Applications of this nature by virtue of **Order. 42 rule 2 of the Civil Procedure Rules** which provides for all orders, notices and documents required to be served on any person to be served in the manner provided for the service of summons. This position was confirmed in **Gladys Senkubuge & Lutwama Matia Vs Kibirango Joyce M. A No. 1704 of 2019** which was cited with approval in **Micheal Mulo Mulagussi Vs Peter Katabalo HCMA NO. 006 of 2016**.

According to the court record and the uncontested facts as presented by the parties, the Application was indeed filed on the 4th November 2022 and endorsed by Court on the 7th December, 2022.

The 21 days within which to serve the application as stipulated by law started to run on 7th December 2022. The Application ought to have been served by the Applicant on the Respondent by the 23rd January 2023 since under **O. 51 rule 4 of the Civil Procedure Rules** the period between 24th December in any year and 15th January of the following year is excluded in the computation of time with regard to service.

By 23rd January 2023, there was no affidavit of service as required under **O. 5r 17 of the Civil Procedure Rules** to prove service of the Application on the Respondent. The rule is mandatory and therefore the absence of the affidavit of service on the Court record leads inevitably to the conclusion that there was no service.

O. 5 r 3 of the Civil Procedure Rules provides that;

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 subrule (2) of this rule: or
- c) the application for an extension of time has been dismissed, the suit shall be dismissed without notice.

In this case, the Respondent on his own initiative obtained the Application from Court on the 27th January 2023. As earlier noted, the application ought



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to have been served by 23rd January 2023. By the time the Respondent obtained the Application, it had expired. The Application had transitioned into a corpse which could not be resurrected in the absence of an application made by the Applicant to extend time in order to serve the Respondent.

The provisions under Order 5 rule 1 of the Civil Procedure Rules are of strict application since a penalty accrues upon default. The penalty for the default according to Order 5 rule 1(3)(a) of the Civil Procedure Rules is dismissal of the suit or application. **(Refer to Gladys Senkubuge(supra)).**

In this case, the Applicant defaulted on service of the Application. The Respondent obtained the application however, by the time he got it, it was out of time. This Application is hereby dismissed under **O. 5 r 1 (3) (a) of the Civil Procedure Rules.**

Since this point of law has disposed of the application, I find no reason to delve into the 2nd point of law.

In the event, the application is dismissed with costs to be borne by the Applicant.

I so order.



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JUSTICE FARIDAH SHAMILAH BUKIRWA

Ruling delivered on 3rd March 2023.