

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**MISCELLANEOUS APPLICATION NO. 101 OF 2022**  
**(ARISING FROM CIVIL SUIT NO. 0060 OF 2022)**

5 **NTOROKO DISTRICT LOCAL GOVERNMENT ::::::::::::::: APPLICANT**  
**VERSUS**

**BABIIHA CHRISTOPHER ::::::::::::::: RESPONDENT**  
**BEFORE HON. JUSTICE VINCENT WAGONA**

10 **RULING**

**Introduction:**

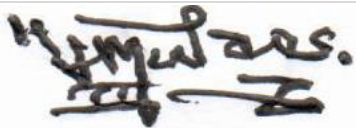
The applicant brought this application under section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 51 rule 6, Order 52 rule 1,2 and 3 of the Civil Procedure Rules seeking the following:

- 15
1. That an order be issued for extension of time within which to file a Written Statement of defense.
  2. That costs of the application be granted in the cause.

**Grounds and Evidence of the Applicant:**

20 The grounds of the application are highlighted in the notice of motion and particularized in the affidavit of Otai Charles, the Applicant's Chief Administrative Officer and are as follows:

1. That the Respondent filed Civil Suit No. 0060 of 2022 against the Applicant claiming salary arrears. That upon receipt of the summons to file a defense



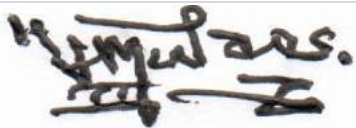
on the 13<sup>th</sup> day of September 2022, the Applicant investigated the matter to confirm the Respondent's allegations against the Applicant.

2. That this matter is one of the numerous matters filed against the Applicant following irregular appointments that called for intervention of the Office of the Inspector General of Government, the State House Anti – Corruption Unit, Ministry of Finance and the office of the Solicitor General.
3. That upon receipt of the summons, the Applicant had to first conduct inquiries and consultations with the offices mentioned above on the way forward. That by the time the inquiries were complete, the statutory time of 15 days within which the Applicant was supposed to file a defense had expired.
4. That the delay was occasioned by administrative procedures over which the Applicant had no control.
5. That the Applicant has a plausible defense and raises issues that merit adjudication by this court. That it is fair, just and equitable and in the interest of justice that this Application be granted by this Honorable Court so that the matter is heard interparty.

**Reply of the Respondent:**

The Application was opposed by the Respondent who contended:

1. That the Applicant has no viable reason for not having filed their written statement of defense in time. That the Applicant has no proof of the purported investigation report as alleged.

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2. That the affidavit in support of the Application is riddled with falsehoods and speculations.

3. That conducting investigations requires a written communication and none is attached to the Application.

4. That a mistake of a client cannot be a ground for extension of time within which to file a defense; that he was individually employed by the Applicant and thus should have been dealt with as an individual and not in a group as alleged by the Applicant.

5. That it is in the interests of justice that this application is denied.

### **Representation and Hearing:**

The Applicant was represented by the Attorney General's Chambers while the Respondent by M/s Bagyenda & Co. Advocates. Both parties filed written submissions which I have considered in this ruling.

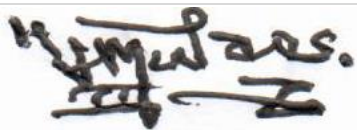
### **Issues:**

**Whether the Applicant should be granted leave to file their Written Statement of Defense out of time.**

### **Submissions of the Applicant:**

Court may for good cause grant an extension of time within which a party can file its pleadings out of time. The discretion to grant an extension may be exercised so that the suit or matter is heard on merits and the dispute is settled. That the

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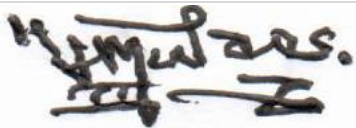


discretion must be exercised judicially on proper analysis of the facts and the proper application of the law to the facts (**Hon. Justice Mulangira in Kaawa James & Anor Vs. Kabodi Danie Misc. Appln. No. MBD 101 of 2019**).

- 5 Mistake of counsel should not be visited on the innocent litigant and should not be used as a bar to one obtaining extension of time and administration of justice. (*Mary Kyomulabi Vs. Ahmed Zirondemu, Civil Misc. Application* No. 41 of 1979).
- 10 Sufficient cause for purposes of extension of time relates to the inability or failure to take the particular step in time (**Rosette Kizito Vs. Administrator General & others SCCA No. 9 of 1996**). Sufficient cause is an expression which has been used in large number of statutes. The meaning of the word “sufficient” is adequate or enough in as much as may be necessary to answer the purposes intended.
- 15 Therefore, the word “sufficient” embraces no more than that which provides a platitude which when the act is done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. (**Hon Justice Ssekaana in Bishop Jacinto Kibuuka Vs. The Uganda Catholic Lawyers Society & Anor MA 696**
- 20 **of 2018**).

The applicant was prevented by sufficient cause from filing their defense on time on ground that the nature of the accusation by the applicant required thorough inquiry which took a long time to conclude.

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Mistakes, faults and lapses should not be visited on the litigant and disputes should be investigated on merits (**Andrew Bamanya Vs. Shamsherali Zaver, SCCA No. 70 of 2001**). The administration of justice normally requires that substance of all disputes be investigated and decided on their merits and errors and lapses should not necessarily debar a litigant from pursuit of his rights (**Essaji Vs Solanki (1968) E.A 218, cited with approval in Bishop Jacinto Kibuuka Vs, The Uganda Catholic Lawyers Society & Anor supra**).

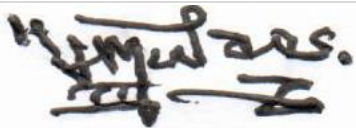
The applicant was prevented by sufficient cause from filing the written statement of defense within the statutory 15 days.

That the applicant has a plausible defense to the Respondent's claim since the matters raised in the plaint are highly administrative whose decision will affect the Applicant in its administration and may be a binding precedent on several people who have matters against the Applicant.

The court should be pleased to find it fair and just to grant the Applicant leave to file their Written Statement of Defense out of time.

**20 Submissions of the Respondent:**

The Applicant has not demonstrated any sufficient cause that prevented them from filing the written statement of defense on time. There is no evidence of the report of the alleged investigation that caused the delay.

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Mistake of counsel was never pleaded in the Application and affidavit in support of the Application. Mistake of a client has no refuge in law. The applicant has not proved any sufficient cause that prevented the Applicant from entering appearance when the case was called for hearing.

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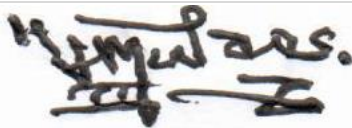
### **CONSIDERATION BY COURT:**

Order 51 rule 6 of the Civil Procedure Rules gives court unlimited discretion to extend time fixed for doing any act or taking any proceedings under these Rules or  
10 by order of the court upon proof of sufficient cause. The rules do not define “sufficient cause”.

In **Hadondi Daniel vs YolamEgondi Court of Appeal Civil Appeal No 67 of 2003** court held thus: *“it is trite law that time can only be extended if sufficient  
15 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”*.

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

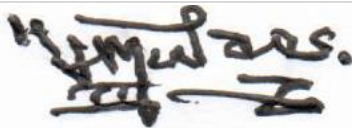
This Court in its earlier decision in **Kabarole District Local Government Vs. Gun Paper Industries Limited, Misc. Application No. 102 of 2022** thus: *“It is  
25 my understanding that whether a particular cause is sufficient or not is a matter*

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for judicial 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 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 the roots of the administration of justice.”

In this case the Applicant contends that she was prevented by sufficient cause in filing the Written Statement of Defense in time. That upon receipt of the Application, they had to inquire from and consult the different agencies of government that were investigating the issue and these included, the Inspector General of Government (IGG), the State House Anti-corruption Unit, the Solicitor General and Police over the matter before filing a defense, which took some time. The applicant states that they received the summons on 13<sup>th</sup> September 2022 and the record show that they filed this application on 17<sup>th</sup> October 2022.

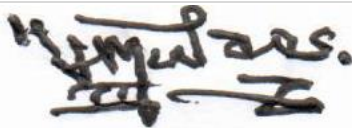
I am satisfied that there was need for consultations with other actors involved in the matter, to inform the nature and content of the WSD, and that application has been brought without unreasonable delay.

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The Respondent opposed this line of facts. He contended that the investigation alluded to by the Applicant didn't take place since there is no report or any writing to that effect. The failure to attach the report of the inquiries or consultations is not fatal and moreover inquiries and consultations can be done without leading to a written report thereof.

I have however looked at the plaint and the nature of claims therein and the intended defense. The Respondent in the plaint pleaded that he was recruited by the Applicant as an Information Technology Officer under the financial year 2020/2021 per the advert run by the Applicant. That he was interviewed, shortlisted and he assumed the position and has been executing the demands of the said position for the last 15 months; that later in 2022 the defendant without any just cause halted payment of his salary without any justification. That despite several demands, payments were not made and on 1<sup>st</sup> August 2022, the Applicant's Chief Administrative Officer wrote to all departments communicating a list of all employees who were allegedly recruited by the District Service Commission and the Respondent's name was not among.

In the draft written statement of defense attached to the affidavit in support of the motion and in the affidavit in support, the applicant contend that the Respondent was among a group of people who were irregularly recruited by the Chief Administrative Officer without following the correct procedure. That the matter was investigated and it was found that the Chief Administrative Officer of the Applicant recruited a number of people without the knowledge of the District Service Commission and the Respondent was among the said group. The Applicant

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also contends that the matter is issue is purely administrative and prematurely before court.

5 I believe that the nature of the allegations by the Respondent against the Applicant and the account of facts by the Applicant as to how the Respondent was recruited require a formal trial inter-party.

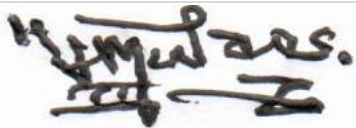
10 I am satisfied that the applicant has demonstrated sufficient cause that prevented the Applicant filing the defense on time and that the Respondent will not suffer any prejudice if the Applicant is granted leave to file their defense out of time. In addition, this application was filed promptly and such there was no unreasonable delay. The 15 days expired on 29<sup>th</sup> September 2022 and the application for leave was filed on 17<sup>th</sup> October 2022 which was less than a month.

15 I find this is a proper case to grant an extension of time within which to file a defence.

I grant the application with the following orders:

- 20 **1. The Applicant shall file and serve their Written Statement of Defense within 15 days from the date hereof.**
  
- 2. The Respondent shall file a reply to the Written Statement of Defense if any within 5 days from the time they are served.**

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3. The case is accordingly fixed for mention and further directions on 30<sup>th</sup> June 2023.

4. Each party shall bear their own costs.

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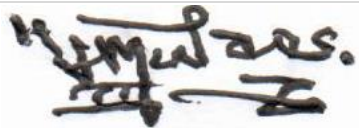
**It is so ordered.**

**Dated at High Court Fort-portal this 8<sup>th</sup> day of June 2023**

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10 Vincent Wagona  
**High Court Judge**  
**FORT-PORTAL**

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