

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION No. 896 of 2022
ARISING FROM MISC. APPLICATION NO. 2098 OF 2021
(ARISING FROM CIVIL SUIT No. 965 of 2020)

FRANCIS DRAKE LUBEGA ===== APPLICANT
VERSUS

1. UGANDA BUS OPERATIONS
ASSOCIATION INVESTMENTS LTD.
2. WILBERFORCE SSEKUBWA=====RESPONDENTS

BEFORE: HON. JUSTICE FLAVIA NASSUNA

RULING

1. This was an application seeking review of the ruling in Misc. Application No.2098 of 2021 allowing the 2nd applicant to amend pleadings in HCCS. No. 965 of 2020. It was brought under the provisions of 0.46 rr 1,2,6 and 8 of the Civil Procedure Rules plus S.98 of the Civil Procedure Act. It was brought by notice of motion which was supported by an affidavit sworn by one Namisango Evelyn advocate for the applicant. The grounds of the application were laid in the notice of motion and affidavit in support. Briefly the grounds were that;
 - a) The application was fixed for hearing on 3/3//2023 at 12.00 noon but was called at 10.00 am before the scheduled time and therefore proceeded exparte against the applicant.
 - b) The applicant had filed an affidavit in reply to the said application but the court proceeded on the assumption that there was no affidavit in reply and therefore proceeded as if the application was not contested.

- c) There is thus an error apparent on the face of the record.
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- 2. The respondent filed an affidavit in reply by which he called upon court to dismiss the application with costs. Briefly he stated that;
 - a) It is true the application had been fixed for 12.00 noon but the court adjusted the time to 10.00 am and the court clerk duly communicated this change in time to him.
 - b) That the said court clerk informed him that he also communicated this change in time to the applicant.
 - c) The amendment will not in any way prejudice the applicant since he will still be given an opportunity to respond to the amended plaint.
 - 3. Both parties filed written submissions which I have carefully studied and need not reproduce them here. I have also carefully studied the pleadings and entire record of proceedings.
 - 4. The issue to be decided by court is **whether the ruling in Miscellaneous Application No. 2098 of 2021 should be reviewed and subsequent order set aside.**

5. Decision of court.

After carefully studying the pleadings on record and submission of both parties I have noted as follows.

- a) Miscellaneous Application No. 2098 of 2021 which had been fixed for 3rd March 2022 at 12. 00 noon was called and heard on the same day at 10.02 am before the scheduled time. There is no evidence on record to show that the change of time was duly communicated to the applicant who was the respondent in that application. The allegation by the respondent that the

clerk told him that the applicant had been duly notified is hearsay and cannot be relied upon by court.

- b) The application was granted on the basis that the respondent had not filed an affidavit in reply and therefore did not contest the application, yet in actual fact he had filed one. Counsel for the respondent did not dispute this fact and indeed the record shows that the said affidavit in reply had been filed at court registry on 7th February 2022.
- c) It was therefore erroneous for the court to proceed before the scheduled time in the absence of one of the parties without ascertaining whether indeed all parties had been duly notified of the change in time.
- d) It was equally erroneous for court to grant the application for the reason that it was uncontested when in actual fact the respondent/applicant had filed an affidavit in reply.
- e) The above two facts are errors apparent on the face of the record which warrant a review of the said decision of court.
- f) Consequently, the ruling in Miscellaneous Application No.2098/2021 and subsequent order are hereby set aside and the said application should be heard interparties.
- g) Since these were errors of court, each party shall meet their costs for this application.

The application is therefore hereby allowed as prayed and each party shall meet their costs for the same.

DATED at Kampala this 18th Day of August 2023


FLAVIA NASSUNA MATOVU

JUDGE.