

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**CIVIL SUIT NO. 0054 OF 2019**

**1. CHARLES KALULE**

5 **2. NAMULONDO BETTY ::::::::::::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**1. THE BOARD OF GOVERNORS OUR LADY OF AFRICA SS**

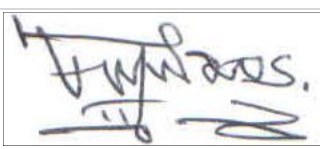
**2. SPRING INTERNATIONAL HOTEL ::::::::::::::::::::::: DEFENDANT**

**BEFORE: HON. JUSTICE VINCENT WAGONA**

10 **RULING ON A PRELIMINARY POINT OF LAW**

The plaintiff filed this suit under negligence against the defendants for recovery of general and special damages arising out of death of their son. The case was settled by consent between the plaintiffs and the 1<sup>st</sup> defendant and consent judgment was endorsed by court to that effect. The 2<sup>nd</sup> defendant later  
15 made an application for leave to amend their written stamen of defense which was allowed and they filed an amended written statement of defense on 19<sup>th</sup> January 2022.

When the case came up for mention on the 16<sup>th</sup> of June 2022, Counsel Phillip Kasimbi was present for the plaintiffs and Counsel Mugisa Richard Rwakatoke  
20 held brief for Counsel Lubangula Geoffrey for the 2<sup>nd</sup> defendant. Court gave parties directions under which, a joint scheduling memorandum was to be filed



by 30<sup>th</sup> June 2022 and each side was given two weeks to file their witness statements and the case was adjourned to 15<sup>th</sup> September 2022 for hearing.

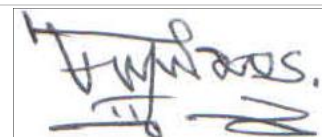
On the 15<sup>th</sup> day of September 2022, the trial judge was on other official commitments and the matter was adjourned to 4<sup>th</sup> November 2022 for mention.

5 On 4<sup>th</sup> November 2022, the matter was further adjourned to 5<sup>th</sup> December 2022 to allow parties pursue an out of court settlement. On 5<sup>th</sup> December 2022, the matter was further adjourned to 22<sup>nd</sup> February 2023 for hearing.

When the case came up on 22<sup>nd</sup> February 2023, Counsel Phillip Kasimbi raised a preliminary point of law. He contended that the 2<sup>nd</sup> defendant did not serve  
10 their written statement of defense upon the plaintiff thus rendering it incompetent and liable to be struck out. Learned Counsel contended that filing of a defense is accomplished by serving the same upon the plaintiff per Order 8 rule 19 of the Civil Procedure Rules. That the failure to serve the written  
15 statement of defense implied that there was no defense duly filed and Counsel referred court to **Nile Breweries Limited versus Bruno Ozunga t/a Nebbi Boss Stores HCCS No. 580 of 2006**. Counsel prayed that the court strikes out the amended written statement of defense and enter an interlocutory judgment under Order 9 rule 8 of the Civil Procedure Rules and have the case set down for assessment of damages and formal proof.

20 **Issues:**

**Whether the 2<sup>nd</sup> defendant's written statement of defense should be struck out.**



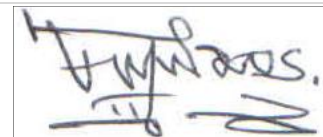
**DECISION:**

Order 8 rule 19 provides thus:

*Subject to rule 8 of this Order, a defendant shall file his or her defence and either party shall file any pleading subsequent to the filing of the defence by delivering the defence or other pleading to the court for placing upon the record and by delivering a duplicate of the defence or other pleading at the address for service of the opposite party.*

**In Stop And See [U] Ltd Versus Tropical Africa Bank Ltd [Commercial Division] Misc. Application No 333 Of 2010 (Arising from Civil suit No. 105 of 2009)** Hon. Justice Christopher Madrama (High Court Judge as he then was) observed that:

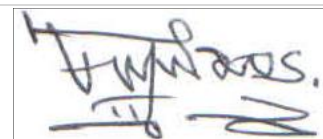
*“In this case the Applicant’s chamber summons was filed on the 28th of May 2010 and court fees were paid the same day. But the notes indicate that the Registrar issued the chamber summons under the seal of the court on the 15th of June 2010. It one complies with order 12 rule 3 (2) the application has to be served within 15 days from the date of filing. That means that strict interpretation of the rule would mean that even the chambers summons were served on the 17th of June 2010 outside of 15 days from the time of filing of the application. However, it is noted that the fault in this case, is that of the court. The Registrar only signed the document on the 15th of June 2010 about 18 days after filing. I must say that the Honorable Registrar should have time to*



*issue all summonses and notices which have been filed on the day they are filed. The rule presupposes that summonses and notices are issued on the day they are filed. This must be the practice to be adopted otherwise the rules may be rendered inoperative. It would enable the application of the rules without injustice to the parties. As it were the applicant cannot be faulted for having served on the 17th of June 2010 more than 15 days from the date of filing on the 15th of May 2010. Service was made on the Respondent within 2 days from when they received the chamber summons for service on the Respondent.”*

It may well have been the intention of the law that documents are filed in court, endorsed and issued by court and received by litigants on the same day. The experience shows that the practice for varying reasons is quite different.

In this case the plaintiff applied for leave to amend the plaint which was granted by Justice Emmy Mugabo on the 26<sup>th</sup> of March 2021. The Plaintiff filed an amended plaint on 17<sup>th</sup> December 2021 and served upon the 2<sup>nd</sup> defendant who also filed her written statement of defense on 19<sup>th</sup> January 2022. However, since then, the copies of the amended written statement of defense were not endorsed by court and thus the 2<sup>nd</sup> defendant could not serve the same. All the three copies of the amended written statement of defense are still on record and not signed by the Registrar of the High Court or sealed, thus the 2<sup>nd</sup> defendant could not serve the same. This cannot be the fault of the party.

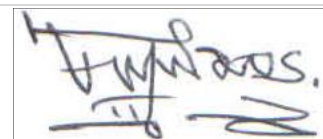
A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to be 'H. Mugabo'.

In addition, the plaintiff has never raised the issue of service of the amended written statement of defense and prepared a joint scheduling memorandum which captured the facts in the amended Written Statement of Defense and even signed and the same was filed in court on 4<sup>th</sup> November 2022. It is my  
5 view that the plaintiff was fully aware of the contents of the amended written statement of defense and cannot turn around and allege none service.

Article 126 (2) (e) of the Constitution orders the courts to administer substantive justice without undue regard to technicalities. In this case, any  
10 perceived prejudice in this case is curable by allowing time for the 2<sup>nd</sup> to formally serve their amended written statement of defense upon being signed by the registrar and endorsed to that effect and allowing time for the plaintiff to act thereon. The failure to have the amended written statement of defense endorsed and issued by court after filing within time should not be visited upon  
15 the 2<sup>nd</sup> defendant.

I therefore overrule the preliminary objection and issue the following orders:

- 1. That the Assistant Registrar is directed to sign and have the copies of the amended written statement of defense sealed and  
20 issued out to the 2<sup>nd</sup> defendant.**
- 2. The 2<sup>nd</sup> defendant shall serve the same within 10 days from the date of receipt of the sealed copies.**

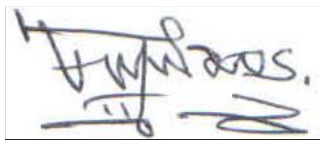
A rectangular box containing a handwritten signature in black ink. The signature appears to be "H. M. W. S." with a flourish underneath.

3. Any reply to the amended written statement of defense by the plaintiff shall be filed within 3 days after service.

5 4. Both the plaintiff and the 2<sup>nd</sup> defendant are given up to 6<sup>th</sup> April 2023 to have filed and exchanged all their witness statements and trial bundles.

10 5. The case is accordingly adjourned to 17<sup>th</sup> April 2023 for cross examination of the plaintiff's witnesses.

It is so ordered.



Vincent Wagona

**High Court Judge**

15 **Fort-portal**

**6.3.2023.**

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