

MANDE SEKIZIYIVU (Administrator for The Estate
Of The Late Dominiko Sajjabi).....APPLICANT

VERSUS

MULINDWA BADRU RESPONDENT

In his affidavit in reply, the Respondent Mulindwa Badru opposed the application and averred that the Applicant was served with summons to file a defence and plaint on the 2nd day of March 2021 at 3:15pm while at his home at Bajja Kayunga Cell Lukaya Town. He contended further that even if the Applicant has been discharged on the 27th March 2021, he filed his application for leave to file a defence out of time on the 10th April 2021, almost two weeks after the court had allowed the Respondent to proceed ex parte. He stated that the application is incompetent, tainted with falsehoods and should be dismissed with costs.

Counsel for the Applicant submitted and invited this court to find that the Applicant was disabled from filing his defence in time by sickness of which he had no control. Counsel cited the decision in *SCCA No, 6 of 1987 Florence Nabalanzi vs Naome Binsobedde (cited with approval in HIKmakyamanya vs Sajabi Chris CACA No. 1 of 2006)* where it was held that sufficient reason or cause depends on the circumstances of each case and must relate to an inability or failure to take particular steps in time. Counsel invited this court to find that sickness on the part of the Applicant constitutes inability to file his defence in time and prayed for the court to allow the Applicant to file his defence.

In response, Counsel for the Respondent submitted that the application has no merit and is only intended to inconvenience the Respondent. Counsel referred to the affidavit of service of Isa Kabiswa the court process server who stated that he served the Applicant with the summons on 2nd March 2021 while at his home and submitted that it is not true that the Applicant was admitted in hospital at the time. Counsel prayed for the application to be dismissed with costs.

Consideration of the application

The Applicant seeks leave of this court to file his defence out of time. The law establishes timelines in which certain steps are to be taken in pursuit of justice and prosecution of matters before court; the same law provides timelines within which litigants are prevented from taking certain steps in prosecution of matters before the courts as a matter of

procedure. This is intended to prevent unnecessary delays as well as putting an end to litigation.

However, in some peculiar circumstances, litigants might be allowed to proceed with prosecution of matters before court despite the rules of procedure and the timelines set by law. This application seeks to defy the rules of procedure as stipulated by the law regarding time within which to file a defence.

The Applicant was served with summons to file a defence on the 2nd day of March 2021 according the affidavit of service dated the 3rd day of March 2021 deponed by Isa Kabiswa, the court process server.

The Civil Procedure Rules under Order 8 Rule 2 provide time for filing a defence to be within 15 days from the date of service of summons. In the instant case, the Applicant did not file a defence within the stipulated time hence this application.

This application was brought under ***Section 98 of the Civil Procedure Act*** which provides that nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

For such an application seeking leave to take a particular step out of time, the Applicant has to prove that there was sufficient cause that rendered him unable to take that particular step in the specified time.

In the case of ***Hadondi Daniel vs Yolam Egondi Court of Appeal Civil Appeal No 67 of 2003*** court held that;

“ it is trite law that time can only be extended if sufficient cause is shown.”

In the case of *Mulindwa v Kisubika (Civil Appeal NO. 12 OF 2014)* the Supreme Court listed factors to be considered in an application for extension of time as follows:

- i. The length of delay;
- ii. The reason for delay;
- iii. The possibility or chances of success;
- iv. The degree of prejudice to the other party.

The Applicant attributes his failure to file a defence in time to sickness. In his affidavit in support of the application, the Applicant stated that he was admitted in hospital from 1st March 2021 to 27th March 2021.

Sickness would amount to just case for failing to take a certain step in prosecuting legal matters if it is proved that indeed the applicant was ill during the time which that step should have been taken and that such sickness was of such nature as to prevent the applicant from taking the necessary steps.

I have carefully perused the evidence of medical records annexed to the Applicant's affidavit as evidence of his sickness and I find such evidence as contained therein to be sufficient to prove that he was indeed sick during the period between 1st March to 20th March 2021.

I also find that the length of delay between the date of service of summons (2nd March 2021) and the date when this application (13th April 2021) was filed, considering that the Applicant was ill for over twenty days during that period does not amount to inordinate delay.

Article 126 (2) e) of the Constitution of the Republic of Uganda provides that justice shall be administered without undue regard to technicalities.

As to whether granting this application will prejudice the other party, this application was filed without delay and the subject matter of the main suit is revocation of letters. Such a cause of action would require for the matter to be determined conclusively in order to have the same settled for the benefit of the beneficiaries of the estate. Furthermore, the Respondent in the Plaint raises grounds of fraud pertaining to transfer of land which further calls for the dispute to be heard and determined by court with all the facts from both parties.

I therefore find that the Applicant has adduced sufficient evidence and cause to show that he was prevented from filing his defence in time and by filing his proposed Written Statement of Defence, it is clear that he is interested in having the matter heard and determined on its merits.

This application is allowed. The order made by the Registrar allowing the suit to proceed ex parte is hereby set aside. Costs will be in the main cause.

I so order.

Dated at Masaka this 1st day of October, 2021

Signed;



VICTORIA NAKINTU NKWANGA KATAMBA
JUDGE