

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISC. APPLN. 1704 OF 2019**  
**(ARISING FROM CIVIL SUIT NO.986 OF 2018)**

**1. GLADYS SENKUBUGE**  
**2. LUTWAMA MATIA:.....APPLICANTS**  
**VERSUS**  
**KIBIRANGO JOYCE:.....RESPONDENT**

**RULING**

**BEFORE:           HON. MR. JUSTICE HENRY I. KAWESA**

This application was brought by notice of motion under Section 98 of the Civil Procedure Act Cap 71, and O.52 of the Civil Procedure Rules SI 71-1.

The application seeks orders that:

1. The default judgment in Civil Suit No.986 of 2018 be set aside.
2. Extension of time be granted to the Applicants to file their defence in Civil Suit No.986 of 2018: Kibirango Joyce versus Senkubuge Gladys & Anor.

3. Provision be made for the costs of the application.

The application is supported by the affidavit of Ms. Musinguzi Rachael, and opposed by the affidavit in reply of Kibirango Joyce. No affidavit in rejoinder was filed by the Applicants.

Counsel for the parties made oral submissions before Court which I shall consider accordingly.

I have handled the preliminary objections raised by Counsel for the Respondents against the application first.

The first one is to the effect that the application is incompetent since it was served on the Respondent out of time. Counsel for the Respondent, relying on the Respondent's averments, submitted that the application was signed and sealed by Court on the 10<sup>th</sup> day of December 2019, and served upon the Respondent on the 12<sup>th</sup> day of February 2020

The Applicant's Counsel did not respond to this objection, after intimating to Court that she is not aware of the dates of service of the application.

I have looked at the notice of motion and confirmed, as Counsel for the Respondent argued, that it was signed and sealed by Court on the 10<sup>th</sup> day of December 2019. The record does not bear an affidavit of service to allude to the exact date of service of the same upon the Respondent.

However, the Respondent stated in his affidavit that the same was served out of time and, no rebuttal of this averment was made Applicant.

Additionally, the Respondent's Counsel specifically stated that the motion was served upon the Respondent on the 12<sup>th</sup> day of February 2020, and no response to this was made by the Applicants' Counsel as well. The inference from all this is that the motion was probably served upon the Respondent on the 12<sup>th</sup> day of February 2020.

Under O.49 r2 of the Civil Procedure Rules, it is provided that all other Court processes must be served in a manner provided for service of summons. Such processes include a motion on notice. According to O.5 r1(2) of the Civil Procedure Rules, summons must be served within 21 days of issuance but, under O.51 r4 of the Civil Procedure Rules, the

period between 24<sup>th</sup> December and 8<sup>th</sup> January must be excluded in the computation of such time.

Several decisions have affirmed the aforesaid propositions, to wit: *Michael Mulo Mulaqussi versus Peter Katabalo HCMA No.006 of 2016; Joy Kaigana versus Dabo Boubon [1986] HCB 58, Kaur versus City Auction Mart Ltd [1967] EA 10, among others.*

By the 12<sup>th</sup> day of February 2020, when the application was served upon the Respondent, it was clearly outside 21 days allowed for service in view of the aforesaid propositions. No leave was sought by the Applicants to effect the said service outside time.

According to the *Supreme Court* in *Kanyabwera versus Tumwebwa [2005] 2 E.A 86*, all the provisions under O.5 r1 of the Civil Procedure Rules, are is of strict application, since a penalty accrues upon default. The penalty for default, according to O.5 r1(3)(a) of the Civil Procedure Rules, is dismissal of the suit, or application. In this case, the Applicants having defaulted on service of the application upon the Respondent within time, I find that this application ought to be dismissed.

The first preliminary objection therefore succeeds.

I find it unnecessary to delve into the second objection, the first one having dissolved the matter

In the result, this application is hereby dismissed with costs to the Respondent.

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Henry I. Kawesa

**JUDGE**

02/06/2021

MA NO.1704-19-GLADYS KIBIRANGO & ANOR VS KIBIRANGO JOYCE (RULING)

02/06/2021:

Wandera Ismail for the Respondent.

Respondent present.

Opio Moses for the Applicants.

2<sup>nd</sup> Applicant present.

Court:

Matter is for Ruling.

Ruling delivered in the presence of the above parties.

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Henry I. Kawesa

**JUDGE**

02/06/2021

MA NO.1704-19-GLADYS KIBIRANGO & ANOR VS KIBIRANGO JOYCE (RULING)