

5. The main issue for determination is whether there was effective service of summons to file a defence and the plaint on the applicant, and if not, whether the suit should be dismissed for failure to serve summons.
6. The starting point is that electronic service of court documents is allowed by the law, especially where summons for file a defence cannot be served through the ordinary modes of service outlined under Order 5 rules 8 to 15 of the Civil Procedure Rules. This is contained in paragraph 5 and 7(2)(c) of the The Constitution (Integration of ICT into the Adjudication Processes for Courts of Judicature) (Practice) Directions, 2019. In particular, paragraph 7(2)(c) of the above law provides that:

“In preparing a case for trial, the parties shall be specifically encouraged [...] to serve documents electronically through email, instant messaging applications and any other widely used electronic communications service.”
7. The above law allows the service of court documents through modern means of electronic communication such as WhatsApp, electronic mail (e-mail), Telegram, etc. There are several decisions of the High Court of Uganda in which electronic service of court documents has been accepted as effective. See the cases of Male H. Mabirizi v. Attorney General, High Court Misc. Application No. 918 of 2021, per Justice Ssekaana Musa (where service of court of documents through e-mail was accepted) and Musumba Isaac Isanga v. Quid Financials Ltd, High Court Misc. Application No. 139 of 2020, per Lady Justice Jeanne Rwakakooko (where service of court of documents through WhatsApp messenger was accepted). See also the case of Nyanzi Fred Sentamu v. The Electoral Commission and 2 Others, Miscellaneous Application

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No.10 of 2021/Election Petition Appeal No.20 of 2021 (Coram: Hon. Mr. Justice Geoffrey Kiryabwire, J.A., Hon. Mr. Justice Stephen Musota, J.A., and Hon. Mr. Justice Christopher Gashirabake, J.A).

8. In the case of Gray v. Hurley [2019] EWHC 1636 (QB), court allowed court papers in respect of a suit commenced in England and Wales to be served in New Zealand through WhatsApp.
9. Although electronic service of court documents is allowed under the law, the electronic format used must have the intended result of notifying the opposite party of the existence of court proceedings. Consequently, where there is no proof of delivery of court documents to the opposite party, electronic service of court documents cannot be said to be effective. The rationale for this position is that court documents may be transmitted by electronically but the intended addressee does not actually receive them. Take for example, the case of summons sent by e-mail to the opposite party which goes into the junk box; can one say that service of court documents has been effective? For electronic service of court documents to be effective, there must be confirmation of delivery to the opposite party; for example, where the addressee acknowledges receipt of the documents by sending a message to the sender or where there is an automated response confirming delivery. Where the addressee denies receipt of the court summons, the onus is on the sender to prove that the summons were indeed delivered.
10. Whereas courts have generally embraced electronic means of service of court summons (WhatsApp, E-mail, Telegram etc.); there is need to observe a minimum set of safeguards, the sole objective of which, is to ensure that a defendant is effectively notified of a suit against him or her. This is in furtherance of the right to a fair hearing as enshrined in Article 28 (1) & (5) of the Constitution of Uganda (1995). Thus, Section 20(4) & (5) of the Electronic Transactions Act (2011) emphasizes the

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requirement for the addressee to acknowledge receipt of electronic messages (whether by an automated message or otherwise); it provides as follows:

“(4) Where the originator does not specify that the acknowledgement is to be given in a particular form or by a particular method, the acknowledgement may be given by—

(a) any communication from the addressee, automated or otherwise; or

(b) any conduct of the addressee which is sufficient to indicate to the originator that the addressee received the data message.

(5) Where the originator receives the acknowledgement of receipt from the addressee, unless there is evidence to the contrary it is presumed, that the addressee received the data message.”

11. In the case of SBI Cards & Payments Services Pvt Ltd v. Rohidas Jadhav, High Court of Judicature at Bombay, Notice No. 1148 of 2015 in Execution Application No. 1196 of 2015, court held that service through WhatsApp had been effective, because the icon indicators on the App clearly showed that, not only was the message and its attachment delivered to the Respondent's mobile number, but that both were opened.
12. In cases of service of summons by e-mail, it must be proved that: the e-mail is undisputedly connected to the party being served; that the e-mail address is used for business purposes; and that the addressee regularly monitors its e-mail addresses. In the case of Rachel Ehrenfeld v. Salim A. Bin Mahfouz, United States District Court, S.D. New York, No. 04 Civ. 9641 (RCC) (S.D.N.Y. Mar. 23, 2005), the court held as follows:

“Although courts have upheld service via e-mail, those cases involved e-mail addresses undisputedly connected to the defendants and that the defendants used for business purposes [...the] Plaintiff has provided no information that would lead the Court to conclude that [the] Defendant maintains the website, monitors the e-mail address, or would be likely to

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receive information transmitted to the e-mail address [...] here, the e-mail address is apparently only used as an informal means of accepting requests for information rather than for receiving important business communications. Accordingly, the Court does not authorize service by e-mail in this case.”

13. In the case of Kross Television India Pvt Ltd v. Vikhyat Chitra Production, High Court of Judicature at Bombay, Notice of Motion No. 572 of 2017 in Civil Suit No. 162 of 2017, court emphasised the need for a party to acknowledge receipt of an email or WhatsApp message, and held that:

“We have not formally approved of email and other modes as acceptable simply because there are inherent limitations to proving service. Where an alternative mode is used, however, and service is shown to be effected, and is acknowledged, then surely it cannot be suggested that the Defendants had ‘no notice’. To say that is untrue; they may not have had service by registered post or through the bailiff, but they most certainly had notice...”

14. Courts have held that service of court summons through WhatsApp is effective where it is proved that the sender’s smart phone or other electronic gadget displays double blue ticks. See the cases of SBI Cards & Payments Services Pvt Ltd v. Rohidas Jadhav (supra); and Kross Television India Pvt Ltd v. Vikhyat Chitra Production (supra).
15. If the summons have not come to the defendant’s notice, service is not effective. The Supreme Court of Uganda emphasized in the case of Geoffrey Gatete and Anor v. William Kyobe, Supreme Court Civil Appeal No. 7 of 2005 (Coram: Tsekooko, Karokora, Mulenga, Kanyeihamba and Katureebe JJ.S.C), that the primary objective of service is to make a defendant aware of court summons against him or



her; and that service which does not realize that objective is ineffective. The court held as follows:

“[...] the court may order substituted service by way of publishing the summons in the press. While the publication will constitute lawful service, it will not produce the desired result if it does not come to the defendant’s notice.”

16. I now wish to summarize the law on electronic service of court summons as follows. Service of court summons through electronic means shall be upheld by the court where it is proved that service of the defendant through the ordinary means under Order 5 rules 8 to 15 of the Civil Procedure Rules is not possible. Service through a WhatsApp message or other related electronic means is not effective if there is no proof of delivery. Proof of delivery may be in the form of an actual acknowledgement of receipt by the addressee, or an automated message confirming delivery of the summons to the addressee. In case of service of summons through WhatsApp, the display of double blue ticks on the sender’s smart phone or other electronic gadget is proof that the addressee has indeed received the court summons.
17. I now turn to consider the facts of the case before me. The relevant paragraphs of the affidavit of service sworn by Ejalu Emmanuel, a law clerk in the law firm of M/s Omongole & Co Advocates reads as follows:

“3. That on the 28th day of September 2022, I went to the Plaintiff’s home in Entebbe where upon my arrival, I requested her to identify for me the defendant’s home for purpose of delivering the summons for service.

4. That she showed me her home located in Kiwafu Central village, Kiwafu Parish Division B Subcounty, Entebbe Municipality, where I proceeded to serve the said summons, but I did not get her at home. Consequently, I proceeded to the home of the Area LCI chairperson Madam Nakato in

company of the plaintiff, to inquire about the whereabouts of the defendant so that I effect service of summons on her.

5. That the LCI told me, the defendant comes home late in the evening, but she retained copies for onward transmission to the defendant and she did the same though the defendant refused to sign acknowledgment of service.

6. That I further shared copies of the summons and pleadings with the defendant through her WhatsApp number 0700893559 which was given to me by the LCI, Madam Nakato.”

18. Therefore, according to the respondent, there is proof that there was effective service of summons and the plaint on the applicant. But the applicant contends that she was not served with summons and the plaint within 21 days of the date of summons as required by the law, and that she only became aware of the matter on the 28 October 2022, when she received a WhatsApp message from a gentleman only identified as Ejalu, who told her that she had been served through the area local council chairperson, and as such should file her defence. The applicant claims that she was further personally served with the summons and the plaint on the 18 November 2022 which was outside the time allowed by the law. The applicant denies ever being served with summons and the plaint by the area LCI chairperson Madam Nakato.
19. Although the respondent contends that the applicant was served with summons and the plaint, by the area local council (LCI) chairperson Madam Nakato, the respondent did not adduce affidavit evidence by the said LCI chairperson to prove service of summons and the plaint upon the applicant. In the case of Nyanzi Fred Sentamu v. The Electoral Commission and 2 Others (supra), where it was alleged that service of court process was effected through the area LCI chairperson of Bugolobi III, the appellant adduced an affidavit of service sworn by the LCI chairperson, Tumushabe Mary, to prove service.



20. Accordingly, on the specific question as to whether service of summons and the plaint was served upon the applicant though the area local council I chairperson, my decision is that, in the absence of affidavit evidence by the area LCI chairperson, service on the applicant was not effective.
21. Secondly, the respondent attached screen shots of WhatsApp messages to the applicant in black and white. It is not possible to establish if the double ticks on the WhatsApp messages adduced by the respondent are blue, which is the only way of proving that the applicant received the message and the attachment. See the cases of SBI Cards & Payments Services Pvt Ltd v. Rohidas Jadhav (supra); and Kross Television India Pvt Ltd v. Vikhyat Chitra Production (supra). In addition, the screen shots of WhatsApp messages have no dates; so, it is not possible to establish when the WhatsApp messages were sent to the applicant.
22. In the case of Nyanzi Fred Sentamu v. The Electoral Commission and 2 Others (supra) service was made by the court process server first at the 3rd respondent's home in Bugolobi; second, at the Parliament of Uganda where the 3rd respondent works; and third, by way of a WhatsApp message to the 3rd respondent's personal phone number which showed that he had received it. In this case, it can be seen that the process server combined three modes of service to effect service on the 3rd respondent. WhatsApp was not the only mode of service used by the process server, but even then; the appellant proved that the WhatsApp messages had been delivered. And very importantly, the appellant filed an additional affidavit of service by the local council I chairperson of Bugolobi III where the 3rd respondent resides, to prove that service was made at his residence.
23. The applicant contends that she only became aware of the matter on the 28 October 2022 when she received a WhatsApp message from a gentleman only identified as Ejalu. The facts are that summons to file a defence were issued by the court on the 27

September 2022. The respondent should have served the summons within 21 days as required by Order 5 rule 1(2) of the Civil Procedure Rules. The last day to serve summons was 18 October 2022. Although the respondent contends that the applicant was served with summons on the 28 September 2022, I have already decided that service through the LCI chairperson was not effective. Accordingly, the inevitable conclusion is that summons to file a defence were not served within 21 days as required by the law.

24. According to Order 5 rule 1(3) of the Civil Procedure Rules, where service of summons is not effected within 21 days from the date of issue, and there has been no application for extension of time within which to serve summons or such application has been dismissed; the suit shall be dismissed without notice.

25. In the case of Bitamisi Namuddu v. Rwabuganda Godfrey, Supreme Court Civil Appeal No. 16 of 2014 (Coram: Katureebe, CJ., Arach-Amoko, J.S.C., Mwangusya, J.S.C., Mugamba, J.S.C., and Tumwesigye, Ag. J.S.C), the court held as follows:

“The consequences of failure to serve summons within 21 days from the date of issue and of not making application for extension of time in the prescribed period are clear and straightforward – the suit stands dismissed without notice. The provision does not give court discretion to decide whether to dismiss or not dismiss the suit. The court’s action is dictated by law and it is mandatory.”


26. In the case before me, the respondent failed to serve the summons within 21 days from the date of issue as required by the law, and did not make an application for extension of time within which to serve summons. Therefore, I find merit in this application and order as follows:

1). High Court Civil Suit No. 814 of 2022 is dismissed for failure to serve summons to file a defence within the time allowed by the law.



2). The respondent shall pay the costs of this application.

IT IS SO ORDERED.


BERNARD NAMANYA
JUDGE
15 December 2023

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