

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.906 OF 2022

5 **(Arising from Civil Suit No.419 of 2022)**

1. NAKIBINGE MUHAMAD

2. KALEMERA EDWARD

3. ZALWANGO KEZIA:.....APPLICANTS

VERSUS

10 **ARISE AND SHINE INTERNATIONAL OUTREACH MINISTRIES LTD:.....RESPONDENTS**

Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

Introduction:

15 This application is brought by way of Chamber summons under **Section 98 of the Civil Procedure Act, Cap. 71 and Order 5 rules 18 & 32 of the Civil Procedure Rules SI 71-1** for orders that the time for service of summons to file a defence to the plaint in **Civil Suit No. 133 of 2022** on the respondent be extended, fresh summons issue, and that service of the summons on the respondent be effected by way of substituted service, by affixing a copy of the same in some conspicuous place in the court house, and/or publishing the same in any of Uganda's widely read Newspapers like New Vision
20 or Daily Monitor. It also seeks that the costs of the application be provided for.

The application is based on the grounds set out in the affidavit in support thereof deponed by **Ms. Komujuni Jane**, a court process server attached to **M/s Max Mwebembezi & Co. Advocates**. Briefly, that while **Civil Suit No.133 of 2022** was filed on 11th February 2022, and the summons to file a defence issued, she received copies of the same to be served on the respondent from counsel for the
25 applicants on 20th February, 2022.

That with the help of the 1st applicant who introduced her to counsel Muyanja Eddie, the deponent embarked on the process of locating the defendants in the matter, including the respondent herein and that they successfully traced and served the 1st & 3rd defendants.

30 However, they failed to trace the respondent (2nd defendant), its directors or secretary so as to serve them as required by the Companies Act and the Civil Procedure Rules after all due diligence, reasonable inquiries and searches for their whereabouts were made but proved futile.

That neither the applicants nor their counsel have knowledge of any possible place or address to find the respondent so as to serve it in the ordinary way, and that because the applicants are still interested in pursuing their case to its logical conclusion, they would like to effect service on the respondent
35 through substituted service.



Consideration of the application.

The issue for consideration is whether or not this application merits the grant of orders to extend time for service of summons to file a defence to the plaint in **Civil Suit No.419 of 2022** and for fresh summons issue.

5 **Analysis of the law.**

Service of Court process is clearly provided in **Order 5 of the Civil Procedure Rules** which stipulates that

“1. When a suit has been duly instituted a summons may be issued to the defendant-
ordering him or her to file a defence within a time to be specified in the summons; or
10 ordering him or her to appear and answer the claim on a day to be specified in the
summons.

2. Service of summons issued under subrule (1) of this rule shall be effected within
twenty one days from the date of issue; except that the time may be extended on
application to the court, made within fifteen days after the expiration of the twenty
15 one days, showing sufficient reasons for the extension.”

The time within which to effect service may be sought by a party who has failed to effect service within the stipulated time under **Order 5 rule 1(2)** but such application for extension must be made within 15 days after the expiration of the first 21 days mentioned above.

20 In the instant case, the summons to file a defence issued on the 15th day of February, 2022 and should have been served by 9th March, 2022. The application for extension of time within which to serve the summons on the respondent ought to have been filed 15 days later, by 22nd March, 2022. The instant application was however filed on 20th May 2022, over a month later.

25 According to the **ECCMIS**, the applicants submitted this application for filing on 20th May, 2022 at 07:20pm. The record in respect of **Civil Suit No.419 of 2022** reveals that on the same day, a letter from **M/s Kibuka Rashid & Co. Advocates** dated 17th March, 2022 addressed to the Registrar of this court was uploaded onto the system at 07:06pm.

30 The contents of the above mentioned letter indicate that the firm **M/s Kibuka Rashid & Co. Advocates** had received instructions to represent the 1st defendant in the main suit, as well as the respondent company. Counsel for the respondent in that letter also sought to have the matter dismissed on grounds of non-service.

35 What is not clear however is whether or not the applicants herein or their representatives had knowledge of the above mentioned letter before filing this application. It is noteworthy that the applicants have since through the Electronic Court Case Management Information System filed their reply to the 3rd defendant's written statement of defence on 6th July 2022, a consent with the 3rd defendant filed on 14th July, 2022 and on 11th October 2022. The record also indicates that the applicants have since instructed **M/s Katongole & Co. Advocates**.

The applicants after receiving the notice of instructions cannot now claim that they have not been made aware of the respondent's address of service through the notice of instructions filed by its lawyers.



While substituted service is a recognized mode of service of process in accordance with **Order 5 rules 18(1) of the Civil Procedure Rules**, it was meant to cater for circumstances where ordinary service upon a defendant within jurisdiction has been deemed impossible. The applicants in this case have not demonstrated that ordinary service upon the respondent is not possible or that it has been rendered futile.

On account of the fact that the matter in any case is to proceed against the 1st and 3rd defendants; and that it is the same firm representing the respondent and the 1st defendant, in the interest of justice therefore, I will allow the application to the extent that leave is granted to effect ordinary service to the respondent through his counsel.


Alexandra Nkonge Rugadya

Judge

27th February, 2023.

Delivered
by e-mail
Alexandra Nkonge Rugadya
J 27/2/2023