

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISCELLANEOUS APPLICATION NO. 1192 OF 2023**  
**(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 904**  
**& 415 OF 2023)**  
**MISCELLANEOUS APPLICATION NO.1465 OF 2021**  
**AND**  
**(HIGH COURT CIVIL SUIT NO. 87 OF 2005)**

**ABDU NASSER ===== APPLICANT/PLAINTIFF**

**VERSUS**

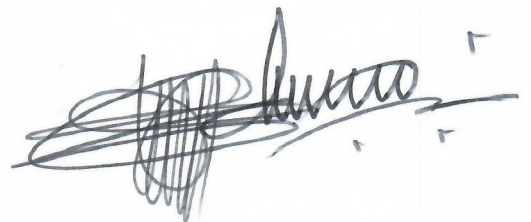
**1.S&M HOLDINGS LTD ===== RESPONDENT/DEFENDANTS**

**2. THE COMMISSIONER LAND REGISTRATION.**

**BEFORE: HON.JUSTICE TADEO ASIIMWE**

**R U L I N G:**

This Application came for hearing on 30/10/2023 and the Applicant was represented by Counsel Mukidi Peter Walubiri together with Counsel Kasaija Ita while the Respondents by Counsel Simon Tendo Kabenge.



The Respondent's Counsel, Simon Tendo Kabenge raised 3 preliminary objections as follows;

That the affidavits in rejoinder were wrongfully filed without leave of Court.

That the said affidavit in rejoinder is bad in law since it raises fresh and new matters.

That the witness summons were wrongfully issued by the Registrar.

To support the above Preliminary objections, Counsel argued that Applicant's affidavit in rejoinder was wrongfully filed as no leave to do the same was granted by this Court. In his view, pleadings closed on 16/10/2023 when the matter first came up for hearing.

He further argued that pleadings must come to an end. Counsel relied on the Civil Procedure Rules which provide for the sequence of presentation and closure of pleadings. That Order.8 r 18 CPR state that a party shall be entitled to file a reply within 15 days which we did. And specifically r (2) states that no pleadings subsequent to the reply shall be filed without leave of Court.

In support of the second objection, Counsel argued that the rejoinder introduces completely fresh issues which were not alluded to in the Application or in the reply to the Application.

A large, stylized handwritten signature in blue ink, followed by several horizontal and diagonal scribbles, located in the bottom right corner of the page.



In his view the law only allows a rejoinder if allowed by leave of Court to clarify on specific issues raised in the reply.

In his third objection he faulted the Applicants for causing issuance of witness summons contrary to the Order of Court.

In reply, the Counsel Walubiri argued that the Respondents Counsel filed the affidavit in reply in this Application and he was served on to him that every morning of the hearing on 16/10/2023.

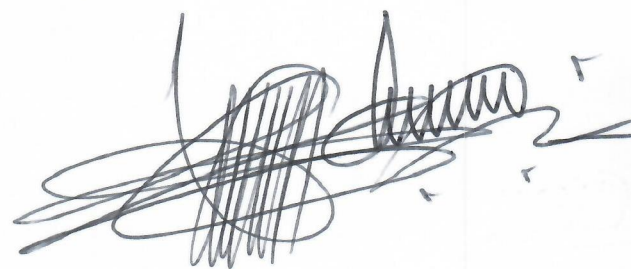
That because he was anxious to proceed with the Application, he was prepared that day.

That however, when the Respondents sought to cross-examine the witness, the Applicant exercised his right to file a rejoinder.

The pleadings were never completed because the substantive hearing did not start and there were matters in the reply that needed to be addressed and there was time to address them.

He further argued that the Respondents have raised a strange argument.

That the CPR have been with us since 1909 and those rules have consistently been interpreted as handmaidens of justice to allow filing of rejoinders without leave.

A large, stylized handwritten signature or scribble in dark ink, located in the bottom right corner of the page. It consists of several overlapping loops and lines, with some vertical strokes on the right side.

That he has never sought leave to file a rejoinder in the last 35 years he has practiced. If that rule ever existed that there is need for leave it was long abandoned as a practice.

So there was no closure of proceedings, there is no need for leave to file a rejoinder.

He concluded by stating the rejoinder was properly filed and it does not raise any fresh matter.

As regards issuance of witness summons, he supported the issuance to enable the Company Registrar to give evidence in this Court since the same was issued by a Registrar of this Court.

**Determination:**

Pleadings governed by Order 8 Rule 18 (5) CPR which provides that:

**“Where a pleading subsequent to reply has not been ordered [...] the pleadings shall be deemed to be closed, and all material statements of fact in the pleading last filed shall be deemed to have been denied and put in issue [...].”**

Civil Procedure Rules only provide for an Application and a reply and there is no specific provision for a rejoinder.

In my considered view, a rejoinder is not the reply envisaged under the Rules and if the same is to be filed then Court's Leave is necessary.



In this Application no such leave was sought before filing the Rejoinder which I find to be improper and irregular. Pleading must come to an end to enable Court to commence hearing without unnecessary delays.

The practice where Courts have allowed rejoinders without leave is a bad practice likely to cause prolonged pleadings and delay trials.

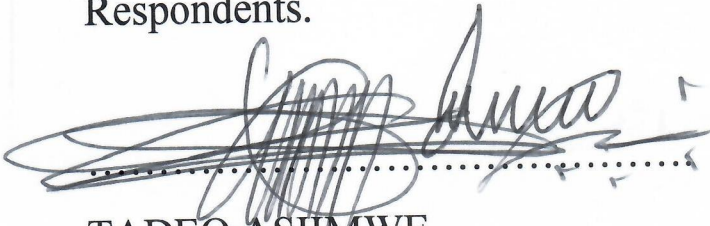
Therefore, it's a finding of this Court that the Rejoinder in this matter was improperly filed and the same is hereby rejected.

This finding determines the second preliminary objection as well.

As regards the third objection on summons, it's clear the summons were issued by the Registrar without any proceedings or order of this Court. Therefore, the same is hereby cancelled for having been issued in error.

As a whole, all the Preliminary Objections are upheld.

The Application shall proceed on the basis of its own evidence as contained in the affidavit in support and the replies made by the Respondents.

A handwritten signature in dark ink, appearing to read 'Tadeo Asiimwe', is written over a horizontal dotted line. The signature is stylized with loops and flourishes.

TADEO ASIIMWE

**JUDGE**

12/01/2024.