

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISCELLANEOUS APPLICATION NO. 368 OF 2023**  
**(ARISING FROM CIVIL SUIT NO. 0130 OF 2009)**

**MAYENGO MOSES ::: APPLICANT**

**VERSUS**

**JULIUS .F. BITATULE ::: RESPONDENTS**

**BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING.**

**Introduction:**

1. This was an application by notice of motion brought under Article 126 of the Constitution of Uganda, Section 96 & 98 of the Civil Procedure Act, Section 14, 33 & 39 of the Judicature Act Cap 13, and Order 51 rule 6 and Order 5 rules 1 & 3 of the Civil Procedure Rules (CPR) for orders: -

- i) That the written statement of defence filed by the Applicant is validated or in the alternative leave is granted to the Applicant to file a written statement of defence out of time.



ii) That the costs of this application be provided for.

**Background;**

2. The Respondent/plaintiff filed HCCS No. 130 of 2009. Before the Applicant could file a written statement of defence, the Applicant and the Respondent entered into a consent settlement to which the Applicant who was unrepresented at the time, avers to have been reliably informed by the respondent's counsel that it had disposed of the suit and hence he needed not to take any further steps in the matter.
3. Ten years down the road, the Consent was set aside by Godfrey Kirumira vide MA No. 1165 of 2019 and the suit was re-opened to be heard and disposed of on its merits.
4. The matter was fixed for hearing, however the Applicant/defendant had not filed a defence within the timelines stipulated by law, he therefore seeks to have the defence filed on record validated or in the alternative, this Honourable Court grants him leave to file his Written statement of defence out of time.

**Applicant's evidence;**



5. The grounds of the application are contained in the affidavit in support of the application deponed by **MAYENGO MOSES** the Applicant, and are briefly that: -

- i) That upon filing HCCS No. 130 of 2009, the respondent/plaintiff and his Advocates approached me and convinced me to settle the dispute by way of a compromise/ executing a consent judgement on the 30<sup>th</sup> day of June 2009 as opposed to filing a written statement of defense.
- ii) That the respondent and his lawyers had already sold the suit property to Kirumira Godfrey.
- iii) That the consent judgement was set aside in 2019 by Kirumira Godfrey and the suit was re-opened to be heard on its merits.
- iv) That it is only just and fair that the applicant is permitted to defend himself in HCCS No. 130 of 2009.

**Respondent's evidence;**

6. The application is opposed to by an affidavit in reply deponed by **JULIUS F. BITATULE** the respondent which briefly states as follows;



- i) That the consent judgement was entered willingly and in good faith and there was no misrepresentation whatsoever.
- ii) That after the consent judgement was filed there was no need for the applicant to file a written statement of defense.
- iii) That whereas the Consent Judgment/Decree was endorsed by court, it was later set aside by Hon. Justice John Eudes Keitirima on 23<sup>rd</sup> April, 2021 vide Miscellaneous Application No. 1165 of 2019 which culminated into the reinstatement of High Court Civil Suit No. 130 of 2009.
- iv) THAT since the ruling and Order of review was passed without notice to the parties including myself, I filed my appeal against the same order vide Miscellaneous Appeal No. 1741 of 2021
- v) THAT my advocates have since filed Misc. Application No. 18 of 2022 in the Court of Appeal seeking leave to file the appeal out of time and validate the Notice of Appeal filed out of time and the letter requesting for proceedings.
- vi) THAT the appeal should be disposed of first before proceeding with civil No. 0130 of 2009 since the appeal is likely to succeed

**Representation;**



7. There was no representation from the Applicant whereas the Respondent was represented by Mr. Mulema Mukisa of M/s KSMO Advocates. Both parties filed their affidavits and written submissions which I have considered in the determination of this application.

**Issues for determination;**

- i) ***Whether the applicant's written statement of defence should be filed and or be granted leave to file the same out of time?***

**Resolution and determination of the issue;**

8. The law has created gates to justice through which people seeking the same go through to get redress. The gates open and close at given intervals in accordance with the rules of procedure. In rare circumstances gates which are closed may be opened to allow in a late entrant. ***(See; Tushabe Chris vs Co-operative bank ltd (in receivership/statutory liquidation) Civil Application No.08 of 2018)***



9. Under these circumstances, the Applicant must have been impeded from filing their respective pleadings either by sufficient reason and must not be guilty of any dilatory conduct. **(See; *Guliano Gariggio vs Claudio Casadio SCCA No. 1 of 2013 and Narittam Bhatia & anor vs Boutique Shazim ltd CACA No. 3 of 2017 and Shanti vs Hindocha & others [1973] EA 207 at 2019)***
10. In the instant application, upon filing HCCS No. 130 of 2009, the parties entered into a consent settlement to which the Applicant was reliably informed that the consent settlement would dispose of the suit hence the applicant did not file a defence in the same.
11. The consent judgement was later on set aside in 2019 by Kirumira Godfrey vide MA No. 1165 of 2019 and the suit was reopened for hearing and the applicant was accordingly served hearing notices.
12. A defendant who has not filed a written statement of defence does not have audience in Court **(See; *Komax Motor Vehicle Company limited & 2 others vs Idha Micheal HCMA No. 15 of 2023)***.



- 13.** The Applicant was under bonafide belief that the suit had been wholly disposed off upon execution of the consent settlement. However, the same was set aside after ten (10) years and the applicant only got to know after the suit was fixed for hearing.
- 14.** I find that the Applicant is not guilty of any dilatory conduct and has sufficient reasons for validating his written statement of defence and or filing the same out of time.
- 15.** This Court is vested with powers to extend time and validate pleadings even when there are limits created by the statute. **(See; Vegol (U) Limited v Godfrey Sentongo MA No. 72 of 2020)**
- 16.** In my view, this is one of the rare cases where the Applicant should benefit from the unfettered discretionary powers of Court and in order not to contravene the principles of a fair hearing as enshrined under Article 28 of the Constitution of the Republic of Uganda 1995.
- 17.** Therefore, for these reasons, it is in the interest of justice that the Applicant's written statement of defence filed in this Honorable Court is validated to grant him audience in this Court.
- 18.** I therefore allow the application on the following orders : -



- i) The Applicant's written statement of defence filed in this Honourable Court is hereby validated.
- ii) The costs of this application shall be in the main cause.

**I SO ORDER.**



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**NALUZZE AISHA BATALA  
JUDGE**

**30<sup>th</sup>/1/2024**