

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS APPLICATION NO. 3851 OF 2023
(ARISING FROM CIVIL SUIT NO.3130 OF 2016)

1. VINCENT R.BBALE MUGERA
2. SARAH KAGERE BBALE MUGERA ::::::::::::::: APPLICANTS

VERSUS

1. PERI-URBAN AGRO ENTERPRISES LTD
2. WAMBOKA MARTIN ::::::::::::::: RESPONDENTS

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING.

introduction;

1. This was an application by chamber summons brought under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act Cap, Order 5 rules 1,18 & 32 of the Civil Procedure Rules (CPR) that: -

- i) That the directives/order of court issued on the 19th October 2023 and the hearing notice in civil suit No.3130



of 2016 be served upon the 2nd applicant/defendant by way of substituted service.

ii) Costs of the application be provided for

Background;

2. That on the 19th of October 2023, the applicant/plaintiffs appeared before this court and this honorable court issued directives to parties which include filing of a joint scheduling memorandum, trial bundle and witness statements in respect of civil suit No.3130 of 2016.


3. That the said directives/order and the hearing notices cannot be effected due to the fact the 2nd respondent/defendant was not present in court. That the 2nd respondent/defendant currently has no known address from where service of the court's directives /orders and hearing notices can be effected and all the attempts to search for the 2nd respondent have been rendered futile, hence this application.

Applicant's evidence;



4. The application is supported by an affidavit deposed by Aryatwakira Keresi a high court licensed process server which briefly states as follows;

- i) That I am a high court process server and other courts subordinate thereto attached to K & K Advocates.
- ii) That on the 19th of October 2023, I received copies of directives in respect of civil suit No. 3130 of 2016 to be served on both the respondents.
- iii) That a hearing notice in respect of civil suit No.3130 of 2016 was issued by this honorable court for service on the respondents.
- iv) That I effected service on the 1st respondent's lawyers at their address.
- v) That the former lawyers of the 2nd respondent M/S Bwire and Waiswa Co Advocates filed a notice of withdraw of instructions and advised that all correspondences in respect of civil suit No.3130 of 2016 should be served onto the 2nd respondent personally.



- vi) That I reached to the 2nd respondent via his telephone numbers availed to me by his former lawyers but the said contacts were unreachable.
- vii) That the physical address is unknown to all parties to the suit something that has rendered normal service of documents futile.

Representation;

- 5. The applicant was represented by Mr. Sebufu Usama of K & K advocates there was no representation from the respondents. The applicants filed submissions which I have considered in the determination of this application.

Issues for determination;

Whether the applicants can effect service of court directives and hearing notice of civil suit No.3130 of 2016 onto the 2nd respondent by way of substituted service?

Resolution and determination of the issue?

- 6. The law on service of court documents which includes hearing notices is provided for in the civil procedure rules under order

order 5 of the civil procedure rules, the general presumption is that service shall always be personal to the person supposed to receive the service.

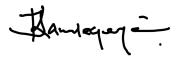
7. However, the same order 5 of the civil procedure rules has provided exceptions to the general rule and among the exceptions include substituted service onto the persons supposed to receive the service. The law on substituted service is provided for under order 5 rule 18 of the civil procedure rules which provides that; ***i) Where the court is satisfied that for any reason the summons cannot be served in the ordinary way, the court shall order the summons to be served by affixing a copy of it in some conspicuous place in the courthouse, and also upon some conspicuous part of the house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the court thinks fit. (ii) Substituted service under an order of the court shall be as effectual as if it had been made on the defendant personally. (iii) Where the court makes an order for substituted service, it shall fix such time for the appearance of the defendant as the case may require.***

8. The said provision has been elaborated by courts of law, I will draw reference to justice Madrama's decision in **Al Hajji Abdu Vs Tropical Bank HCMA NO.360 of 2006** where the learned justice stated that the circumstances under order 5 rule 18 that may be brought into action in situations where court is satisfied that service cannot be effected the ordinary way and that court might order for service in a manner it thinks fit to ensure that the ends of justice are met.
9. In the instant application, the applicants via the affidavit in support deposed by the high court process server attached to the applicant's lawyer's firm stated that he has done all the necessary steps to reach out to the 2nd respondent but all in vain.
10. I am of the view that for purposes of ends of justice to be met, this honorable court deems it fit to have the directives and hearing notices issued by court regarding civil suit No.3130 of 2016 served by way of substituted service through a newspaper of wide circulation That is the new vision or daily monitor onto the 2nd respondent since service cannot be effected the ordinary way.



11. In the final result, it is to the findings of this honorable court that the application is granted and costs of the application to be in the main cause.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

12/02/2024