

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 061 OF 2024
(Arising out of civil suit No.962 of 2021)**

1.MIRIAM SARAH KISUULE

2.CHRISTINE NANZIRI ::::::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

1.JAMES KYEYUNE

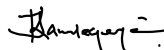
2.KASSIM MUKIIBI ::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING.

Introduction;

1. Miriam Sarah Kisuule and Christine Nanziri hereinafter referred to as the applicants brought this application against James Kyeyune and Kassim Mukiibi herein after referred to as the respondents under Section 98 of the civil procedure Act Cap 71, Order 5 rules 18 and 32, Order 52 rule 7 of the Civil Procedure Rules for orders that;
 - i) This honorable court issues fresh hearing notices and grants leave to the applicant to serve the respondents by way of



substituted service in the newspaper of wide circulation.

- ii) That the honorable court enlarges time within which to serve the hearing notices on the defendants vide civil suit No.962 of 2021.
- iii) Costs of the application be provided for.

Background;

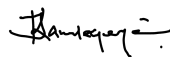
- 2. The applicants sued the respondents jointly and severally for a declaration that the defendants have no interest over the suit land seeking for orders that the respondent's/defendants acts of hiring assailants armed with machetes and pangas and deploying them on the subject land infringed the applicants/plaintiffs rights to life and own property.
- 3. The applicants made several attempts to serve the respondents as directed by court but their efforts have been rendered futile since they cannot trace the whereabouts of the respondents, hence this application.

Applicant's evidence;

- 4. The application is supported by an affidavit deposed by Mr. Ronald Ndagije a high court process server which briefly states

as follows;

- i) That on the 10th jan.2024 I received copies of hearing notices, copies of the plaintiff trial bundles to effect service on the respondents/defendants.
- ii) That on the same day I proceeded to the known address of the respondents M/S Lukwago, Matovu and Co. advocates where I inquired from the secretary about the advocate in personal conduct of the matter and whether she could share the whereabouts of the 2nd respondent/defendant but she informed me that the firm no longer represents the said parties and they don't know their whereabouts.
- iii) That I proceeded to wakiso district where I met Nathan Kirekke whom I know to be the son to the 2nd respondent together we proceeded to the home of the 1st respondent.
- iv) That I introduced myself to the lady whom I met to the said home named Nakimbugwe Phiona and told her the purpose of my visit and she informed me that the 1st respondent was well known to her brother in law but that he was currently away from home, I gave her the copy of the hearing notices and the trial bundles.



- v) That the said Nakimbugwe Fiona gave me the 2nd defendant telephone contact, I tried reaching out but there was no any response.
- vi) That I tried sending the documents via whatsapp but all failed.

Representation;

5. The applicant was represented by Ms Ritah Nakaluma of M/S Engoru, Mutebi and Advocates. The applicant filed the affidavit in support which I have considered in the determination of this application.

Issues for determination;

- i) **Whether the applicants can effect service on the respondents by way of substituted service?**

Resolution and determination of the issues;

Issue 1; whether the applicant can effect service on the respondents by of substituted service.

6. The Civil Procedure Rules under Order 5 state the procedure governing service of summons and rule 18 specifically provides

that where court is satisfied that for any reason the summons cannot be served in an ordinary way, court shall order that the same be served by substituted service.

7. In the instant application, referring to the affidavit in support of the application under paragraphs 2,3,4,5 and 6 the applicants clearly demonstrate how all efforts have been tried to have service effected personally to the respondents but the same has been rendered futile.
8. The applicants have at all times demonstrated the ability to have service effected onto the respondents/defendants but they have been frustrated with the whereabouts of the respondents/defendants.
9. The applicants hold the intentions to pursue their case inter party as provided for by the Civil Procedure Rules and the law regarding suits.
10. This court is enjoined to ensure that the ends of justice are met at all times and the Civil Procedure Rules under section 98 vest this court with inherent powers to ensure that ends of justice are met.
11. When the summons are issued in a suit and they cannot

be effected as directed, courts are supposed to issue out fresh summons to be served onto the parties and the fresh summons are governed by the time lines provided for in the Civil Procedure Rules.

12. In the result, it is to the findings of this honourable court that the applicants be issued with fresh summons to be served onto the respondents/defendants in civil suit No.962 of 2021 by way of substituted service in a newspaper of wide circulation and I make no orders as to costs.

I SO ORDER.



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NALUZZE AISHA BATALA

JUDGE

15/01/2024