THE REPUBLIC OF UGANDA
THE INDUSTRIAL COURT OF UGANDA HOLDEN AT KAMPALA
MISC. APPLN. NO. 84/2017
(*ARISING FROM LDC NO. 50*/2017)

CIPLA QUALITY CHEMICAL INDUSTRIES LIMITED.....APPLICANT

VERSUS

NAMAKOYE LUCY SUING THROUGH THE LEGAL REPRESENTATIVE, ONGURAPUSI MOSES.....RESPONDENT

BEFORE
1. Hon. Chief Judge Ruhinda Asaph Ntengye
2. Hon. Lady Justice Linda Tumusiime Mugisha

PANELISTS
1. Mr. Ebyau Fidel
2. Ms. Harriet Nganzi Mugambwa
3. Mr. Micheal Matovu

RULING

This is an application for enlargement of time brought **under Rule 6 of the Labour Disputes (Arbitration & Settlement)(Industrial Court Procedure) Rules, section 98 of CPR, order 52 rules 1 and 2 of CPR**.

It seeks for orders that the time within which the applicant may file its reply in **Labour dispute claim 50/2017** be extended, that the act of filing the reply to the claim filed on 19/5/2017, be validated and that costs of this application be provided for. The application is supported by an affidavit to which an affidavit in reply was filed by the respondent.

The facts as agreed by the parties are that the claimant filed a memorandum of claim in this court via Labour Claim No. 50/2017 and effected service of the same onto one Ms. Diana Nanjobe, the Administrative Assistant of the respondent on 11/05/2017.

The respondent filed a reply to the memorandum of the claim on 19/05/2017, outside the prescribed time, hence this application.

Learned counsel for the respondent at the beginning of the hearing raised a preliminary objection which in the wisdom of this court, could be disposed of together with the application. Counsel felt that the said preliminary objection ought to be raised separately and a ruling made thereon before proceeding with the application. He felt that entertaining the objection together with the application would be prejudicial to his client but we thought otherwise and in the interest of time we decided to entertain both and now let us deal with the objection first.

Learned counsel submitted that the application before this court did not disclose a cause of action and it should be dismissed with costs under **06 rule 30(1) and order 7 rule 11 of the Civil procedure rules.**

He vehemently argued that whereas **rule 6 of the of the Labour Disputes** (**Arbitration and Settlement) (Industrial Procedures) rules 2012** provides for a remedy of enlargement of time within which to file documents for justifiable reason, the same remedy was not available to the claimant because he sought to challenge the validity of the entire proceedings for failure of effective service of the court process.

According to counsel, the claimant should have instead filed an application to strike out the entire claim for want of service.

According to counsel,
"The position of the law on this is very clear, failure to effect service in accordance with the law renders the entire claim null and void. However for court to reach that determination, it cannot do so in an application for enlargement of time. The application for enlargement of time has to be withdrawn or dismissed and then an application to strike out the entire claim for want of service is brought instead …….."

He argued that the remedy of extension of time was not meant to interrogate issues of service of court process.

On perusal of the file, we did not find any reply from the applicant on the above point of law by the time we started writing this ruling on 02/09/2017 although this court had set 22/09/2017 for any rejoinder.

Order 06 rule 30 of Civil Procedure Rules provides:

"The court may upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and in any case, or in case of the suit or defense being shown by the pleading to be frivolous or vexations, may order the suit to be stayed or dismissed or judgement to be entered accordingly, as may be just."

A cause of action as we understand it, is when a litigant alleges in the plaint (or application) or (memorandum of claim) that he/she enjoyed a legal right and that the legal right was breached by the defendant (or the respondent) and that by doing so such defendant or respondent is liable. The question whether or not the pleadings disclose a cause of action is determined by looking at the pleadings.

According to counsel for the respondent for as long as the applicant was raising questions regarding the service of court process in the application for enlargement of time under rule 6 of the rules of this court, they could not have a cause of action.

The said rule provides
"6 extension of time

(1) A party to a dispute who fails to file documents within the prescribed time, may apply to the court for extension of time.

With due respect to counsel for the respondent on perusal of the Application and the affidavit supporting the same, we find that the claimant (now respondent) filed a

> labour dispute against the respondent (now applicant) and served the same on a person the applicant asserts was not capable of receiving the same. We also find in the same application and affidavit a disclosure of the fact that the person capable of receiving the claim and replying to it knew about it after the time prescribed for filing the same had passed. The cause of the delay of filing the reply is also stated in the affidavit attached to the application. Given that this is an application for extension of time, and given the contents of the application and the affidavit as above described, we fail to see merit in the submission of counsel for the respondent, that the application discloses no cause of action.

It seems to us that it is only the opinion of counsel for the respondent that he thought was the position of the law. He did not quote any provision of the law or any precedent whatsoever to support his opinion or proposition that failure to effect service renders the entire claim null and void.

Neither did he supply court with an authority for the proposition that the remedy of extension of time was not meant to interrogate issues of service of court process.

We have not come across any legal authority for the proposition that in circumstances as appear in this application, the application for enlargement of time has to be withdrawn or dismissed after which an application to strike out the entire claim for want of service is brought. We are convinced that all this is the opinion of counsel without any legal authority but we also think that it is a misplaced or wrong opinion since it is not backed by law. The opinion is besides the circumstances provided under **order 06 rule 30 and order 7 rule 11 of Civil Procedure Rules under which a plaint (or application**) may be dismissed or rejected for non-disclosure of a cause of action and the basis of which was the preliminary objection. We take exception to counsel for imposing his opinion as if it was a legal position.

We accordingly find no merit in the preliminary objection and overrule the same.

The gist of the substantive application, as we understand it, is that the respondent served court process to a person incapable of receiving and thereafter replying to the allegations in the memorandum of claim. It is the case for the applicant that immediately after the proper officer got information about the case, he/she filed the necessary reply albeit after the time prescribed to do so had passed.

It is the case for the respondent that the applicant was properly served and that there was no reason for them not to file any reply within the prescribed time.

Counsel for the applicant argued that the person who was served with the court papers was not a principal officer of the applicant and was not capable of filing a reply to the memorandum of claim. He relied on **order 29 rule 2 of the Civil Procedure Rules and the authority of Kampala City Council Vs Apollo Hotel Corporation 1998 HCB 77.** Counsel argued also that the applicant was diligent in that when the company secretary knew about the court process she immediately instructed her lawyers to file a reply. He relied on **Congo Trading Corporation Vs Alzahiri Wissanji CACA No. 191/2010.**

He argued that the respondent had not suffered any prejudice and that in accordance **with Article 28/29 of the Constitution**, the applicant has a right to be heard so as substantive justice to be administered.

Counsel for the respondent on the other hand strongly argued that the applicant had not shown any cause as to why they should be granted the application. He argued that none service of court process was not sufficient reason to warrant the application as it is outside the realm of grounds stipulated in the case of **Nicholas Roussel VsGulamhussein Habib Viram & Another, CA No. 9/1993.** He reiterated that the proper remedy was for the applicant to bring a fresh application to challenge the main proceedings. Counsel argued that there was no evidence to suggest that the Administrative Assistant did not bring the pleadings to the attention of the Corporation Secretary in time and that even then the reply was not brought diligently or expeditiously since it was after 8 days. He argued that the Administrative Assistant was authorized to receive and had in fact previously properly received court process in other matters and that the respondent would be prejudiced if the court allowed extension of time to file a frivolous and vexatious response causing delay of the matter. According to counsel the applicant was given a right to be heard but she abused the same right.

We have carefully perused the application together with the affidavit attached thereto. We have also perused the affidavit in reply. We have at the same time perused and internalized the submissions of both counsel.

We have no doubt in our minds that a person's right to be heard before being condemned is sacrosanct and it can only be complied with if indeed that person is made aware of the allegations against him. There is no doubt that an Administrative Assistant of the applicant was served with the court process. **Rule 2 of order 29 of CP**R provides for service upon the secretary, Director or other Principle Officer of the corporation. Different companies have different systems. Depending on the size of the company and the various activities of the same, a person referred to as "**a principle officer"** may not be carrying out the same duties as another person in another company. It is therefore our considered opinion that a person referred to as a principle officer in one organization may not be referred to as such in another.

Consequently the burden of proof is on the company to prove that the person served was not a principal officer within the meaning of **order 29 rr 2 of the Civil Procedure Rules**.

A company is a legal person though it's an artificial person. It therefore acts through human beings whose actions necessarily bind the company. The important question therefore is whether the person who was served was in such a position as either to take immediate action or have the capacity to give the necessary information to the person with capacity to take action.

In the instant case, it is our opinion that it was incumbent upon the applicant to show that the Administrative Assistant was such an employee of the company that he/she could not be reasonably referred to as a principal officer of the company within the meaning of order 29 rule 2 of the CPR. This having not been the case, this court is entitled to hold that the administrative assistant was a principal officer who ought to have either acted on the court papers or communicated to whoever was expected to act and her failure to do so could not be visited onto the respondent. This is especially so when ordinarily an

administrative assistant's duty is to assist in administrative duties which ordinarily include receipt of documents for onward transmission to responsible officers and sometimes to act on them.

We take cognizance of the right of the applicant to be heard as provided for **under Article 28(2) of the Constitution**. We also take cognizance of the mandate of this court as being to administer substantive justice without regard to technicalities. The applicant has shown great interest in defending the claim against her and it is our view that denying her the opportunity to defend the claim simply because she did not file the reply within the prescribed time, would not be administering substantive justice.

Accordingly we shall allow the application. For avoidance of wasting time and clogging the court system, the reply already filed in this court is hereby validated.

The applicant shall pay costs for application.

SIGNED BY:

1. Hon. Chief Judge Ruhinda Asaph Ntengye …….
2. Hon. Lady Justice Linda Tumusiime Mugisha …….

PANELISTS

1. Mr. Ebyau Fidel …….
2. Ms. Harriet Nganzi Mugambwa …….
3. Mr. Micheal Matovu …….

Dated: 06/10/2017