

**THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISC. APPL. 21 OF 2019
(ARISING FROM L.D.C. NO. 203/2016)**

ENOS KASIRABO.....APPLICANT

VERSUS

KAMPALA INTERNATIONAL UNIVERSITY.....RESPONDENT

BEFORE

1. HON. CHIEF JUDGE RUHINDA ASAPH NTENGYE
2. HON. LADY JUSTICE LINDA TUMUSIIME MUGISHA

PANELISTS

1. MR. RWOMUSHANA REUBEN JACK
2. MS. ROSE GIDONGO
3. MR. ANTHONY WANYAMA

RULING

This is an application by Notice of Motion seeking reinstatement of LDC 203/2016. The applicant was represented by Mr. Brian Kirima of Katarikawe & Co. Advocates while the respondent was represented by M/s. Everlyn Tumuhairwe of Magna Advocates.

The background is that the applicant filed LDC 203/2016 and it was fixed for hearing on 4/2/2019 at the instance of counsel for the claimant (now applicant) in the absence of the respondent. On 4/2/2019 none of the parties was in court and none of counsel was in court either. In the circumstances, the court dismissed the claim on the ground that parties had lost interest in the case. This application therefore is an attempt to set aside the dismissal.

Before the matter could proceed, counsel for the respondent raised a preliminary objection concerning service of the notice of motion. She strongly submitted that the notice of motion was served out of time contrary to **Order 49 r 1 and 2 and Order 5 r1, 2 and 3 of the Civil procedure Rules.**

Relying on the authority of **Frederick James Jjunju & Luwedde Vicoria Vs Madhvani Group Ltd and Commissioner Land Registration, M.A 688/2015 (Arising from C.S 508/2014 of the Civil Division)** counsel argued that unless the applicant applied and was granted extension of time within which to serve the notice of motion, it was mandatory that it be served within the stipulated time. She prayed that the application be dismissed.

In reply, counsel for the respondent argued that the respondent having filed no affidavit in reply, counsel was arguing on evidence from the bar. He submitted that the applicant having filed the application on 8/2/2019, it was only signed by the registrar after 2 months. He claimed that they received the signed application on 13/6/2019 and proceeded to serve the respondent.

According to counsel since this court has power to enlarge time and the applicant had the right to bring this application to court, and the applicant was not at fault, this court in the interest of justice should proceed with the application.

Order 5 rule 1(2) of the Civil Procedure Rules provide that service of court process be issued on the opposite party within 21 days from the date the summons was issued. The consequence of failure to serve the summons within the time prescribed is stipulated under O5 rules 1(3) of the Civil Procedure Rules.

O5 rules 1(2) of the Civil Procedure Rules states:

“Service of summons issued under sub rule (1) of this rule shall be effected within twenty one days from the date of issue; except that the time may be extended on application to court made within fifteen days after the expiration of the twenty one days, showing sufficient for the extension.”

O5 rules 1(3) of the Civil Procedure Rules states:

“Where service has been issued under this rule and –

- (a) Service has not been effected within twenty one days from the date of issue and**
- (b) There is no application for extension of time under sub rule (2) of this rules or**
- (c) The application for extension of time has been dismissed, the suit shall be dismissed.**

While considering an application of a similar nature in the case of **Frederick James Jjunju** above cited the Hon. Dr. Justice Andrew Bashaija quoted the authority of **Amdan Vs Stanbic Bank (U) Ltd HCMA 900 of 2013** which according to him followed the decision of the **Supreme court in the case of Kanyabwera Vs Tumwebwa (2005) 2 EA 86, where at page 94 Justice Order JSC (RIP)** held as follows:

“What the rule stipulates about service of summons, in my opinion, applies equally to service of hearing notices.”

A notice of motion in our view constitutes a hearing notice within the above section of the law and the Supreme Court decision. This is because it states

“Take notice that this court shall be moved on... for counsel for applicant to be HEARD on an application for orders that ...”

It is for the same reason that in the of **Frederick James Jjunju case (supra)**. Hon Dr. Justice Bashaija while considering the above supreme court decision stated

“it would appear clearly from the above decision that the reference for the procedure of service of summons under Order 5 (supra) also applies to service of the hearing notices and applications for purposes of the provisions relating to the issuance and service. Therefore the service of the instant application had to comply with the procedure of service of summons under order 5 r (1) 2 CPR.

We find (and the applicant does not contest) that the Notice of Motion was duly endorsed by the registrar on 29/4/2019. The computation of time within which to serve the applicant began to run from this date. It means that the respondent should have been served on or before 20/05/2019.

We do not accept the insinuation of counsel for the applicant that the delay to serve the respondent was because of the delay of the registrar to sign and endorse the application. Time does not start running from the date of filing but from the date of endorsement by the registrar. This imposes a duty on the applicant to be vigilant in pursuing his/her case in the courts of law by following up and subsequently serving the court process onto the opposite party so as to ignite commencement and subsequent expeditious hearing of the case. Delay of the process as a result of the conduct of the applicant cannot be tolerated by the courts of law.

The law provides in order 5 rule 1 (2) that the time may be extended once an application for extension is made within 15 days from the expiration of 21 days. In the instant case, the time expired on 20/5/2019 and the applicant ignored the process of applying for extension of time and instead proceeded to serve the application out of time which as clearly put under **Order 5 rule 1 (3)** is not acceptable. This rule provides that the application filed in this manner must be dismissed.

We do not accept the contention of counsel for the applicant that the respondent had to file an affidavit in reply before submitting on a point of law. A point of law is not evidence on which the court bases its decision. Law is applied on the evidence available from the applicant. There was no need of any evidence from the respondent in order for this court to dispose of the point of law raised.

The applicant has not presented any grounds to show why he did not serve the notice of motion within the prescribed time or to apply for extension of the same within the time allowed.

Accordingly the application is dismissed as provided for under **Order 5 r 1 (3) of the Civil Procedure Rules**. No order to costs is made.

DELIVERED & SIGNED BY:

1. HON. CHIEF JUDGE RUHINDA ASAPH NTENGYE
2. HON. LADY JUSTICE LINDA TUMUSIIME MUGISHA

PANELISTS

1. MR. RWOMUSHANA REUBEN JACK
2. MS. ROSE GIDONGO
3. MR. ANTHONY WANYAMA

Dated: 09/08/2019