THE REPUBLIC OF UGANDA

IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA

MISC. APPL. NO. 258 OF 2019

[ARISING FROM LABOUR DISPUTE REFERENCE NO. 250/2019]

BETWEEN

GALILEE COMMUNITY GENERAL HOSPUTAL.....APPLICANT

VERSUS

KASULE WILLIAM.....RESPONDENT

BEFORE

1. Hon. Head Judge Ruhinda Asaph Ntengye

PANELISTS

1. Ms. Adrine Namara
2. Mr. Michael Matovu
3. Ms. Susan Nabirye

RULING

The application was brought under **Section 98 of the Civil Procedure Act** and **Orders 07 rules 11(a) (d) (e)** and **19 of the Civil Procedure Rules.**

It mainly sought an Order of the Court that the memorandum of claim in Labour Dispute Claim No. 250/2019 be rejected.

REPRESENTATION

Mr. Nanyumba Nicholas of Cadra Mediators & Advocates represented the applicant while Mr. Okurut Isaac of M/s. Kigenyi-Opira & Co. Advocates represented the respondent.

The application was supported by an affidavit sworn by one Kiiza Oscar of Cadra Mediators & Advocates to the effect that through investigations into the Uganda Registration Services Bureau it was found out that the respondent ws a non-

existent entity, and that this being the case no cause of action was disclosed in the claim. The affidavit further stated that the application was frivolous and vexations. An affidavit in reply to the above assertions was sworn by Kasule William, the respondent, to the effect that, he was at all times employed by the respondent in the name and style of the respondent and that no change whatsoever in regard to the name had ever been communicated to him. The affidavit was emphatic about the fact that the respondent filed a response to the claim and attended mediation sessions in the same name as well as instructed lawyers to defend the same name.

SUBMISSIONS

It was the submission of counsel for the applicant on a preliminary legal point, that the affidavit in reply ought to be struck out for having been filed out of time contrary to **Order 12 rule 3(2) of the Civil Procedure Rules.**

Counsel argued that paragraphs 3, 4, 5, 6, 7, 8, and 9 of the respondent's affidavit in reply were argumentative and it should therefore be struck out.

According to counsel the description of the respondent in the memorandum of claim as **"carrying out the business of health services"** fell short of the requirement under **Order 7r1(c) of the Civil Procedure Rules** as it did not disclose whether the suit was against an incorporated entity or merely a business name. It was argued that the claim was incurably defective for having been brought against a non-existent party.

In response to the above submissions, it was strongly agued by the respondent on the preliminary legal point that the applicant having filed the application in 2019 did not serve the same onto the respondent. According to counsel, the respondent learnt of the existence of the application on the 13/09/2021 from the court record whereupon counsel for the respondent extracted hearing notices of the application and served the applicant with both the hearing notice and the affidavit in reply on 17/9/2021. Counsel strongly submitted that in accordance with **Order 12 rule (3)(2)** of the **Civil Procedure Rules** the application should be dismissed for non-service within 15 days as required.

It was contended that the applicant did not show Court how the paragraphs in the affidavit in reply were argumentative. According to counsel the affidavit in reply did not offend **Order 19 rule 3 of the Civil Procedure Rules**.

It was the respondent's submission that under **Order 7 rule 1(c) of the Civil Procedure Rules** it was required to name the description and residence of the defendant "**as far as can be ascertained**" and from the contract of employment the respondent was employed by **"Galilee Community General Hospital of Masanafu, Lubaga Division."**

Relying on **Section 2 of the employment Act** and the authority of **Gyavira Mutayomba Vs Four ways group of companies LDC No. 21/2016** counsel argued that whoever employs a worker and the worker does work for such employer the employee is liable whether legal person or not.

DECISION OF COURT

Preliminary objection:

There is no doubt that this application was filed on 17/10/2019 as the court record reveals. It follows therefore that the affidavit in support of the application was filed on the same date. The Registrar of this court issued the application on 7/2/2020.

Order 5 rule 3 of the CPR provides

"3 where summons have been issued under this rule and –

(a) Service has not been effected within 21 days from the date of issue; and

(b) There is no application for an extension of time under sub rule (2) of this rule; or

(c) The application for extension of time has been dismissed, the suit shall be dismissed, without notice.

Order 12 rule 3(2) of the CPR provides

"Service of an interlocutory application to the opposite party shall be made within fifteen days from the filing of the application, and a reply to the application by the opposite party shall be within 15 days from the date of service of the application and be served on the applicant within 15 days from the date of filing a reply.

It is clear from the above rules that applications of whatever nature must be served onto the opposite party within a certain time after being issued by the court and the opposite party must file a reply within a certain period after being served. The applicant correctly relied on the case of **Patrick Senyondwa and another Vs Lucky Nakito, MA 1103/2018** for the proposition that timelines applicable to plaints and written statements of defenses also apply to interlocutory applications.
In the instant case, it was the contention of the respondent that the applicant did not serve the application (and the affidavit in support) within the prescribed time which under **05r3** should have been 21 days from the date of issue and **under 012 rule 3(2)** should have been within 15 days. The applicant on the other hand contended that the respondent did not file a reply within the 15 days from 17th October 2019 when the application was filed and served upon the respondent.

After perusal of the application, the affidavit in support and the affidavit in reply, nothing suggests that the application was served onto the respondent within the prescribed time. An affidavit of service filed in court on 21/9/2021 reveals that the respondent served a hearing notice of the application onto the applicant on 15/9/2021. The hearing notice was for 21/09/2021 for mention of the application although the matter on the record was mentioned on 26/2/2020. In the absence of evidence that the application was served onto the respondent within the prescribed time, it is tempting to believe the assertion of the respondent that he received the application (and the affidavit) together with a hearing notice from the Court and served both the affidavit in reply and the hearing notice onto the applicant on 15/09/2021. It is so tempting because ordinarily it should have been the applicant rather than the respondent to process the application and serve the same or any hearing notice relating to the same application.
Consequently, we agree with counsel for the respondent that the application ought to be dismissed for failure of effecting its service within 21 days of its issue in accordance with **Order 5 Rule 3 of the Civil Procedure Rules**.

Substantively however, it is also true that under **Section 2 of the Employment Act** an employer is defined **"as... any organization whatsoever"** for whom an employee has worked or normally works. In our view this excludes the import of legal

personality into an employment relationship. Thus in Gyavira Mutayomba Vs Four Ways Group of Companies, LDC 21/2016, this court stated

> **"In our understanding of the above "other institution or organization whatsoever," connotes any institution whether registered or not for as long as the employee worked for the same institution under a contract of serve. This means that lack of capacity to enter a usual contractual relationship would not be a defense for any institution not to pay emoluments or be accountable for the same where an employee has evidence that under a contract of service such employee did work at a fee for the said institution."**

The above section of the law and the above decision of this Court make the submission of the applicant about legal entity lack merit. We are at the same time convinced that the description of the respondent in the claim is sufficient and measures to the standard required by **Order 07 Rule 1(c) of the Civil Procedure Rules.**

In conclusion we find the application without merit and dismiss it with costs to the respondent.

Delivered and signed by:

1. Hon. Head Judge Ruhinda Asaph Ntengye .....

PANELISTS

1. Ms. Adrine Namara .....
2. Mr. Michael Matovu .....
3. Ms. Susan Nabirye .....

Dated: 19/11/2021