

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**MISCELLANEOUS APPLICATION NO. 115 OF 2021**  
**[ARISING FROM LABOUR DISPUTE REFERENCE NO. 157/2021]**

**BETWEEN**

**SANYU FM ..... CLAIMANT**

**VERSUS**

**BETSY MUGAMBA ..... RESPONDENT**

**BEFORE**

1. Hon. Head Judge Ruhinda Asaph Ntengye

**PANELISTS**

1. Mr. Musimbi Jimmy
2. Mr. Amos Lapenga Can
3. Ms. Robinah Kagoye

**RULING**

This is an application by notice of motion brought under **Section 33 of the Judicature Act, Rule 5 of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules 2012, Section 98 of the Civil Procedure Act, Order 51 rule 6 and Order 52 rules 1, 2, & 3 of the Civil Procedure Rules.**

The application is supported by an affidavit deposed by one Venkata Chalam Ramaswa Myler, a human Resources Manager of the applicant to the effect that the respondent was never served with a memorandum and a notice of claim since the alleged service was upon a receptionist who did not forward the papers to a principal officer of the applicant.

An affidavit in reply was sworn by one Ogola Abdallah, a process server of the High court who deposed that he served the memorandum and notice of claim to a receptionist of the respondent who took it to the Managing Director for

approval and after approval the receptionist stamped and signed the documents. He also deposed that previous service of documents was done in the same manner.

### **REPRESENTATIONS**

The applicant was represented by Mr. Matovu Elias of M/s. Mugisa, Namutale & co. advocates while the respondent was represented by Mr. Oscar Kihika of Byenkya, Kihika & Co. Advocates.

### **SUBMISSIONS**

The applicant strongly argued that there was no proper and effective service on the applicant since the service was upon the secretary who was neither the director; nor a principal officer of the applicant as stipulated under **Order 29 rule 2 of the CPR.**

Counsel relied on the authorities of **Remco Ltd Vs Mistry Judva Parbat and Co. Ltd. and others (2002) I.E.A 233, Kampala City Council Vs Apollo Hotel corporation (1985) HCB at page 77 and Kyambogo University Vs The Heights Ltd HCMA 0954/2015.** Counsel contended that as averred in the affidavit in reply the receptionist, one Aisha never took the court process to the Managing Director for approval.

In reply counsel for the respondent contended that no sufficient cause was shown for the applicant to be allowed to file a memorandum of claim out of time. Counsel relied on **Bishop Jacinto Kibuuka Vs The Uganda Catholic Lawyers Society, M.A. 696/2018** as well as **Mulindwa George William Vs Kisubika Joseph, Civil Appeal 12/2014,** as to the definition of “sufficient cause.” Counsel strongly argued that in accordance with the decision of the court of Appeal in **S.M Ssebowo Family Ltd Vs Manna Harvestors International Ltd., Civil Appeal 161/2017,** the service done by the respondent in this case constituted effective service.

### **DECISION OF COURT:**

**Order 29 rule 2 of CPR provides**

**“Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served-**

**(a) on a Secretary, or any director or other principal officer of the Corporation; or**

**(b) By leaving it or sending it by post address to the corporation at the registered office, or if there is no registered office, then at the place where the corporation carries on business.**

We have carefully perused and internalized the submissions of both counsel which were based on the affidavits sworn by the parties. We have as well internalized the authorities relied upon by both counsel.

A receptionist of a company is definitely not the Secretary or director or principal officer of the company intended by Order 29 rule 2 of the CPR. However, we have no doubt that when she received the court process she was at the registered office of the respondent where the respondent carried on business.

We have taken interest in the question whether or not before the receptionist stamped the court process she got approval from the Managing Director. We have looked at both affidavits i.e. the affidavit in reply and the affidavit in rejoinder. The affidavit in reply is to the effect that after the deponent explaining the purpose of his visit to the receptionist, the receptionist went to consult the Managing Director as he waited and on her return she informed him that the Managing Director had instructed her to receive the court papers which she did by stamping and signing them.

By an affidavit in rejoinder the receptionist admits having received the papers on 18/8/2021 and having gone to consult the Managing Director but denies having found him in the office. She was advised by his office clerk to stamp on the court papers and hand them over to the Managing Director as soon as he came back. The Managing Director only came to the office on 2/9/2021. We note that the initial

affidavit in support of the application was by a human Resource Manager of the applicant to the effect that the receptionist did not forward the court papers to the Managing Director or any other principal officer within 5 days.

Since a limited liability company is an artificial person which necessarily acts through Human beings, the question whether or not effective service was done will always depend on either who exactly was served or/and the circumstances under which such service was effected. Either or both of these are clearly spelt out in **Order 29 rule 2 of the Civil Procedure Rules**. Either the service is made on a principal officer of the company **OR** it is left or sent by post to the registered address of the office of the company or at the place where the company carries on business. The case of S. M. Ssebowa & family Ltd Vs Manna Harvestors International Ltd (supra) is imperative as it held

**“Section 274 of the companies Act provides for proper service of documents at the registered address of the company. In my view where service is effected at the address of the company, there would be no need to prove further that the person who received the summons was a director of the recipient company.”**

We do not associate ourselves with the submission of the applicant that the respondent having not chosen the manner of service envisaged in the above decision, he could not plead that he effected service at the registered office.

In our view the circumstances of service in the instant case embodied both personal service on the principal officer who was a Managing Director as well as the receptionist who received the papers at the registered office.

We form the opinion that the import of the decision in the above case is to apply order 29 rule 2 as a whole. Given that the failure of the receptionist to find the Managing Director and serve him was only in rejoinder by the receptionist who in our view should have filed the initial affidavit, we find on a balance of probability that the affidavit in reply contains the truth i.e. that the receptionist found the Managing Director who approved the service before she stamped and signed the papers. Even if we were wrong in this probability, both the fact that the

receptionist was an employee of the respondent responsible for receiving documents on behalf of her employer, and the fact that she received the documents at the registered office of the applicant constituted effective service within the meaning of O29 rule 2 of the CPR. We do not find sufficient cause in the reason given by the applicant for failure to file a reply within the specified period.

However, as this court held in **CIPLA QUALITY CHEMICAL INDUSTRIES LIMITED VS NAMAKOYE LUCY (suing through a legal representative) labour Misc. Application 84/2017.**

**“We take cognizance of the right of the applicant to be heard as provided 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.”**

The instant application is based on the same facts as the above application. Just like in the above application this application will be allowed with costs payable by the applicant for the reasons mentioned above

The applicant shall file the reply within 14 days from the date of this ruling and if it is already filed it is hereby validated.

**Delivered & signed by:**

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

**PANELISTS**

2. Mr. Musimbi Jimmy .....

3. Mr. Amos Lapenga Can .....

4. Ms. Robinah Kagoye .....

Dated: 11/02/2022

