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THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
[CORAM: KISAAKYE, JSC]

MISC. APPLICATION NO. 13 OF 2017

BETWEEN

10 **E. B. NYAKAANA & SONS LTD. :::::::::::::::::::::::::::::::] APPLICANT**

AND

BEATRICE KOBUSINGYE & 16 ORS :::::::::::::::::::::::] RESPONDENT

[Application arising out of Supreme Court Civil Appeal No. 02 of 2017]

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RULING OF COURT

This is a ruling on an application by counsel for the 12th to 16th respondent and counsel for the 17th respondent, the Official Receiver to have them struck out of Misc. Application No. 13 of 2017 on grounds of the applicant’s failure to serve them with material
20 documents, to wit the application and the supporting documents.

Rule 47(1) of the Rules of this Court provides for the service of the notice of motion as follows:

25 ***“The notice of motion and copies of all affidavits shall be served on all necessary parties not less than two clear days before the hearing.”*** [Emphasis mine]

This provision is very clear and is couched in mandatory terms. Service of the Notice of Motion and all supporting documents must be served on the necessary parties. Although the Rules do not define who these necessary parties are, my view is that these are

5 persons that are directly affected by the application or the appeal
from which the application emanated. I also notice that it is not
clear from the reading of Rule 47(1) on who has a duty to effect
service. I however take judicial notice of the fact that the practice
has always been that the party who files the application (or appeal)
10 has the duty to effect service on the opposite party or those others
directly affected by the application (or appeal) unless the applicant
(or appellant) has sought leave of Court to dispense with the service
or if the Court decides on its own volition to effect service itself.

The consequences of failure to serve are not hard to decipher. This
15 Court has on different occasions had to deal with situations similar
to the one before me where a party had failed to serve the opposite
party directly affected by matter. For example in ***Edward
Rurangaranga & Anor v. Horizon Coaches Ltd, Civil
Application No. 21 of 2008***, this Court struck out a notice of
20 appeal lodged by the respondent due to the respondent's failure to
effect service of the same on the party directly affected by the appeal.
This Court observed as follows:

25 ***“In the instant case, there is no evidence that the
respondent sought and obtained direction from this Court
not to effect service of copies of the notice of appeal on the
co-defendants on ground that they took no part in the
proceedings in the Court of Appeal. In the absence of such a
direction, failure to serve copies of the notice of appeal on
these co defendants amounted to failure to take an essential
30 step in the appeal process and a violation of rule 74 (1) of
the Rules of this Court. We should add for emphasis that
the provisions of this rule are coached in mandatory terms
and their requirement constitutes an essential step in an
appeal process. The applicants were therefore justified in
35 seeking to have the notice of appeal struck out.”***


5 In the circumstances, in exercise of the powers of this Court under
Rule 2(2) of the Judicature (Supreme Court) Rules I hereby grant the
prayer of the 12th to the 16th respondents and the 17th respondent,
respectively, to be to be struck out of Misc. Application No. 13 of
2017, due to non-service of documents for this application by the
10 applicant.

I direct that the application should proceed between the applicant
and the 1st to 11th respondents.

Before I take leave of this matter. I note that after adjourning the
hearing of this application on 23rd May 2017 to make this Ruling, an
15 Affidavit of Service dated 23rd May 2017 deponed by Yesse Mugenyi
was lodged in this Court and subsequently was smuggled on the
Court Record by Registry staff. I take strong exception to this
conduct by both counsel for the applicant and the Court staff
involved in these malpractices. I will address this issue in the main
20 application.

Dated at Kampala this.....^{29th}.....day of.....^{May}.....2017

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JUSTICE DR. ESTHER KISAAKYE,
JUSTICE OF THE SUPREME COURT.