

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)**

**HCT-00-CC-MA-0677-2007
(Arising out of C.S. No. 713 of 2005)**

BYARUHANGA JOSEPHAT ::::::::::: APPLICANT/JUDGMENT DEBTOR

VERSUS

**DERMA INTERNATIONAL LTD
::::::::::::: RESPONDENT/JUDGMENT CREDITOR**

BEFORE: THE HONOURABLE MR. JUSTICE YOROKAMU BAMWINE

R U L I N G:

This is an application filed under 0.9 rr. 12 and 27, 0.52 rr. 1 and 2 of the Civil Procedure Rules and S. 98 of the CPA. The applicant seeks orders that the warrant of arrest and committal of the judgment debtor be set aside and he be released from Civil Prison; the exparte judgment and decree be set aside; the applicant/judgment debtor be granted unconditional leave to defend the suit; that costs be provided for.

The grounds upon which the application is based are contained in the affidavit in support, and further affidavit in support of the application and the supplementary affidavit of Abaine Jonathan, Advocate.

Briefly, the applicant contends that:

- (i) He was never served with summons to file a defence or at all and that the affidavit of service on record is false.

- (ii) He never signed acknowledging receipt of the summons and the purported signature is a forgery.
- (iii) The warrants of arrest and committal to civil prison were irregularly procured as the lawyers in the matter, namely Mwesige – Mugisha & Co. Advocates who prompted the Registrar are not the lawyers in the matter in the sense that they filed no notice of change of Advocates.

There is a list of other grounds listed in Mr. Abaine's written submissions. It is not necessary to reproduce them here. The respondent filed a reply to the application. However, when the application came up for hearing, Mr. Mathew Kakooza representing the respondent intimated to Court that he had just been served with a copy of the written submissions and needed time to respond. While this was a genuine reason to warrant an adjournment, I was of the view that further incarceration of the applicant was unnecessary for a number of reasons.

The first reason relates to the alleged lack of service of summons.

The applicant contends that the summons were never served on him and that he actually learnt of the existence of the suit on arrest. I have perused the Court file. The copy of summons in summary suit on plaint said to have been signed by the applicant herein as evidence of service on him has alterations on the month of service. What was '05' appears to have been changed to '11'. The copy of the summons in summary suit on plaint relied upon by the respondent, annexure 'B' to the affidavit of Kareel Ruhman does not bear the alteration. If any thing, whereas the date of service is given on the former document as "17/11/2005," the date on the latter document is given as "17 Nov 2005." Also, one does not need the services of a handwriting expert to tell that the signatures on the two documents attributed to the applicant herein differ. The implication is that the two copies are extracts from different originals.

I have also looked at the signatures on both copies attributed to the Deputy Registrar of this Court. Again one does not require the services of a handwriting expert to tell that the two signatures though

purportedly imprinted on the same document on the same day are different. This alone raises doubt in the mind of Court that the applicant was served.

The second reason relates to the warrant of arrest and committal to Civil Prison.

From the records, the application for it was filed here on July 12, 2007 by M/S Mwesige Mugisha & Co. Advocates purporting to represent the judgment creditor. From the same records, however, the respondent's lawyers were from the outset M/S Nangwala, Rezida & Co. Advocates. The lawyers who applied for warrant of arrest in execution did not file a notice of change of Advocates at the time. Upon the applicant's counsel pointing out the irregularity to Court, the said M/S Mwesige Mugisha Advocates appear to have filed a belated "*Notice of Change of Advocates*" on 17/10/2007 and backdated it to 1/10/2007.

The third reason relates to a 'statement' dated 12th September 2005 allegedly authored by the applicant. It has just been served on him so he has not had any time to respond to the same. It is attached to the affidavit of one '*Kaleel Ruhman*', the General Manager of the respondent. The same person made an affirmation on 16/11/2005 in support of the summary suit as set out in the plaint. He made no reference to the 'Statement'. Not only this, he gave his full name as "*KELEEL S. RAHUMAN*". I would hesitate to think that the names '*Ruhman*' and '*Rahuman*' refer to one and the same person herein, the person who has variously given his designation in the plaintiff/respondent company as Managing Director (in the affidavit of 16/10/2005) and General Manager (in the affidavit of 17/10/2007) what with differing signatures as well.

In view of the above discrepancies, I was of the considered view that even if I were to take the generous view that Mr. Kakooza had just been served with a copy of the written submissions and therefore deserved time to file a reply; the Court would not come to a different conclusion regarding the merits of the application. Which ever way the application is looked at, it shows that the applicant has raised triable issues of fact and law which ought to be investigated and remedied.

It was for the reasons above that I set aside the warrant of arrest and committal of the applicant to prison and ordered for his release from prison, set aside the exparte judgment and decree and granted him unconditional leave to file a defence within seven (7) days from the date of the order.

Costs of the application shall abide the outcome of the main suit.

Ordered accordingly.

Yorokamu Bamwine

J U D G E

18/10/2007