

this date was served on the defendant. For some unknown reason the relevant was not placed before a judge. There is no minute in the court file for that date. Then on 15/12/92 the Plaintiff a train set down the case for hearing on 15/1/93. Hearing Notice was again properly served on counsel for the defendant.

This complies with the provision of 0.9 r 10 of the Civil Procedure Rules. (SI. 65-3) This rule requires hearing Notice to be served on a defendant who has entered appearance even though he has failed to file a defence within the time allowed. This view finds support in Barclays Bank Ltd* vs Kangave and Kiini (HCCS No. 182/67 unreported), Otanga vs. Nabunjo HCCS No. 613/63 unreported; and Kafeero vs .Standard Bank Ltd. (1970) EA 465.

On the hearing date, counsel for the defendant appeared and applies for adjournment to enable him put in his W.S.D Out of time. He gave reasons why he could not file his client's W.S.D in time. That his client was forced to go into hiding following problems within his company. That during that hiding, he could not contact the client. That he has now returned and has given him the necessary information for the formulation of his defence. That he now has the defence and ready to file it so that the case can be heard on the merits. He showed me a typed W.S.D and prayed that the adjournment b granted.

Mr. Twinomugisha for the plaintiff vehemently opposes the application on the ground that the delay is inordinate and that counsel for the defendant did not advance sufficient reason to justify grant of the adjournment. He relied on the Attorney general Vs. Sengendo (1992) EA 556 where it was held that the court has a discretion whether to allow a defendant who has filed no defence and his counsel also did not take advantage of an offer to consider an application to file a defence out of time. In those circumstances, the court exercised discretion by not allowing the defendant to be heard.

In JAMNANAD V. SODHA VS. G. HEMRAJ (1952) 7 ULR7, It was held that where a defendant who has entered appearance but failed to file a W.S.D. within time but has good defence on the merits, unless the defendant is simply trying to delay the action, court should normally exercise its discretion in favour of such a defendant and let him put forward his defence but punish him severely in cost.

I consider the above principle of the law quite sound and appeals to justice. The end of the justice would not be met by shutting out a defendant who has a good defence to the claim against him and sound reason for his delay in filling the defence. Such an act would turn our type of justice into a laughing stock. Procedural rules are hand maids of justice not masters of it.

In the instant case, counsel for the defendant has shown me his W.S.D. which he is ready to file. He also gave reason

which is p for the delay. I am convinced that the plaintiff will not suffer injustice by the adjournment sought being granted provided that he is compensated in cost. For that reason the application for adjournment is allowed to enable the defendant to file his W.S.D out of time. The defendant is to pay cost of this adjournment in any event and file his W.S.D. within 15 days from the date hereof.

G.M. OKELLO

JUDGE

18/1/93

Ruling delivered in my chamber in the presence of Twinomugisha counsel for the plaintiff.

Mrs Catherine Adere Court clerk

G.M. OKELLO

JUDGE

18/1/93

