

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HOLDEN AT GULU
HCT – 02 – CV – MA – 056 – 2007
(Arising from CV. CS – 0006 – 2007)

PADER DISTRICT LOCAL GOVERNMENT:.....APPLICANT
VERSUS
OKENGO JUSTINE & 12 OTHERS:.....RESPONDENTS

BEFORE HON. JUSTICE REMMY K KASULE

RULING

The applicant is the Local Government of Pader District.

H.C.C.S. No. 6/07 was instituted in this court by the Respondents against the applicant. In the suit, respondents, who are former employees of applicant, seek from the applicant several payments connected with their being retired from work.

Service of summons to file a defence to the suit was effected upon the applicant on 27.03.2007. This fact is admitted by applicant.

No defence was filed to the suit within the prescribed time because, according to applicant, the officer served never passed on the served process upon counsel for applicant in time. By the time applicant's counsel was given the paper, the prescribed time had already run out.

The reason for not handing over the papers to counsel was because the applicant's Chief Administrative Officer, one Ojok Leonard, who knew what to do, was, at the material time of service, no longer in office. The one acting in his stead just sat on the papers, until it was late.

Mr. Donge, counsel for Respondent opposed the application contending that no sufficient cause had been established for setting aside the interlocutory Judgment and allowing the applicant to file a defence.

Court accepts the reason given by applicant for not filing the defence to the suit in time as a sufficient ground to set aside the interlocutory Judgment.

It is not uncommon for officers of Local Governments, who are lay persons, and not lawyers, to just file away court process without paying attention to the time deadlines set there in. Court is of the view, that in such circumstances, costs can be an appropriate remedy by being awarded against the party in default.

From the bar, counsel for the applicants indicated to court, that a likelihood of settlement of the case is very probable. All the same the applicant needs to be fully part and parcel of the proceedings in order to effectively put before court the instructions of the applicant. Court appreciates this consideration.

Accordingly this application is allowed. The interlocutory judgment in Civil Suit No. 6/07 dated 31.05.07 is hereby set aside. Leave is hereby granted to the applicant to file and serve to opposite party a defence to the suit within seven(7) days from the date hereof. The respondent is to make a reply to the same within 4 days, from the date of service, and thereafter the suit shall proceed to hearing, if not settled out of court.

Before taking leave of this application court desires to make the following observations:

First, Learned Counsel for applicants Ochaya Achellam Paul, deposed to an affidavit in support of the application. He deposed to contentious matters relating to the service of summons upon his clients. By so doing he turned himself into a witness for the applicant.

The Advocates professional conduct Regulations, SI 93//1973 and SI 79/1977, enjoin an advocate not to be personally involved in a client's case. An advocate is barred from conducting

proceedings on behalf of a client in any contentious matter in which that advocate is personally involved either as a party or possible witness.

Counsels are expected to strictly observe this aspect of professional conduct.

The second matter to be observed upon is the acceptance to receive court process by Local Governments.

Regulation 26 of the Local Government Councils Regulations, Third schedule to the Local Governments Act, Cap. 243, provides that service of court process shall be by delivering the same to, or by sending it by Registered post addressed to, the Town Clerk, Chief Administrative Officer, or Chief of the Sub-county of the council.

To receive court process is thus a statutory duty imposed upon the stated specified officers. Those officers must therefore put in place, at their offices, arrangements of readily receiving and dealing with such court process.

This court wishes to believe that what the respondents's process server, Ocaya Anthony Kibwota, deponed to in paragraph 7 of his affidavit of service, dated 18.05.2007, that the concerned office of the applicant had been advised not to accept court service is not true.

Local Governments are called upon to take note of this and ensure that court process is readily accepted and receipt of same acknowledged. If they don't, they run the risk, in future, of having court decisions decided against them without their being heard.

Remmy K. Kasule

Ag. Judge

31st August 2007