

UGANDA / JUDGMENT

E.B. Nyakaana & Sons Ltd v Kobusingye & 16 Ors (Miscellaneous Application 13 of 2017) [2017] UGSC 65 (29 May 2017)

[2017] UGSC 65

COURT

Supreme Court of Uganda

BEFORE

Kisaakye, JSC

CASE / FILE NUMBER

Miscellaneous Application 13 of 2017

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THE REPUBLIC OF UGANDA IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: KISA AKYE, JSC]

MISC. APPLICATION NO. 13 OF 2017

BETWEEN

E. B. NYAKAANA & SONS LTD. :..... 10

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 \$12^{\mathrm{th}}\$ to \$16^{\mathrm{th}}\$ 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 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:

"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

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- persons that are directly affected by the application or the appeal S 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 Court has on different occasions had to deal with situations similar 15 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. Horizone Coaches Ltd**, Civil Application No. 21 of 2008, this Court struck out a notice of appeal lodged by the respondent due to the respondent's failure to 20 effect service of the same on the party directly affected by the appeal.

"In the instant case, there is no evidence that the

This Court observed as follows:

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 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 seeking to have the notice of appeal struck out."

In the circumstances, in exercise of the powers of this Court under S Rule 2(2) of the Judicature (Supreme Court) Rules I hereby grant the prayer of the 12^{th} to the 16^{th} respondents and the 17^{th} 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 applicant.

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I direct that the application should proceed between the applicant and the 1^{st} to 11^{th} 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 Affidavit of Service dated 23rd May 2017 deponed by Yesse Mugenyi 15 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 application. 20

Dated at Kampala this. 29th day of ... J. D. Jay. \$\ldots\$ 2017\$

JUSTICE DR. ESTHER KISAANYE,

JUSTICE OF THE SUPREME COURT.

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Prepared on 14 October 2026 · Esheria