

**Emirates Safaris v The Development Analyst
(Miscellaneous Application 458 of 2022)
[2022] UGCommC 178 (19 November 2022)**
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25 Bank Ltd M. A. 333/2070 to buttress this argument.

Counsel for the Respondent submitted to the effect that having been served with the application a day to its hearing on Bl9l22; the court allowed the Respondent to file an affidavit in reply but did not give a time restriction within which to do so and directed that the said affidavit is filed before the next hearing date. The said affidavit was filed

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- 5 before the hearing date (i.e. Tllll 2022) after the Respondent who was not available until 4 days before the said hearing date was able to depone the same since he had been out of Kampala, Counsel for the Respondent also submitted that order 12 rule 3 of the CPR was not applicable because it refers to where there has been ADR which was not the case.
- Counsel for the Applicant reiterated his earlier submissions and added that the counsel for the Respondent did not apply for leave to file the affidavit in reply out of time as required by law and the same should be struck out. 10

In the case of Dn Lam-Laooro James v Muni Universitv MC OOOT/2076, Hon. Justice Stephen Mubiru departed from the decision by Justice C. Madrama in the Stop and see case (supra) and held thus:

"... Although I agree with the argument that the rules of procedure are meant to give parties timelines within which to file and complete their pleadings and that legal practitioners ought to be discouraged from filing affidavits in reply at pleasure, I respectfully defer from the conclusion reached in that decision. Unlike a written statement of defence which serves only one purpose of disclosing the case a defendant proposes to put forward or serving as a means of disclosing the facts which support particular issues raised by each party, an affidavit can be used in a number of important ways, most often as containing evidence to support or oppose an application. The affidavit becomes evidence in the case. This is illustrated by Order 52 rules 3 and 7 of The Civil Procedure Rules which indicate that the filing an affidavit alongside a motion or chamber summons is optional, only when evidence is required in support of the application. Whereas a written statement of defence presents allegations of facts the defendant will rely on, an affidavit in reply presents evidence on oath. Affidavits are a way of giving evidence to the court other than by giving oral evidence. They are intended to allow a case to run more quickly and efficiently as all parties know what evidence is before the Court. Consequently, time constraints applied to defences may be misplaced when applied to affidavits..." 20 25 30

s The Honorable Judge continued to state that;

"... That the Rules Committee did not generally specify time limits for the filing of affidavits in reply in my view is indicative of the flexibility with which it intended courts to deal with them. The only rule that can safely be implied by this silence is that all affidavits in reply, and other pertinent documents attached as annexures, should be filed before the hearing of the motion or summons in chambers. An affidavit in reply, being evidence rather than a pleading in stricto

sers4 should be filed and served on the adverse party, within a reasonable time before the date fixed for hearing, time sufficient to allow that adverse party a fair opportunity to respond, For that reason, an affidavit in reply filed and served in circumstances which necessitate an adjournment to enable the adverse party a fair opportunity to respond, should not be disregarded or struck off but rather the guilty party ought to be penalized in costs for the consequential adjournment..."

This court has no reason to disagree with the reasoning of Justice Mubiru in the above case and I fully associate myself with it.

20 25 In the present matter counsel for the Respondent explained that his client was out of Kampala until 4 days before the hearing date and that is when he was able to file an affidavit in reply still before the hearing date of 711L12022. Counsel for the Applicant did not show how his client would be prejudiced if the affidavit in reply was considered in determining the application. Instead counsel for the Respondent submitted that since the matter raises issues of fraud, it was important that the affidavit in reply is allowed

in order to explain the same and give the directors an opportunity to be heard.

In the premises and grounded on the case of Dr. Lam-Lagoro James (supra); this court in the absence of any prejudice shown by the Applicants if the affidavit in reply is allowed; will allow the affidavit in reply of the Respondent and proceed to hear the matter on its merits without regard to technicalities raised by the Applicant.

In the interest of justice and in light of Article 126(2) (e) of the Constitution of Uganda \$ \mathsf{S}\\$ 1995, this court will allow the present application to be heard within the affidavit in reply filed by the Respondent. Should the Applicant require time to file an affidavit in rejoinder; it is free to do so before the next hearing date. I so order.

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HON. LADY JUSTICE ANNA . B. MUGENYI DATED: \$1411122\$

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