

**Millennium Tiles (U) Limited v Kampala Tile
Market Limited (Miscellaneous Application 472
of 2024) [2025] UGCommC 57 (14 April 2025)**
[2025] UGCommC 57

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This application was brought under section 33 of the Judicature Act Cap 16, Section 98 of the Civil Procedure Act Cap 282, Order 5 Rules 1,2 & 32 and Order 9 Rule 3(1) & (2) of the Civil Procedure Rules S. I No. 71-1. The Applicant sought for orders that:

- 20 1. The summons to file a defense issued by the court on 12th February 2024 in Civil Suit No. 602 of 2023 be set aside;
- 2. Civil Suit No. 602 of 2023 be dismissed for failure to serve summons and a plaint to file a defense within the time allowed; and
- 3. Costs be provided for.
- 25 The grounds of the application were supported by an affidavit sworn by Mr. Nishit Bhai, the Applicant's Head of Sales. He briefly stated that:
 - (a) This court issued the first summons on 5th July 2023 and fresh summons on 18th September 2023, however, the Respondent failed to
 - 5 serve the Applicant both summons within twenty-one days from the date of issue;
 - (b) The Respondent served the Applicant on 4th March 2024 with a copy of a plaint and summons to file a defence issued on 12th February 2024;
 - (c) The Respondent did not file any application for an extension of time to
 - 10 effect service of the summons issued on 5th June 2023; therefore, the suit stood dismissed without notice on 22nd July 2023.

In reply, the Respondent stated that when the suit was filed on 10th March 2023, the Registrar delayed admitting the file on ECCMIS, which was admitted on 5th July 2023. The file was also allocated to various Registrars, and on several follow-ups, it was established that it was reallocated to H/W Mastula Mulondo. The

Respondent raised these concerns before the Registrar and orally applied for summons, which were issued on 12th February 2024 and thus effected service upon the Applicant on 4th March 2024.

The Respondent stated that they became aware of the summons issued on 5th 20 July 2023 and 18th September 2023 through this application. Upon checking the ECCMIS system, the Respondent established that H/W John Paul Edoku signed the summons but uploaded them on 20th July 2023. Regardless of these delays, the summons issued on 12th February 2024 was served within the prescribed time by law. This court issued fresh summons and was served. Thus, the suit 25 did not stand dismissed on 22nd July 2023. Therefore, there is no justification to

Appearance and representation

set aside the summons issued on 12th February 2024.

M/s J. B Byamugisha Advocates represented the Applicant, while M/s Ojambo & Ojambo Advocates represented the Respondent. Both parties submitted 30 written submissions.

5 Issues for determination

- 1. Whether the application should be granted.
- 2. What remedies are available to the parties?

Determination

Before delving into the application, the Respondent raised a preliminary point of law that the Applicant applied the wrong procedure to challenge the summons the Learned Assistant Registrar issued on 12th February 2024. Considering the said summons were issued through an order of the Learned Assistant Registrar, the proper procedure to set them aside would have been an appeal against the decision of the Learned Registrar, pursuant to Section 79(1)(b) of the Civil Procedure Act Cap 282 and Order 50 Rule 8 of the Civil Procedure Rules.

In reply, the Applicant submitted that the Respondent's objection was misconceived because pursuant to Order 50 Rule 6 of the Civil Procedure Rules, the issuance of summons to file a defence was not prescribed under the law as one of the registrar's powers. It was submitted for the Applicant that the court issued fresh summons on 12th February 2024 without jurisdiction.

Under Order 50 Rules 1, 3, & 6 of the Civil Procedure Rules S. 71-1, the powers of Registrars are explicitly explained as follows:

1. General powers.

Wherever in the Act or in the rules under the Act it is provided that any act²⁵ or thing may be done by such officer as the court may appoint, that act or thing may be done by the registrar.

3. Formal and interlocutory matters.

All formal steps and preliminary to the trial, and all interlocutory applications, may be made and taken before the registrar.

30 *6. Registrar deemed a civil court.*

Page 3 of 6

5 *For the purposes of rules 1, 2, 3 and 4 of this Order a registrar shall be deemed to be a civil court.*

From the above provisions of the law, it is very clear that issuing summons is a power given to the registrar by law. I agree with the Respondent that the Applicant should have appealed the Learned Assistant Registrar's decision to issue a fresh summons in accordance with Order 50 Rule 8 of the Civil Procedure Rules. However, in the case of **Tarlok Singh Saggu versus Road Masters Cycles (U) Limited Civil Appeal No. 46 of 2000**, it was established that where an application omits to cite any law or cites the wrong law, but jurisdiction to grant the order sought exists, then the irregularity or omission can be ignored and the correct law installed. This

court has jurisdiction to grant the orders as sought in the Notice of Motion, and this error or omission is curable under the spirit of **Article 126(2)(e) of the Constitution of the Republic of Uganda as amended**. Therefore, the court shall determine the application on its merits, and the Respondent's preliminary objection is overruled.

20 The Applicant submitted that there was no application or order extending the summons issued on 20th July and 18th September 2023 to 12th February 2024. Therefore, the Applicant contended that those fresh summons were irregular and of no effect. The Applicant submitted that the summons should be set aside because the suit stood dismissed when the Applicant failed to serve the 25 initial summons to file a defence within the period prescribed by law.

To determine this application, I had to log onto ECCMIS to establish which documents were lodged and/or admitted and by whom and when. The Respondent lodged the Complaint dated 10th March 2023 on ECCMIS on the 10th March 2023. The same Complaint, was admitted by H/W Edoku on the 6th July

30 2023. I hasten to add that in drafting this Complaint, the counsel for the Plaintiff did not make a provision for the Registrar to endorse it.

This court, on the 23rd March 2023 issued summons. These summons were uploaded on ECCMIS by the Respondent on the 6th April 2023. The summons

- 5 bore a physical stamp of the Court Registry with the following remarks from the registry: "ECCMIS system is down". In light of the fact that the Summons had been endorsed by H/W Hatanga and the Complaint did not make provision for the Registrar to endorse the same, the Plaintiff could have served the same Summons and Complaint on the Defendants. The last date of effecting service would
- 10 have been 17th April 2023. But this was not done.

On the 6th of July 2023, H/W Edoku admitted the Complaint. This Complaint, as observed above, was no different from the one uploaded on the system by the Plaintiff on the 10th March 2023. The learned Registrar signed the summons on the 5th of July, 2023, and the same was uploaded on ECCMIS on the 20th of

15 July, 2023, thereby bringing them to the attention of the Plaintiff. This implies that the Defendants should have been served with the summons and complaint by or on the 10th of August 2023 and an affidavit of service filed on the court record. The Plaintiff did not do this.

I am not satisfied by the explanation rendered by the Respondent that he 20 moved the registrar orally to extend the summons or was unaware of the summons. There is no record on the court file to that effect. These are submissions from the bar. **Order 5 Rule 3 (a), (b), and (c) of the Civil Procedure Rules as amended** is very clear on the issue and service of summons. Without an affidavit of service and an application to extend the

25 summons on the court record, the main suit stood dismissed without notice on the 10th of August, 2023. The summons issued by the Registrar, H/W Mastula Mulondo, were issued in error.

Lastly, the Respondent submitted that they kept following up on the case. Therefore, the Respondent cannot be seen to plead that they were not aware of

30 the summons issued by H/W Edoku. The Respondent squandered two opportunities to serve the summons and plead on the Defendants.

In the circumstances, this application is hereby allowed with costs to the Applicant.

- 5 Issue 2: What remedies are available to the Parties
- a) HCCS No. 0602 of 2023 is hereby dismissed with no order as to costs.
- b) Miscellaneous Application No. 0723 of 2023 is overtaken by events.

Dated and signed at Arua this 11th day of April 2025.

10 Harriet Grace Magala

Judge

Delivered online via ECCMIS this 14th day of April 2025.

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