

**Mukasa v Kidzi (Miscellaneous
Application 2558 of 2024) [2024]
UGHCLD 248 (29 October 2024)**
[2024] UGHCLD 248

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- ii) That the respondent sold the above-described land to the applicant on the 14th November, 2005 while in the Amsterdam, in the Netherlands.
 - iii) That later I relocated back to Uganda and started on the process of transferring the land into my names upon which the physical attendance of the respondent was required by the registrar of titles at Wakiso land office.
 - iv) That I tried to get in contact with the respondent but failed to trace him at his address here in Uganda at Makerere-Kavule, Triangle Zone for purpose of service of Misc. Cause No.0041 of 2024
 - v) That the respondent's last known address is in the Netherlands Danauweg 4,1043 Amsterdam.
- vi) That the other address for the respondent's lawyers in the Netherlands is P/A Hemonylaan 27,1074 BJ Amsterdam.

Representation;

3. The applicant was represented by Counsel Kanabi Emmanuel holding brief for Counsel Mutyaba Najib of M/S Luzige,Lubega,Kavuma & Co. Advocates. Counsel for the applicant proceeded by way of written submissions which I have considered in the determination of this application.

Issues of determination;

- i) Whether the applicant should be granted leave to serve Misc. Cause No. 0041 of 2024 out of Jurisdiction?

Resolution and determination of the issue;

4. The general rule for service of court process is that service should be personal as per the civil procedure rules. However, the same rules provide for circumstances when service of court process may be effected in any manner provided in the rules other than service being personal.
- 5. The civil procedure rules under order 5 rule 22 provides for certain cases when service may be allowed out of jurisdiction and rule 22(c) states that in situations where any relief is sought against any person domiciled or ordinarily resident within the jurisdiction.
- 6. Further order 5 rule 24 is to the effect that "every application for leave to serve the summons or notice on a defendant out of the jurisdiction shall be supported by affidavit or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country the defendant is or probably may be found." the same averment was made in the decision of **J. Kabagambe and ors vs Kenafric Ltd and Anor, Misc. Application No.157 of 1993.**

- 7. In the instant application, the applicant avers in his affidavit in support of the application that he tried serving the respondent at his known address in Uganda at Makerere, Kavule but failed in vain and the other known address of the respondent where the applicant can duly effect service of the main application is in Amsterdam and the respondent's lawyers are at P/A Hemonylaan 27,1074 BJ Amsterdam-Netherlands.
- 8. It appears that the applicant is aware of the respondent's address out of jurisdiction and he intends to effect service onto the respondent since his presence is necessary in the main application for vesting orders.
- 9. I am of the view that the applicant has made a case for service out of jurisdiction onto the respondent and since the applicant is aware of the respondent's address in the Netherlands and the applicant transacted with the respondent at one point.
- 10. This a case where service of court documents through modern means of electronic communications such as whatsapp, electronic email, telegram applies.
- 11. The law on service where it cannot be effected through the ordinary modes of service permits electronic service of summons which service is deemed effective*. (See; Musumba Isaac Isanga v. Quid Financials Ltd, High Court Misc. Application No. 139 of 2020, per Lady Justice Jeanne Rwakakooko where service of court documents through whatsapp was accepted)*
- 12. Despite electronic service of court documents being allowed under the law, the electronic format used must have the intended result of notifying the opposite party of the existence of court

proceedings. Consequently, where there is no proof of delivery of court documents to the opposite party, electronic service of court documents cannot be said to be effective.

13. In situations of service through WhatsApp, the icon indicators on the app should clearly indicate that not only was the message and attachments delivered to the respondent's mobile number but that both were opened or that the electronic gadget displays double blue ticks. *(See; SBI Cards & Payments Services Pvt Ltd v.*

Rohidas Jadhav, Execution Application No. 1196 of 2015)

- 14. In the instant case therefore, the applicant is to serve the respondent through electronic means of either WhatsApp or via his email address and he has to adduce proof that indeed the service was effected onto the respondent.
- 15. Therefore, the instant application succeeds with no orders as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

29th/10/2024

Delivered electronically via ECCMIS on the 29th day of October 2024.

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