

UGANDA / JUDGMENT

Mutooro and Another v Monday and 3 Others (Miscellaneous Application 38 of 2024) [2024] UGHC 1033 (30 October 2024)

[2024] UGHC 1033

COURT
High Court of Uganda

BEFORE
Wagona, J

CASE / FILE NUMBER
Miscellaneous Application 38 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

3 MISC. APPLICATION NO. 38 OF 2024

(ARISING FROM HCT – 01 – CV – LD – NO. 08 OF 2024)

1. MUTOORO YOSAM MANI

6 2. BACWA THEOPISTA MUTOORO ::::::::::::::::::::::::::: APPLICANTS

VERSUS

- 1. MONDAY PAUL
- 9 2. GARELNABI SARAH AKIIKI
- 3. KABAROLE DISTRICT LAND BOARD
- 4. REGISTRAR OF TITLES ::::::::::::::::::::::::::: RESPONDENTS

12 BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

This ruling determines the motion by the applicants brought under section 98 of the 15 Civil Procedure Act, and Order 52 rules 1 and 2 of the Civil Procedure Rules for orders that;

(a)The applicants be granted unconditional leave to file a reply to the Counter 18 *claim out of time in HCT – 01 – CV – LD – NO. 08 of 2024*

(b)The costs of taking out the application be provided to the applicants.

The motion is supported by the affidavit of MotooroYosam Mani, the 1st applicant 21 who deposed as follows;

- (a) That at the time of filing a written statement of defense, the 1st defendant included a counter claim. That the defense was served upon his lawyers and 3 the clerk in the firm did not bring it to the attention of counsel in personal conduct.
- (b)That counsel is personal conduct only got knowledge of the counter claim 6 after a letter was written by the counter claimant seeking a default judgment in respect of the counter claim.
- (c) That the subject matter in dispute being land, it is fair that it is heard on merits 9 since entering a default judgment in respect of the counter claim has an effect on the main suit.
- (d)That it is fair and just that the application is granted to meet the ends of justice.
- The application was opposed by 1st 12 Respondent through an affidavit filed in Court on 5th July 2024 where he deposed that he was wrongly sued by the applicants in the main suit and the application at hand was untruthful and insufficient in law.

15 Representation and Hearing:

Mr. Businge A Victor appeared for the applicants while Mr. Atuheire Patrick appeared for the 1st Respondent. The other Respondents did not file a response since 18 the application did not touch them substantively. I have taken into account the

- **Issues:**
- 21 Whether there is sufficient cause to warrant grant of leave to the applicants to file a reply to the 1st defendant's counter claim out of time?

pleadings of the parties and the written submissions of Mr. Businge.

Consideration of the application:

Order 8 rule 11 of the Civil Procedure Rules provides that;

(1) Any person named in a defence as a party to a counterclaim thereby made 3 *may, unless some other or further order is made by the court, deliver a reply within fifteen days after service upon him or her of the counterclaim.*

(2) Where a reply to the counterclaim is filed under subrule (1) of this rule, 6 *the plaintiff shall serve it upon the defendant within fifteen days after its filing.*

(3) No other reply or rejoinder shall, subsequent to subrule (1) of this rule, be filed without leave of court, the application for which must be filed within 9 *fifteen days from the date of the last service.*

Thus a defendant who is served with a counter claim is required to file a reply within 15 days from the date of service unless otherwise directed by Court. A reply to the 12 counter claim should be served within 15 days after filing. Therefore, a party who seeks to file a reply to the counter claim outside the 15 days can only do so with leave of court. The applicant must demonstrate sufficient cause to account for the 15 delay as a basis for grant of leave. It thus follows that the power to grant leave or not is discretionary which must be exercised judiciously.

The supreme court in Nicholas Roussos vs Gulamhussein Habib

18 **Virann&Another** (SCCA No.9/93)(unreported) which position was cited with approval by Court of Appeal in **Twiga Chemical industries *Ltd v Viola Bamusedde t/a Tripple B Enterprise, C. A. C. A No. 9 of 2002*** stated thus: *"As for the principles*

21 *upon which the discretion under r.24 may be exercised, the courts have attempted to lay down some of the grounds or circumstances which may amount to sufficient cause. A mistake by an advocate though negligent may be accepted as a sufficient*

24 *cause. See **Shabin Din V Ram ParkashAnand (1955) EACA 48**. Ignorance of*

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*procedure by an unrepresented defendant may amount to sufficient cause **Zirabamuzale v Correct [1962] EA 694**. Illness by a party may also constitute*

- 3 *sufficient cause:**P. B. Patel v The Star Mineral Water and Ice Factory [1961] EA 454**. But failure to instruct an advocate is not sufficient cause. See**Mitha v Ladak [1960] EA 1054**. It was also held in this case that it is not open for the court to*
- 6 *consider the merits of the case when considering an application to set aside an ex parte judgment under this rule".*

The deductible position from the above authority is that what amounts to sufficient 9 cause varies from case to case depending on the facts or the reasons presented by a party for not taking an act within time. It has been settled by the Supreme Court in a number of authorities that mistake of advocate though negligent can be admitted as 12 sufficient cause for failure to act within the time provided for under the law.

In the present suit, Mr. Mutooro deponed that the reply to the written statement of defence and counter claim was served upon the clerk of his lawyer who did not bring

- it to the attention of his advocate. That by the time the advocate noticed, the 1st 15 defendant/Respondent had filed a letter seeking a default judgment in respect of the counter claim to be allowed to present the same exparte. This was a mistake on part
- 18 of the advocate. It is the advocate who is aware of the timelines set under the law and the consequences of none compliance with the law. Therefore, the mistake by the applicants' lawyer to notice that there was a counter claim and to file a reply
- 21 within the 15 days provided for under the law is a careless mistake of the advocate which cannot be visited on the applicants.

Further, I have considered the counter claim and the main suit filed by the applicants. 24 Both the main suit and counter claim relate to ownership of the land in dispute.

Therefore, I find it prudent to allow this application to allow the applicants file a reply to the counter claim so that both claims are investigated in one suit at ago. I

3 find it fair to allow the applicant file a reply to the counter claim so that court considers both claims simultaneously.

I therefore allow this application with the following orders;

- *(a)The applicants shall file a reply to the 1st* 6 *defendant's written statement of defense and counter claim within 10 days from the date hereof. (b)Service of the counter claim shall be within 5 days after filing.*
- 9 *(c) No order is made as to costs.*

I so order.

- 12 Vincent Wagona **High Court Judge FORTPORTAL**
- 15 **DATE: 30/10/2024**

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