

UGANDA / JUDGMENT

Nakilyowa v Attorney General
(Misc Application No. 320 of 2013)
[2014] UGHCCD 42 (20 March 2014)
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COURT

HC: Civil Division (Uganda)

CASE / FILE NUMBER

Misc Application No. 320 of 2013

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****CIVIL DIVISION****MISC APPLICATION NO. 320 OF 2013****NAKIRYOWA CHRISTINE*****alias* NAKILYOWA AISAH ::::::::::::::::::::::::::::::::::: APPLICANT****VERSUS****ATTORNEY GENERAL ::::::::::::::::::::::::::::::::::: RESPONDENT****BEFORE: HON. JUSTICE STEPHEN MUSOTA****RULING**

The applicant, Nakilyowa Christine *alias* Nakilyowa Isah filed a suit against the Attorney General claiming for her pension and gratuity since her discharge in the year 1997, a declaration that the defendant has intentionally and deliberately refused to pay the plaintiff's pension and gratuity which amounts to a breach of the plaintiff's rights as an employee and laws on pension. The plaintiff sought for an order that she be paid her entitlements at the current rate of payment as a Major from 1997 until payment in full together with interest of 60% per month till payment in full. The plaintiff also prayed for special, general, exemplary, punitive and aggravated damages plus costs of the suit.

Summons to file a defence were taken out on 24th April 2013. The record indicates that an amended plaint was filed on 29.04.2013. There is no indication that fresh summons to file a defence were taken out in respect of the amended plaint. There is however an affidavit of service in respect of the summons to file a defence dated 24th April 2013 on the Ministry of defence and the Attorney General respectively. The amended plaint was also served on the Attorney General. The defendants did not file any Written Statement of Defence hence this application.

The application under consideration is by Chamber Summons brought under Rule 3 (a & b) & Rule 6 of the Government Proceedings (Civil Procedure) Rules and under O. 9 rr 5,6,8 & 10 of the Civil Procedure Rules and S. 98 of the Civil Procedure Act for orders that:

1. A default judgment be entered against the defendant in respect of Civil Suit 112 of 2013 and the same be fixed for formal proof.

The application is supported by his affidavit of Nakilyowa Christine *alias* Nakilyowa Aisah deponing that despite service, the defendant deliberately refused to file a defence. That if this application is not granted the applicant will suffer irreparable damages. In his brief submission Mr. Mpagi for the applicant reiterated the contents of the application and prayed that it be granted.

Ms Mutesi for the respondent opposed the application on grounds that an application to extend time to file a defence has been filed. That a draft defence is annexed to the application which reveals a good defence. That if this application is allowed the defendant will be condemned unheard yet it has sufficient reason for not filing a defence in time. That in the interest of justice, parties should be heard on merit since the applicant will not suffer prejudice.

Ms Mutesi further submitted that the defence does not deny in principle that the applicant is entitled to pension and gratuity but the contention is on quantum and the allegation that the UPDF refused to pay.

I have considered this application as a whole and the submissions by the respective counsel. I have noted that the respondent has shown interest in being heard in defence of the applicant's claim. An application to file a defence out of time has been filed. The said application is yet to be heard. It would be prejudicial to the defence if this application is allowed yet an application to file a defence is pending hearing by court. A litigant who has shown interest to be heard should not unreasonably be locked out or be condemned unheard for the ends of justice to be met.

For the above reasons I will decline to grant this application. It will be dismissed with no orders as to costs.

Stephen Musota

J U D G E

20.03.2014

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