

UGANDA / JUDGMENT

Odongo v Oryema (Miscellaneous Application 124 of 2023) [2024]

UGHC 315 (13 May 2024)

[2024] UGHC 315

COURT

High Court of Uganda

BEFORE

Phillip Odoki, J

CASE / FILE NUMBER

Miscellaneous Application 124 of 2023

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT GULU****(MISC. APPLICATION NO. 124 OF 2023****(Arising from Civil Suit No. 039 of 2010)****BEATRICE ACHOLA ODONGO ===== APPLICANT****VERSUS****NANCY WISON ORYEMA=====RESPONDENT****BEFORE HON. MR. JUSTICE PHILLIP ODOKI RULING****Introduction:**

- [1] The Applicant filed this application, by Notice of Motion, pursuant to Articles 128 (2) and 23(1)(a) & (b) of the Constitution of the Republic of Uganda; Section 98 of the Civil Procedure Act; Section 33 of the Judicature Act; and Order 52 rules 1, 2, 3 of the Civil Procedure Rules, seeking for, the arrest and committal of the Respondent for disobedience of the orders of this court; an order that the Respondent pays a fine of Ugx 500,000,000/= for contempt Court order; an order that the Respondent pays the Applicant of Ugx 2, 871,000,000/= being the direct special losses suffered by the Applicant as a result of the Respondent's contemptuous actions; and the costs of this application be provided for.

Case procedural history:

- [2] The Applicant filed this application on the 27th June 2023. The application was fixed for hearing on the 7th July 2023. On the 7th July 2023, when the application came up for hearing, counsel for the Applicant, Mr. Ambrose Tebyasa sought the leave of the court to amend the

application to properly indicate the complaint against the Respondent. The court directed the Applicant to file and serve the Respondent with the amended application not later than the 14th July 2023 to enable the Respondent to file an affidavit in reply on the 21st July 2023. An affidavit in rejoinder was to be filed not later than the 28th July 2023. The hearing of the application was fixed for the 16th August 2023.

- [3] On the 16th August 2023 when the matter came up for hearing, the amended application had not been filed. The Court gave the Applicant another directive to file the amended application not later than the 15th September 2023 to enable the Respondent to file an affidavit in reply not later than the 29th September 2023. A rejoinder if any was to be filed on the 6th October 2023. The hearing of the application was fixed for the 26th October 2023.
- [4] The Applicant failed to file the amended application on the 15th September 2023 as directed by the court. The Applicant instead filed the amended application on the 19th September 2023 without the leave of the court. On the 20th September 2023 the Deputy Registrar of this court duly signed the Notice of Motion, fixing the application for hearing on the 26th October 2023. Since then, the Applicant has not filed any affidavit of service of the application on the Respondent.

Determination of the court:

- [5] Order 17 rule 4 of the civil Procedure rules gives this court the discretion where any party to a suit to whom time has been granted fails to produce his or her evidence, or to cause the attendance of his or her witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, to proceed to decide the suit immediately. In the instant case, the Applicant having failed to file the amended application in time to further the progress of this suit, this court has only one option but to dismiss this application.
- [6] In addition, Order 5 rule 1(1) of the Civil Procedure Rules provides that when a suit has been duly instituted summons may be issued to the defendant, ordering him or her to file a defense within a time to be specified in the summons or ordering him or her to appear and answer the claim on a day to be specified in the summons. Under rule 1(2) of the same Order, service of summons has to be effected within twenty-one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after the expiration of the twenty-one days, showing sufficient reasons for the extension. Under rule 1 (3) of the same Order, where summons have been issued, and service has not been effected within twenty-one days from the date of issue; and there is no application for

an extension of time under sub rule (2) of the rule; or the application for extension of time has been dismissed, the suit has to be dismissed without notice.

[7] In *M. M Sheikh Dawood versus Kenshwala and Sons HCCS No. 14 of 2009*, Madrama J, as he then was, held that;

"The motion must be served on the respondent before the date stipulated in the motion for hearing at the time of its issuance by the court. Failure to serve a summons within 21 days under order 5 rule 1 of the CPR is fatal and if time is not extended, it shall be dismissed. The general rules on service of summons under order 5 of the Civil Procedure Rules must apply."

[8] In **Ejab Family Investment and Trading Company Limited versus Centenary Rural Development Bank Limited, HCCS No. 0001 of 2004,* Mubiru J held that non-compliance of Order 5 of *The Civil Procedure Rules* is not a mere procedural technicality. He stated that;*

"The timelines in the rules are intended to make the process of judicial adjudication and determination swift, fair, just, certain and even-handed. Indeed, public policy demands that cases be heard and determined expeditiously since delay defeats equity, *and denies the parties legitimate expectations (see Fitzpatrick v. Batger & Co. Ltd [1967] 2 All ER 657)."*

"It is for those reasons that non-compliance with the requirements of renewal of summons to file a defence is considered a fundamental defect rather than a mere technicality and it cannot be cured by inherent powers since issuance and service of summons to file a defence goes to the jurisdiction of the court"

[9] The applicant having failed to file the amended application as directed by the court and having failed to effect service of the application on the Respondent within the time stipulated in the rules, this application is dismissed under Order 17 rule 4 and Order 5 rule 1(3) of the Civil Procedure Rules with costs to the Respondent.

I so order.

Dated and delivered by email this 13th May 2024

Phillip Odoki JUDGE.

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