

UGANDA / JUDGMENT

# Opio and Another v Turkish Investments Limited (Miscellaneous Application No. 1110 of 2021) [2022] UGCommC 66 (21 June 2022)

[2022] UGCommC 66

## COURT

Commercial Court of Uganda

## BEFORE

Wabwire, J

## CASE / FILE NUMBER

Miscellaneous Application No. 1110 of 2021

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**THE REPUBLIC OF UGANDA****IN THE HIGH COURT OF UGANDA AT KAMPALA**

(COMMERCIAL COURT DIVISION)

**MISCELLANEOUS APPLICATION NUMBER 1110 OF 2021**

(Arising from CS No. 424 of 2021)

1. OPIO EMMANUEL

2. O &amp; E CONCRETE ENGINEERING WORKS LTD..... APPLICANTS

VS.

TURKISH INVESTMENTS LIMITED.....

BEFORE HON. MR. JUSTICE RICHARD WEJULI WABWIRE

**RULING****A. INTRODUCTION**

1. The Applicant brought this application by Notice of Motion under Section 98 of the CPA Cap. 71, Order 36 rule 3, Order 51 rule 6 and

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Order 52 rule 1, 2 and 3 of the CPR, SI 71-1 for orders that the Applicants be granted leave to file a written statement of defence in CS No. 424/2021 out of time and costs of the application be provided for. The application was supported by the affidavit of Opio Emmanuel the 1<sup>st</sup> Applicant and the respondent did not file an affidavit in reply.

## B. REPRESENTATION

2. The Applicants were represented by Counsel Masaba Raphael Gideon while the Respondent was jointly represented by Counsel Lule Kennedy Ben and Counsel Kalali Stephen. Both parties addressed Court in oral submissions.

## C. DETERMINATION BY COURT

- 3. Having taken into consideration the Applicants' applications and the parties oral submissions, the Court finds as follows;
- 4. In the case of **Bankone Limited vs Simbamanyo Estates Limited**. MA No. 645/2020, Justice Stephen Mubiru held that unless the Court comes to the conclusion that there was intentional delay in not filing the defence timeously, or there was gross negligence on the part of the defendant for not approaching the Court after coming to know of the proceedings against it, the delay should normally be condoned.

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- 5. In this particular case, the Applicants stated that the delay in filing the defence timeously was unintentional but rather was as a result of the covid19 lockdown that ran from 18<sup>th</sup> June 2021 to August 2021. The respondent opposed this by stating that according to the affidavit of service deposed by Nicholas Mwesigye Mukasa on 28<sup>th</sup> June 2021, on 18<sup>th</sup> June 2021 the Applicants were served with summons to file a defense but did not take any respective steps to file their defences. In paragraphs 13 and 14 the Applicants state that upon being served by the respondent, they sent copies of the pleadings to their lawyers and instructed them to file a written statement of defence but the lawyers informed them that they could not move to Court to file it.
- 6. Indeed as rightly submitted by the respondent's Counsel according to the circular issued by the Chief Justice on 21<sup>st</sup> June 2021, Courts were directed to scale down operations to 10% physical presence and ensure that critical staff remain to attend to the Court business on a daily basis. According to the circular issued by the registrar of the Commercial division on the same day, the critical staff that were to remain included the Registry staff for purposes of facilitating filing of pleadings.
- 7. Much as the Chief justice's circular did not in any way stop litigants from filing pleadings, the presidential directives that were issued on 18<sup>th</sup> June 2021 curtailed movements of all persons for 42 days from the date of that directive. I am in agreement with the respondent's submissions that there is no evidence of any instructions to the alleged

previous lawyers which are referred to in paragraph 13 and 14 of the affidavit in support of the application. According to the ULS Executive Council covid-19 message dated 22<sup>nd</sup> June 2021, the president of the ULS stated that ULS was pursuing the Ministry of Transport and works to get accreditation and movement stickers for the legal profession for emergencies and were to communicate the progress in due course. Therefore, the presidential directive curtailed lawyers' movements too. Much as there were guidelines on filing pleadings, there was restriction in movement.

- 8. Furthermore, for a lockdown that ended in August 2021 and the Applicants filed this application on 6<sup>th</sup> September 2021 a few days after the lockdown had been lifted and overall close to three months from the date of being served with summons cannot be considered a delay in bringing this application. In the above case of Bank one vs

Simbamanyo (supra), 8 months was not considered a delay in bringing an application to set aside a judgment.

- 9. In the case of Utex Industries Ltd vs Attorney General, CA No. 52/1995, the Supreme Court held that for any delay to be excused, it must be explained satisfactorily.
- Based on the foregoing analysis, I find that the Applicants have \$10.\$ satisfactorily explained the reason for their delay in filing their defence. The Applicants had sufficient cause for not filing the defence in time.
- \$11.\$ The application is. accordingly allowed. The Applicants/Defendants are directed to file their defence within 15 days from the date hereof.
- 12. Costs shall abide the outcome of the main suit.

I so order.

Delivered at Kampala this 21<sup>st</sup> day of June 2022.

I Richard Wejuli Wabwire JUDGE

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