

UGANDA / JUDGMENT

Oting v B.O.G Adwari S.S.S (Civil Appeal 8 of 2017) [2023] UGHC 357 (21 February 2023) [2023] UGHC 357

COURT

High Court of Uganda

BEFORE

Ajiji, J

CASE / FILE NUMBER

Civil Appeal 8 of 2017

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA HOLDEN AT LIRA
CIVIL APPEAL NO.0008 OF 2017**

(ARISING FROM MISCELLANEOUS APPLICATION NO.47 OF 2017) (FURTHER ARISING FROM
CIVIL SUIT NO. 25 OF 2015) OTING JULIUS PETER:..... **VERSUS**

B. O. G ADWARI S. S. S :..... CIVIL PROCEDURE: Appeal arising out of the trial
magistrate's decision *Setting aside an expert judgment.*

HELD: Appeal dismissed, service of summons to file defence not effectively *Effected on the
respondent.*

BEFORE: HON. MR. JUSTICE ALEX MARCAY AJIJI**JUDGMENT**

- 1. This appeal arises from the decision of His Worship Alex Karocho the chief magistrate court Lira. It seeks for orders setting aside an expert judgment delivered on 26th of October, 2016.
- 2. The brief facts of the case are that the appellant sued the respondent under Civil Suit No. 25 of 2015 claiming for compensatory damages of Ug Shs. \$45,000,000/\$ = for unlawful arrest, malicious prosecution and false imprisonment, physical and mental torture and making the plaintiff/appellant to suffer colossal damages (Special and general in nature), injury, anguish, inconveniences at the hands of errant Police Officers and Prison Official, at the behest and instigation of the management and officials of the defendant herein as the complainants, exemplary damages, interest and the cost of the suit for which he holds the

defendants/respondents liable.

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- 3. The appellant filed Civil Suit No. 25 of 2015 on 22nd/04/2015 and court started hearing the matter on 1st/07/2015, the plaintiff/appellant was present but defendant/respondent was not present. The matter was then adjourned to 31st/11/2015 but still the respondent/defendant was absent. Counsel for the appellant indicated to court that summons to file defence had been served to the defendant/respondent as earlier as 4th/05/2015. Proof of service on the court record indicates service was effected on the respondent/ defendant on 6/05/2015. On 31st/11/2015, counsel for the appellant asked court to enter an interlocutory judgment against the respondent/appellant. The matter was then adjourned to 1st/03/2016 where court gave the respondent/ defendant another chance and ordered hearing notices to be issued for 24th/04/2016. The hearing notices were accordingly issued and served upon the Headmaster of the respondent who also doubles as secretary for the Board of Governors of Adwari Secondary School. The matter again came up for hearing on 08th $\frac{109}{2016}$, 14th $\frac{10}{2016}$ all in absence of the respondent. Court then delivered the judgment on 26/10/2016 in absence of the respondent.
- 4. Taxation hearing notices were then issued to the respondent and signed by court on 19th January, 2017. Proof of service of the notices to show-cause why execution should not issue was filed in court on 4th /04/2017 and deposed by Olia Benard.
- 5. The respondents thereafter filed their application seeking court to set aside the expert judgment in Civil Suit No. 025 of 2015 on 16th/05/2017.
- 6. The trial Magistrate considered the application of the respondent and on 30th /sup> May, 2017 made the following orders;
- The application succeeds in the spirit of ensuring the observance of a $\$i.$ fair inter parte trial, resultantly the exparte judgment and decree in the

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Civil Suit No. 25 of 2015 are set aside, execution is stayed and motor vehicle Reg. No. UAY 627E release from attachment.

- The applicant shall deposit shs. 33, 782,000/ $\$ = \$$ with court being security $\$ \ddot{i}$. for costs within seven days from today and a ruling was delivered on 26/10/2016 all in absence of the defendant/respondent.
- The respondent/plaintiff is given seven days from today to file and iii. serve mediation summary in court in Civil Suit No. 25/2015

- The applicant/defendant is given fifteen days from today to file a iv. written statement of defence together with defendants's mediation summary and the main suit be set down for mediation then.
- Costs amounting here from shall abide the outcome of the inter parte \$V\$. proceedings in Civil Suit No. 25 of 2015"
- 7. The appellant was dissatisfied with the trial magistrates decision above hence this appeal. The appeal is based on the following grounds;
- That the learned trial magistrate erred in law and fact by failing to properly \$\dot{1}\$. evaluate the evidence on court records and reached a wrong decision and judgment
- That the learned trial magistrate erred in law by misapplying the laws and ii. thereby reached a wrong decision and judgment. He prays that the appeal be allowed, trial courts orders be set aside with costs

8. REPRESENTATION

- 1. This court takes note that it is the first appellant court and therefore has the duty to evaluate the entire evidence on the court record.
- 9. It is a settled law that in setting aside expert judgment, courts must consider whether:
- The applicant had sufficient reason for absence or \$i.\$
- Whether the applicant has good defence. ii.

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10. Order 9 r. 27 of the Civil Procedure Rules is to the effect that; In any case in which a decree is passed ex parte against a defendant, he or she may apply to the court by which the decree was passed for an order to set it aside; and if he or she satisfies the court that the summons was not duly served, or that he or she was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him or her upon such terms as to costs, payment into court, or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit; except that where the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also.
- 11. From the submission of the respondents in their application to set aside an expert judgment, the respondent does not deny having received the summons to file defence through the head teacher but indicate to court that the head teacher is a lay person who did not understand the importance and the procedure of how to handle and treat summons. He submitted that at the time, the Board of Governors was undergoing a transitional process and the current one was not informed by the head teacher of any summons.

- 12. Considering the submissions as above laid, the failure by the head teacher to inform the Board of Directors clearly indicates that there was effective service. However, in the case of Geoffrey Gatete Vs. Kyobe [2007] 1 HCB 54\$ (SC)), it was stated that if it is shown that the service did not lead to the defendant becoming aware of the summons, the service is not effective.
- 13. The respondent further in her defence told court that there was theft of computers from its library and what she did was to report the matter at police and thereafter police took over the investigation of the theft of the computers. The respondent further informed court in her WSD that he has never given

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any wrong or false information and or malicious information to police, it was not the respondent who prosecuted the appellant and did not defame him in any way.

- 14. Section 98 of the Civil Procedure Act provides that nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.
- 15. Article 126(2)(e) of the Constitution of the Republic of Uganda is to the effect that justice shall be administered without undue regard to technicalities. 16. In the view of the above, I find that the trial magistrate properly applied the law and came to proper conclusion.
- 17. This appeal is dismissed.

Given under my hand and seal of court this \$\mathbb{R}\$ \$\mathbb{R}\$
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ALEX MACKAY AJIJI JUDGE

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Prepared on 12 October 2026 · Esheria