

UGANDA / JUDGMENT

Robert Opio and Anor v Edward Kabugo Sentongo (HCT-00-CC-MA 142 of 2008) [2008] UGCommC 44 (21 August 2008) [2008] UGCommC 44

COURT

Commercial Court of Uganda

CASE / FILE NUMBER

HCT-00-CC-MA 142 of 2008

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{\f1\fs28\super\insrsid2169715\charrsid2169715 rd}{\f1\fs28\insrsid2169715 Defendants in Civil
Suit No. 166 of 2002, seeking an extension of time within wh

ich to file an Amended Defence to an [\f1\fs28\insrsid13789104](#) Amended Plaintiff. The application [\f1\fs28\insrsid2169715](#) to [\f1\fs28\insrsid13789104](#) is brought by Notice of Motion under Order 51 rule 6, Order 52 rule

[\f1\fs28\insrsid12732096](#) 1 [\f1\fs28\insrsid6582553](#) [\f1\fs28\insrsid2169715](#) of the Civil Procedure Rules and Sections 96 and 98 of the Civil Procedure Act. [\f1\fs28\insrsid3093271](#)

[\par](#) [\f1\fs28\insrsid2169715](#)

[\par](#) The application is supported by two affidavits, on [\f1\fs28\insrsid13789104](#) e [\f1\fs28\insrsid2169715](#) deposed to [\f1\fs28\insrsid13789104](#) by [\f1\fs28\insrsid2169715](#) Sarah Basagwa Kulata, the Ag. Commissioner for Land Re [\f1\fs28\insrsid13789104](#)

gistration [\f1\fs28\insrsid2169715](#) in the Ministry of Land [\f1\fs28\insrsid13789104](#) s [\f1\fs28\insrsid2169715](#) , Housing [\f1\fs28\insrsid10449454](#) and Urban [\f1\fs28\insrsid2169715](#) Development. The other is deposed [\f1\fs28\insrsid13789104](#) to [\f1\fs28\insrsid2169715](#)

[\f1\fs28\insrsid2169715](#) by Robert Opio, the [\f1\fs28\super\insrsid2169715\charrsid2169715](#) st [\f1\fs28\insrsid2169715](#) Applicant and a Senior Registrar of Titles for Kampala City Council.

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[\par](#) Order 51 rule 6 of the Civil Procedure Rules grants court the discretion to extend time within which to take [\f1\fs28\insrsid13789104](#) k [\f1\fs28\insrsid2169715](#) e any action or proceedings. [\f1\fs28\insrsid13789104](#) It states:- [\f1\fs28\insrsid2169715](#)

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or taking any proceedings under these rules or by order of the Court, the Court shall have power to enlarge the time upon such terms, if any, as the justice of the case may [\f1\fs28\insrsid13789104](#) require, and the enlargement may

[\f1\fs28\insrsid2169715](#) be ordered although the application [\f1\fs28\insrsid13569891](#) for it is not made until after the expiration of the time appointed or allowed; except that the costs of any application [\f1\fs28\insrsid13789104](#)

ication to extend the time and o [\f1\fs28\insrsid13569891](#) f any order made on the application shall be borne by the parties making the application, unless the court shall otherwise order.'94 [\f1\fs28\insrsid2169715](#)

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[\par](#) Section 96 of the Civil Procedure Act states:-

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Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may in its discretion, from time t{\f1\fs28\insrsid13789104 o time, enlarge the period, even}{\f1\fs28\insrsid13569891

though the period originally fixed or granted may have expired.\94

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\par While prosecuting the application Ms Fredah Kabatesi, a State Attorney argued that the reasons contained in the two affidavits, filed in support of the application, provided sufficient reasons a}{\f1\fs28\insrsid13789104 s}{\f1\fs28\insrsid13569891

to why the Amended Written Statement of Defence was not filed in time. Counsel cited the case}{\f1\fs28\insrsid13789104 of}{\f1\fs28\insrsid13569891 }
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Charles Harry Twagira Vs Attorney General and 2 others SCC Application No 15 of 200}
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JSC agreed with the holding }{\f1\fs28\insrsid13789104 of }{\f1\fs28\insrsid15863628 Justice Tsekoko JSC in the }{\i{\f1\fs28\ul\insrsid15863628\charrsid15863628 Mansukh}
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{\f1\fs28\insrsid15863628 where he stated}{\f1\fs28\insrsid13789104 :-}{\f1\fs28\insrsid15863628 }
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The matter is left to the discretion of the Court. This means is my view that various factors can constitute sufficient re}{\f1\fs28\insrsid13789104 a}{\f1\fs28\insrsid6582553 so}
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. In my view, a ground that prevents injustice to an applicant can constitute sufficient reason. Counsel's mistake can cause

injustice. Article 126 (2) (c) requires courts to administer substantive justice without undue regard to technicalities. Without being dogmatic, I think

that Article 126 (2) (c) should be a useful tool in considering applications as this one.⁹⁴

The Plaintiff/Respondent's claim in the main suit is that at all material time, he was and still is the registered proprietor of the land and house situate at Kyadondo Block 208 Plot 1408 Kawempe. That the

The Plaintiff/Respondent's claim in the main suit is that at all material time, he was and still is the registered proprietor of the land and house situate at Kyadondo Block 208 Plot 1408 Kawempe. That the

, he was and still is the registered proprietor of the land and house situate at Kyadondo Block 208 Plot 1408 Kawempe. That the

Applicant/2nd Defendant is a registrar of titles and the officer in charge of Kampala Mailo Office Land Registration Department Ministry of Water, Land and Environment working under the control of the 2nd Defendant.

Defendant is a registrar of titles and the officer in charge of Kampala Mailo Office Land Registration Department Ministry of Water, Land and Environment working under the control of the 2nd Defendant.

Applicant/3rd Defendant. The 2nd Defendant is in charge and control of the office of Title

Applicant is in charge and control of the office of Title in the said Ministry. That the 1st Defendant

Applicant fraudulent ly and in non-compliance with the provisions of the Registration of Titles Act re moved

the provisions of the Registration of Titles Act re moved a caveat lodged on the

property by one Jenifer Kabugo, wife to the Respondent, registered a mortgage in favour of the 1st Defendant

Defendant and had intention to register a transfer into the names of a third party. Which act }
 {\f1\fs28\insrsid8398998 the Respondent}{\f1\fs28\insrsid10433483 contends cause}
 {\f1\fs28\insrsid13789104 d}{\f1\fs28\insrsid10433483 him }

\f1\fs28\insrsid13069044 loss and damage for which he holds the}{\f1\fs28\insrsid13789104 A}
 {\f1\fs28\insrsid13069044 pplicants and the 1}{\f1\fs28\super\insrsid13069044\charrsid13069044 st}
 {\f1\fs28\insrsid13069044 Defendant jointly and sever}{

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\par The }{\f1\fs28\insrsid13789104 R}{\f1\fs28\insrsid13069044 espondent filed an affidavit in
 reply where in paragraph 3 he avers that the department of land registration and }
 {\f1\fs28\insrsid1784969 survey}{\f1\fs28\insrsid13069044

where Sarah Basagwa Kulata}{\f1\fs28\insrsid13789104 works}{\f1\fs28\insrsid13069044 was
 served on 17}{\f1\fs28\super\insrsid13069044\charrsid13069044 th}{\f1\fs28\insrsid13069044 }
 {\f1\fs28\insrsid1784969 Augu

st 2007 but has since not filed a defence to the amended plaint. In paragraph 6 he avers that since
 the time the 1}{\f1\fs28\super\insrsid1784969\charrsid1784969 st}{\f1\fs28\insrsid1784969

Applicant, Robert Opio, was served with the Amended Plaint has been appearing in court but had
 never explained to court a}{\f1\fs28\insrsid13789104 s}{\f1\fs28\insrsid1784969 to why he did not
 file a defence to the Amended Plaint. }

\f1\fs28\insrsid13069044

\par }{\f1\fs28\insrsid1784969

\par In }{\f1\fs28\insrsid8398998 his affidavit}{\f1\fs28\insrsid1784969 Robert Opio states that he is
 employed in the Government of the Republic of Uganda}{\f1\fs28\insrsid13789104 as a Senior R}
 {\f1\fs28\insrsid1784969 egistrar of }

\f1\fs28\insrsid12927617 Titles for Kampala City Council. That at }{\f1\fs28\insrsid8398998 the
 material}{\f1\fs28\insrsid12927617 times }{\f1\fs28\insrsid13789104 t}{\f1\fs28\insrsid12927617 he
 was officer in charg

e of Kampala Mailo Office and a subordinate officer to the Ag. Commissioner Land Registration.
 Since the end of the year 2004 he was relocated from the Ministry of Lands, Housing and Urban
 Development under, what he terms, very harsh circumstances whereb

y he was literally declared persona non-granta, }{\f1\fs28\insrsid8398998 which,}
 {\f1\fs28\insrsid12927617 he says, meant that he could not be seen near the }
 {\f1\fs28\insrsid8398998 registry nor}{\f1\fs28\insrsid12927617

could he access any of the records in respect of land matters, including the file and certificate of title comprising of the suit property.

He contends that as a result of the above reasons, when the amended plaint was served on him in August 2007, he could not have access to the relevant file in order to prepare

{\f1\fs28\insrsid5972913 a}{\f1\fs28\insrsid12927617

n appropriate defence. That it was only from {\f1\fs28\insrsid13789104 the }

{\f1\fs28\insrsid12927617 beginning of the year 2008 the circumstances changed enabling him to have access, requisite and make {\f1\fs28\insrsid6582553 consultations}{

\f1\fs28\insrsid12927617 {\f1\fs28\insrsid5972913 bus and {\f1\fs28\insrsid12927617 be in position to prepare the defence attached dated 19}

{\f1\fs28\super\insrsid12927617\charrsid12927617 th}{\f1\fs28\insrsid12927617 March 2008. }

\f1\fs28\insrsid1784969

\par {\f1\fs28\insrsid12927617

\par In her affidavit the Ag. Commissioner for Land Registration avers that she is the officer in charge and control of the Department of Land Registration. As the {\f1\fs28\insrsid5972913 r}{\f1\fs28\insrsid12927617

esponsible officer, her attention has been only recently drawn to the suit by the 1}

{\f1\fs28\super\insrsid12927617\charrsid12927617 st}{\f1\fs28\insrsid12927617

Applicant, Opio Robert. She contends that she is the responsible officer upon whom service of the Amended Plaint ought to have been made. She denies having been served and states }

{\f1\fs28\insrsid5972913 that {\f1\fs28\insrsid12927617

she only learned from the said Opio Robert, {\f1\fs28\insrsid8398998 the Senior Registrar}{\f1\fs28\insrsid12927617 of titles for Kampala {\f1\fs28\insrsid4876487 District of the alleged service of an Amended Plaint on the {\f1\fs28\insrsid8398998

Department on}{\f1\fs28\insrsid4876487 or about 16}

{\f1\fs28\super\insrsid4876487\charrsid4876487 th}{\f1\fs28\insrsid4876487 August 2007. She contends that due to {\f1\fs28\insrsid8398998 the failure}{\f1\fs28\insrsid4876487

to serve the responsible officer, it has}{\f1\fs28\insrsid5972913 not}{\f1\fs28\insrsid4876487 been practicable for the Department to effectively {\f1\fs28\insrsid8398998 prepare itself}

{\f1\fs28\insrsid4876487

and to file the necessary defence within the prescribed time.

\par

\par On the above evidence Counsel of the Applicants}\f1\fs28\insrsid5972913 submitted }
 {\f1\fs28\insrsid4876487 that the}\f1\fs28\insrsid5972913 re}\f1\fs28\insrsid8398998 were}
 {\f1\fs28\insrsid4876487 sufficient reasons for the }}

\f1\fs28\insrsid8398998 Applicants}\f1\fs28\insrsid6582553 \rquote }{\f1\fs28\insrsid8398998
 failure}\f1\fs28\insrsid4876487 to file the amended statements of defence in time. Counsel also
 relied on the case of }}

\i\f1\fs28\ul\insrsid4876487\charrsid5972913 Attorney General Vs AKPM Lutaya SCC Application
 No. 12 of 2007}\f1\fs28\insrsid5972913 , where}\f1\fs28\insrsid4876487 t

he reason for delay was that there was a lack of co-ordination in the Civil Registry of the Attorney
 Generals Chamber following the }\f1\fs28\insrsid5972913 resignation of a Senior S}
 {\f1\fs28\insrsid4876487 tate}\f1\fs28\insrsid5972913 A}{

\f1\fs28\insrsid4876487 ttorney who had the personal conduct of the case file. }
 {\f1\fs28\insrsid8070934 Justice Bart K}\f1\fs28\insrsid4876487 aturebe JSC }
 {\f1\fs28\insrsid5972913 found that there was a lack of c}\f1\fs28\insrsid4876487

oordination in the Civil Registry of the Attorney General\rquote s }{\f1\fs28\insrsid8398998
 Chambers and}\f1\fs28\insrsid4876487

held that the mistakes and lapses and or failures by the Director of Civil Litigation, his lawyers
 and staff constituted sufficient cause as to why the necessary steps were not taken in time. His
 Lordship allowed the application for extension of time.

\par }{\f1\fs28\insrsid8070934

\par Mr Medard}\f1\fs28\insrsid5972913 Lubega, c}\f1\fs28\insrsid8070934 ounsel for the}
 {\f1\fs28\insrsid5972913 Respondent, opposed}\f1\fs28\insrsid8070934 the application. He argued
 that the }\f1\fs28\insrsid6582553 a}\f1\fs28\insrsid8070934

pplication was tail}\f1\fs28\insrsid6582553 or}\f1\fs28\insrsid8070934 ed with lies and deceitful
 conduct on the part of the }\f1\fs28\insrsid6582553 A}\f1\fs28\insrsid8070934 pplicants. With
 regard to the l}{

\f1\fs28\super\insrsid8070934\charrsid8070934 st}\f1\fs28\insrsid8070934 Applicant Counsel
 argued that he had neither been dismissed }\f1\fs28\insrsid6582553 n}\f1\fs28\insrsid8070934 or
 interdicted but only }\f1\fs28\insrsid5972913 transferred}{

\f1\fs28\insrsid8070934 from the }\f1\fs28\insrsid5972913 L}\f1\fs28\insrsid8070934 and
 Department to Kampala City Co}\f1\fs28\insrsid5972913 uncil}\f1\fs28\insrsid8070934 . He had
 been only relocated or transferred. Counsel maintained that

in the circumstances he had access to the relevant files.

\par

\par It is an agreed fact that Opio Robert had moved from the Registration of Land Department of the ministry to Kampala City Council. His evidence on oath is that the circumstances} {\f1\fs28\insrsid14951808 of} {\f1\fs28\insrsid8070934 his transfer

were very harsh and was literally treated a persona non granta with no access to the department. The only evidence to contra} {\f1\fs28\insrsid14951808 di} {\f1\fs28\insrsid8070934 ct that statement is that of the Respondent} {\f1\fs28\insrsid14951808

who in} {\f1\fs28\insrsid8070934 paragraph 5 of his affidavit states that Opio Robert has always had access to the } {\f1\fs28\insrsid14951808 L} {\f1\fs28\insrsid8070934 and Registry. Mr. Edward Kabugo Sentong} {\f1\fs28\insrsid14951808

o is not an officer or member} {\f1\fs28\insrsid8070934 of staff in the land Registry and as such he is not in } {\f1\fs28\insrsid8398998 position positively} {\f1\fs28\insrsid8070934 } {\f1\fs28\insrsid14951808 to } {\f1\fs28\insrsid8070934

assert, as he attempts to do, that Opio had f} {\f1\fs28\insrsid14951808 ree} {\f1\fs28\insrsid8070934 access to the Registr} {\f1\fs28\insrsid14951808 y. It is not always true that a} {\f1\fs28\insrsid8070934 n

officer who has been transferred from an office has free access to that office and } {\f1\fs28\insrsid14951808 or } {\f1\fs28\insrsid8070934 documents therein. There is no evidence given to } {\f1\fs28\insrsid8398998 contra} {\f1\fs28\insrsid14951808 di} {\f1\fs28\insrsid8398998 ct} {\f1\fs28\insrsid8070934 Opio Robert} {\f1\fs28\insrsid14951808 \rquote s} {\f1\fs28\insrsid8070934 evidence on the circumstances surrounding his transfer. I therefore find no reason to doubt h

is averments as to his accessibility to the information relevant for the } {\f1\fs28\insrsid8398998 preparation} {\f1\fs28\insrsid8070934 of an appropriate defence.

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\par With regard to the 2} {\f1\fs28\super\insrsid8070934\charrsid8070934 nd} {\f1\fs28\insrsid8070934 Applicant } {\f1\fs28\insrsid14951808 c} {\f1\fs28\insrsid8070934 ounsel argued that the office of } {\f1\fs28\insrsid8398998 the Commissioner} {\f1\fs28\insrsid8070934 Land } {\f1\fs28\insrsid8398998 Registration was} {\f1\fs28\insrsid8070934 aware of the Amended Complaint since there was service of the Amended Complaint on the Commissioner Land Registration } {\f1\fs28\insrsid10035125 on} {\f1\fs28\insrsid14951808 e} {\f1\fs28\insrsid10035125 Mr Karibwende on 17} {\f1\fs28\super\insrsid10035125\charrsid10035125 th} {\f1\fs28\insrsid10035125 August 2007. Further Ms Kulata must have been aware of the Amended Complaint since on 11} {\f1\fs28\super\insrsid10035125\charrsid10035125 th} {\f1\fs28\insrsid10035125 February 2008 a Hearing Notice had been served on a lady Commiss

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itioner for land whom learned counsel concluded must have been Ms Kulata. He relied on the two affidavits of service, annexure}{\f1\fs28\insrsid14951808 s}{\f1\fs28\insrsid10035125 '93A1\94 and '93A2\94 to the affidavit in reply.}}

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\par }{\f1\fs28\insrsid10035125

\par In Annexure A2, the process sever avers that he was forwarded to the Commissioner of Land Mr. Kalibwende whom he served the Amended Plaintiff. This was on 17}

{\f1\fs28\super\insrsid10035125\charrsid10035125 th}{\f1\fs28\insrsid10035125

August 2007. While in Annexure A1 the process server states that on 11}

{\f1\fs28\super\insrsid10035125\charrsid10035125 th}{\f1\fs28\insrsid10035125 February 2008 he served Hearing Notice on the Commissioner of Land who}{\f1\fs28\insrsid14951808 m}{

\f1\fs28\insrsid10035125 he this time does not name b}{\f1\fs28\insrsid14951808 ut}

{\f1\fs28\insrsid10035125 refer to as '93Her\94 . The }{\f1\fs28\insrsid8398998 implication is}

{\f1\fs28\insrsid10035125 that there has since bee}{

\f1\fs28\insrsid14951808 n}{\f1\fs28\insrsid10035125 changes in office of the Commissioner. The evidence available }{\f1\fs28\insrsid14951808 is that }{\f1\fs28\insrsid10035125

Ms Sarah Basagwa Kulata is currently the Ag. Commissioner Land Registration. However there is no evidence to show that she was the lady Commissioner on whom }{\f1\fs28\insrsid8398998 the Hearing}{\f1\fs28\insrsid10035125 Notice was served on 11}{

\f1\fs28\super\insrsid10035125\charrsid10035125 th}{\f1\fs28\insrsid10035125 February 2008. Her evidence is that she had only been recently made aware of the existence of }

{\f1\fs28\insrsid8398998 the suit}{\f1\fs28\insrsid10035125

and the Amended Plaintiff by the 1}{\f1\fs28\super\insrsid10035125\charrsid10035125 st}

{\f1\fs28\insrsid10035125 Applicant. It}{\f1\fs28\insrsid14951808 is not disputed that Mr. Kar}

{\f1\fs28\insrsid10035125 ibwende on whom the Amended }

\f1\fs28\insrsid4012676 Plaintiff had been served had}{\f1\fs28\insrsid10035125 }

{\f1\fs28\insrsid4012676 ceased }{\f1\fs28\insrsid10035125

to be the Commissioner Land Registration. No evidence has been adduced to show that Sarah Basagwa Kulata, the Ag. Commissioner }{\f1\fs28\insrsid4012676 was }{\f1\fs28\insrsid10035125 the one who immediately replaced }{\f1\fs28\insrsid14096602

Mr. Karibwende. This court is not prepared to infer that since Sarah Basagwa Kulata is a lady, she must be the one served with Hearing Notice on 11}

{\f1\fs28\super\insrsid14096602\charrsid14096602 th}{\f1\fs28\insrsid14096602

February 2008. In the premises I find that the Applicant has given sufficient reasons for failure to file an Amended Written Statement of defence in time.

Both Applicants in their respective affidavits, state that it is just and equitable that

the application for extension of time within which to file the defence in allowed. The need to file an Amended Written Statement of defence arose following the Respondent having filed an Amended Complaint on 16

August 2007. Otherwise both Applicants

had already filed a jointly Written Statement of Defence on 26 April 2002. The Applicant has

attached to this application their intended Amended Written Statement of Defence. I have carefully perused the Applicant's

s Written Statement of Defence on record and their intended Amended Written Statement of Defence and I have found that the intended

Amended Written Statement of Defence does not introduce anything new. It does not in any way introduce

a new defence. The defence is substantial the same, save that the Intended Amended Written Statement of Defence is more elaborative. Even if the Application was to be rejected what is stated therei

n could still be brought out in evidence and the Applicants would still be within their pleadings.

Therefore considering all the circumstances of this case I find that it is appropriate to exercise its discretion and

\f1\fs28\insrsid7293153 allow the application by both }\f1\fs28\insrsid4012676 Applicant}
\f1\fs28\insrsid6582553 s}\f1\fs28\insrsid4012676 to }\f1\fs28\insrsid7293153

extend the time within which to file their Amended Written Statement of Defence. The
application is granted. Since the reasons }\f1\fs28\insrsid4012676 for }\f1\fs28\insrsid8398998
the Applicants}\f1\fs28\insrsid4012676 \rquote }{

\f1\fs28\insrsid7293153 failure to file the Amended Written Statement of }\f1\fs28\insrsid8398998
Defence cannot}\f1\fs28\insrsid7293153 be attributed to the Respondent, the}
\f1\fs28\insrsid4012676 Re}\f1\fs28\insrsid7293153

spondent is awarded cost }\f1\fs28\insrsid4012676 occa}\f1\fs28\insrsid7293153 ssioned to him
by this }\f1\fs28\insrsid8398998 application.}\f1\fs28\insrsid14096602

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\f1\fs28\insrsid7293153 Hon Mr. Lameck N. Mukasa

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\pararsid2782236 {\b\f1\fs28\insrsid7293153\charrsid8398998 Judge

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\f1\fs28\insrsid7293153 22}\f1\fs28\super\insrsid7293153\charrsid7293153 nd}
\f1\fs28\insrsid7293153 August 2008}\f1\fs28\insrsid13569891

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