

UGANDA / JUDGMENT

# Seguya v Namutebi (Miscellaneous Application 242 of 2024) [2024]

## UGHCLD 149 (30 May 2024)

[2024] UGHCLD 149

## COURT

HC: Land Division (Uganda)

## BEFORE

Naluzze Aisha Batala, J

## CASE / FILE NUMBER

Miscellaneous Application 242 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA [LAND DIVISION] MISCELLANEOUS APPLICATION NO.242 OF 2024 (Arising from Civil Suit No. 1290 of 2023)

HAJJI ALI SEGUYA :::::::::::::::::::: VERSUS

NAMUTEBI MADINA ::::::::::::::::::::

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA RULING.

### Introduction:

- 1. This was an application by notice of motion brought under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, Order 6 rule 30, Order 8 rule 1(2) Order 9 rules 10&11(2) and Order 52 rules 1, & 3 of the Civil Procedure Rules (CPR) for orders that: -
- That the written statement of defence filed by the  $\mathbf{i}$  respondent in Civil Suit No.1290 of 2023 be struck out for having been filed out of time. Hamleyey -
- ii) That Civil Suit No.1290 of 2023 be set down for exparte hearing.
- iii) Costs of the application be in the cause.

**\*Background;\***

- 2. H. C. C. S No. 1290 of 2023 was filed in this honorable court by the applicant on the 17th day of November 2023 and the summons to file a defense served onto the respondent on the 29th of November 2023.
- 3. The respondent/defendant filed her written statement of defense on the 10th of January 2024 which was out of time since she was supposed to file her written statement of defense on the 18th of December 2023 as per the 15 days' time frame provided for in the civil procedure rules, hence this application.

**\*Applicant's evidence;\***

- 4. The application is supported by an affidavit in support deposed by the applicant which briefly states as follows;
- i) That I filed Civil Suit No.1290 of 2023 against the applicant for actions of trespass on the 17th of November 2023.
- ii) That the summons to file a defence were issued by court and served onto the respondent/defendant on the 29th of November 2023.
- iii) That the respondent/defendant filed her written statement of defence on the 10th of January 2024.
- iv) That a written statement of defense is supposed to be filed within 15 days from the date of service of the summons to file a defence upon the defendant.
- v) That the written statement of defence filed by the respondent/defendant on the 10th of January 2024 was filed out of the 15-days statutory period.

**\*Respondent's evidence;\***

- 5. The application is responded to by an affidavit in reply deposed by the respondent which briefly states as follows;
- i) That I was served with summons to file a defence in Civil Suit No.1290 of 2023 on the 29th of November 2023.
- ii) That it is true I was supposed to file my written statement of defense within 15 days from the date of service of summons to file a defense as provided for in the law.
- iii) That I instructed my former lawyers Ms Atrium Advocates to file my written statement of defense.
- iv) That when I changed instructions from my former lawyers to M/S Atuhaire Nicholas & Co Advocates to pursue my case, I was advised that the written statement of defence was filed after the 15 days of service.

- v) That the said delay was occasioned by mistake of counsel that should not be vested on an innocent client.
- vi) That I instructed my lawyers of M/S Atuhairwe Nicholas and Co Advocates to file an application for leave to file a defence out of time and have the same validated.
- vii) That the said application for leave to appear and defend is still pending before this honorable court.

**\*Representation;\***

6. The applicant was represented by Fahad Matovu of M/s Nakachwa, Matovu & Co. advocates whereas the respondent was represented by Gyagenda Noah of M/s Atuhairwe Nicholas & Co. Advocates. Both parties filed their affidavits and only the applicant

filed submissions which I have considered in the determination of this application.

**\*Issues for determination;\***

- i) Whether the written statement of defence in Civil Suit No.1290 of 2023 should be struck out for being filed out of time without leave?
- ii) What remedies are available to the parties;

**\*Resolution and determination of the issues;\***

- 7. It is a principle of law that a defendant who has been served with summons to file a defence shall unless some other further order is made, file his or her defence within 15 days after being served with the said summons. \*(See; order 8 rule 1(2) of the civil procedure rules and Hadondi Daniel vs Yolam Egondi CA 67 of 2003)\*
- 8. In the instant case it's the submission of counsel for the applicant that the respondent was served with summons to file a defence on the 29th of November 2023 and filed her written statement of defence on the 10th of January 2024, way out of the 15 days statutory period provided for.
- 9. It is also the submission of counsel for the applicant that the respondent/defendant's act of applying for leave to have defence filed out of time validated was an afterthought by the respondent's current lawyers.
- 10. Counsel for the applicant relied on the decision in **Hadondi Daniel vs Yolam Engondi** (supra) where it was held that time can only be extended if sufficient cause is shown, the sufficient cause must relate to the inability or failure to take necessary steps within the prescribed time, it does not relate to taking wrong decisions. If the applicant is found guilty of dilatory conduct the time will not be granted.

- 11. Counsel for the applicant further submitted that it could not be mistake of counsel to have the written statement of defense filed out of time, since the respondent/defendant was aware of the fact that she had to file her written statement of defence within 15 days as stated in her affidavit in reply under paragraph 6.
- 12. The respondent in her reply states that the delay in filing the written statement of defense out of time was mistake of counsel which cannot be vested on an innocent client.
- 13. The respondent further in her affidavit in reply avers under paragraph 9 that she instructed her current lawyers to file an application seeking leave of court to have the written statement of defense filed out of time validated which application is still pending determination.
- 14. I take cognizance of the laws on filing of a written statement of defense and the time period when the same should be filed.
- 15. The theory in the instant case is that the respondent was served with summons to file a defence on the 29th of November 2023 in Civil Suit No.1290 of 2023 and she complied to the said summons by filing her written statement of defence on the 10th of January 2024 which was after the 15 days period provided for in the civil procedure rules.
- 16. It is not a disputed fact that the respondent filed an application for leave to have the written statement filed out of time validated through her current lawyers which application is still pending determination by court.
- 17. This honorable court is enjoined with powers to ensure that the ends of justice are met in all matters as provided for under section 98 of the civil procedure Act.
- 18. I am of the view that striking out the written statement of defense filed by the respondent out of time which is subject to the pending application, which application seeks leave of court to have the said written statement of defence filed out of time validated, would be shutting the doors of justice to the respondent.
- 19. The respondent has taken a necessary step to ensure that she complies with the rules of procedure through applying to court for leave to have her written statement filed out of time validated, a step that will ensure that the suit is heard interparty.
- 20. In the result, I do not find sufficient grounds for striking out the written statement of defense filed out of time which is still subject to a pending application for leave to have the same validated.
- 21. Therefore, the instant application fails and the same stands dismissed with no orders as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

JUDGE

\$30^{\rm th}\$ -05-2024

---

### Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE      <https://ulii.org/akn/ug/judgment/ughcld/2024/149/eng@2024-05-30>

CASE PAGE              <https://chat.esheria.ai/case-law/uganda/seguya-v-namutebi-miscellaneous-application-242-of-2024-2024-ughcld-149-30-may-2024-unknown-topic-unknown-court-2024>

Prepared on 13 October 2026 · Esheria