

UGANDA / JUDGMENT

Serunjogi v Ntege (Miscellaneous
Application 189 of 2024) [2025]
UGHC 290 (5 May 2025)

[2025] UGHC 290

COURT

High Court of Uganda

BEFORE

Deepa Verma, J

CASE / FILE NUMBER

Miscellaneous Application 189 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA SITTING AT MPIGI
MISCELLANEOUS APPLICATION NO. 189 OF 2024

SSERUNJOGI BERNARD APPLICANT

VERSUS

NTEGE LUTEMBE EDWARD=====RESPONDENT

Before: Hon. Lady Justice Deepa Verma

RULING

This Application is brought by way of Notice of Motion under Sections 33 and 17(2) of the Judicature Act Cap 16, Section 98 of the Civil Procedure Act Cap 282, and Order 52 Rules 1, 2, and 3 of the Civil Procedure Rules. It is supported by the affidavit of the Applicant, Sserunjogi Bernard, deponed on 9" August, 2024.

The Application proceeds ex parte, leave to do so having been granted by this Honourable Court on 5" May 2025.

The Applicant seeks orders; that the Respondent's Memorandum of Appeal and the entire Civil Appeal No. 023 of 2024 are incurably and fatally defective in law, an illegality on court record, incompetent, frivolous, vexatious, a non-starter, and an abuse of court process, and should be struck out with costs to the Applicant.

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Representation

The Applicant was represented by Counsel Lwasa Steven of M/s IBC Advocates and the Respondent neither appeared in person nor was he represented.

Issues for Determination

- 1. Whether the Applicant's Application is unchallenged and should be granted as prayed.
- 2. Whether the Respondent's Memorandum of Appeal is incurably and fatally defective in law, an illegality on court record, incompetent, frivolous, vexatious, a non-starter, and an abuse of court process, and should be struck out with costs.
- 3. What remedies are available to the Applicant.

Determination of Court

1. Whether the Applicant's Application is unchallenged and should be granted as prayed.

Order 8 Rule 1(2) of the Civil Procedure Rules (CPR), SI 71-1, provides that a defendant served with a summons shall file a defense within fifteen days from the date of service, unless otherwise ordered by the court. This timeline applies analogously to affidavits in reply in applications as held by both Justice Madrama in **Stop and See (U) Limited v. Tropical African Bank** (HCMA No. 333 of 2010) and Justice Kawesa in **Patrick Senyondwa and Rose Nakito v. Luck Nakitto** (Suing through her Lawful Appointed Attorney Bunjo Francis) (HCMA No. 1103 of 2018). Referencing **Stop and See (U) Limited v. Tropical African Bank** (Supra), Justice Kawesa emphasized that the timelines applicable to complaints and written statements of defense also govern applications. The court noted that a reply or defense to an application must be filed within fifteen days, underscoring the importance of adhering to procedural timelines in such matters.

Non-compliance with procedural timelines is a fundamental defect, not a mere technicality, as it undermines the orderly and expeditious administration of justice - **Akena Jabina & Anor v.**

Odongo Benjamin, Civil Appeal No. 35 of 2018; **Ejab Family Investments**

and **Trading Company Limited v. Centenary Rural Development Bank Limited**, (HCCS No. 0001 of 2024).

It is settled law that a respondent's failure to file an affidavit in reply results in the applicant's averments being deemed unchallenged and accepted as laid out in several cases such as **Makerere University v. St. Mark Education Institute & Ors** (HCCS No. 378 of 1993). The Court of Appeal in **David Lubuuka v. Fred Joel Nsobya** (Misc. Application No. 357 of 2016), citing **H. G. Gandesha and Another v. G. J. Lutaaya** (SCCA No. 14 of 1989), pronouncing itself on this issue held that failure to file an affidavit in reply leaves the applicant's averments in their supporting affidavit uncontroverted and thus accepted implying that the respondent's lack of response constitutes an admission of the truth of the application's contents.

In the case before this court, the Applicant's affidavit of service deponed by Mubangizi George William, confirms that the Notice of Motion was served on the Respondent's counsel, M/s Kasule Kiberu & Co. Advocates on 15th November 2024. The Respondent was required to file an affidavit in reply by 21st November 2024. Further hearing notices were served on 10th March 2025 and the Applicant's lawyer went further to write a courtesy letter received by the Respondent's counsel on 11th April 2025 notifying the later of the next hearing date.

The court record shows no affidavit in reply was filed, nor was leave sought to file out of time. On 5th May 2025, this court permitted the Application to proceed ex parte due to the Respondent's non-compliance.

In *Visa Investments Ltd & Anor v. Jordan Sebuliba & Anor* (HCMA No. 453 of 2021), Justice John Eudes Keitirima held that compliance with statutory timelines is mandatory, and Article 126(2)(e) does not permit defaulting litigants to evade procedural rules.

The Respondent's failure to file an affidavit in reply within the prescribed timeline renders the Applicant's evidence uncontroverted -*H. G Gandesha and Kampala Estates Ltd v. G. J Lutaaya* (SCCA No. 14 of 1989).

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Court has established that the Respondent having been duly served chose not to file his reply and in addition, this Court, having reviewed the credible and consistent application finds that it is unchallenged and as such the averments therein are deemed admitted. The issue is therefore resolved in the affirmative.

2. Whether the Respondent's Memorandum of Appeal is incurably and fatally defective in law, an illegality on court record, incompetent, frivolous, vexatious, a non-starter, and an abuse of court process, and should be struck out with costs.

Order 5 Rule 1(5) of the Civil Procedure Rules, provides:

"Every such summons shall be signed by the judge or such officer as he or she appoints, and shall be sealed with the seal of the court."

The Applicant avers in paragraph 5(b) of his affidavit in support of his application that the Memorandum served on 6th August 2024 was neither signed by a judge, Deputy Registrar, or an appointed officer nor sealed with the court's seal, rendering it a nullity.

The Applicant argues that a Memorandum of Appeal, as a court process initiating appellate proceedings, falls within the ambit of this rule, requiring a judicial officer's signature and the court's seal to authenticate its legal authority.

In *Kinyara Sugar Limited v. Kyomuhendo Pamela* (Misc. App. No. 61 of 2020), Justice Byaruhanga Jesse Rugyema citing the authorities of *KAUR Vs CITY MART* [1967] E. A 108 and *FREDRICK JAMES JJUNJU & ANOR Vs MADHVANI GROUP LTD & ANOR* H. C. M. A No. 688 OF 2015 (LD) where court held that;

"Where a notice of motion is not signed by a judge or Registrar or officer appointed for that purpose and sealed by a seal of court, then that is a fundamental defect which is incurable and hence the application is incompetent and a nullity."

The signature and seal validate the document's authenticity and protect against fraudulent processes. - *Namutebi Prossy v. Bumba John Livingstone* (Revision Cause No. 012 of 2023) ' R

| am persuaded by the Applicant's submission that a Memorandum of Appeal, as a court process initiating appellate proceedings, must comply with Order 5 Rule 1(5). The requirement for a signature and seal is mandatory, as the word "shall" in the rule denotes an imperative obligation.

Non-compliance with Order 5 Rule 1(5) is a fundamental defect, not a technicality, as it undermines the document's legal validity and the court's jurisdiction. The Memorandum of Appeal is therefore incurably defective, incompetent, and a nullity *ab initio*. The Civil Appeal No. 023 of 2024, premised on this defective Memorandum, cannot stand and constitutes an abuse of court process, as it is frivolous, vexatious, and a non-starter.

This issue is also resolved in the affirmative. The Memorandum of Appeal and Civil Appeal No. 023 of 2024 are hereby struck out.

Issue 3: What remedies are available to the Applicant?

Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act, empower this court to grant relief to prevent an abuse of court process. Having found that the Memorandum of Appeal fails to comply with the mandatory requirements of Order 5 Rule 1(5), | am satisfied that the Respondent's Memorandum of Appeal and Civil Appeal No. 023 of 2024 are incurably and fatally defective in law, incompetent, frivolous, vexatious, a non-starter, and an abuse of court process.

Further, section 27(1) of the Civil Procedure Act, provides that costs are at the court's discretion, with the general rule that costs follow the event unless the court orders otherwise for good reason. The Applicant has succeeded in this Application, and the Respondent's failure to comply with mandatory procedural requirements and oppose the Application has necessitated these proceedings. No exceptional circumstances exist to depart from the general rule that costs follow the event.

For the reasons stated above, this Application succeeds with the following orders:

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- 1. The Respondent's Memorandum of Appeal and Civil Appeal No. 023 of 2024 are hereby struck out as incurably defective, incompetent, and a nullity.

- 2. The Applicant is awarded the costs of this application.

Hon. Lady Justice Deepa Verma

Acting Judge

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