

UGANDA / JUDGMENT

Ssebaggala Mohammed v Stanbic Bank (U) Ltd (Miscellaneous Application No. 565 of 2024) [2025] UGHC 556 (17 July 2025)

[2025] UGHC 556

COURT
High Court of Uganda

BEFORE
Wabwire, J

CASE / FILE NUMBER
Miscellaneous Application No. 565 of 2024

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THE REPUBLIC OF UGANDA, IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) MISCELLANEOUS APPLICATION NO. 565 OF 2024
(ARISING FROM MISCELLANEOUS APPLICATION NO. 486 OF 2017) $\$ \mathsf{S} \$$
(ARISING FROM CS No. 282 OF 2017)

SSEBAGGALA MOHAMMED.....

VERSUS

STANBIC BANK (U) LTD..... 10

BEFORE: HON. MR. JUSTICE RICHARD WEJULI WABWIRE

RULING

INTRODUCTION 15

This Application was brought under Order 36 rule 11 and Order 52 rules 1 and 3 of the Civil Procedure Rules, S. I 71-1 and Section 98 of the Civil Procedure Act Cap. 71 for orders that;

- (i) The Order of this Honorable Court dismissing Miscellaneous Application No. 486/2017 be set aside; 20
- (ii) The Judgment/Decree of this Honorable Court in CS No. 282/2017 be set aside;
- (iii) Miscellaneous Application No. 486/2017 be reinstated and fixed for hearing inter partes;

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(iv) The costs of this application be provided for.

30 The Application was supported by an affidavit deposed by the Applicant wherein he states that through his former lawyers I(asana, Ivlpungu & Co. Advocates, he filed Miscellaneous Application No. 486 /2017 for leave to appear and defend CS No. 282/2017 . That this court dismissed the application for want of prosecution and entered judgment in CS No. 282/2017. That neither his lawyers nor he were served with any hearing notice prior to the dismissal and judgment.

On the affidavit in reply was deposed by Norris Ntuhunga a Senior Legal Officer of the Plaintiff who deposed that he was advised by his lawyers that the Application is an utter abuse of court process, full of falsehoods; intended to frustrate the Respondent's efforts of recovering the Decretal sums and should be dismissed with costs to the Respondent. In rejoinder, the applicant averred that his affidavit in support is devoid of falsehoods contrary to the Respondent's averments.

REPRESENTATION

The applicant was represented by Pinnacle advocates while the Respondent was represented by Oristal advocates. The Parties filed written submissions which Court duly adopted.

SUBMISSIONS

The applicant's Counsel submitted that the Application demonstrates sufficient cause for setting aside the decree and reinstatement of the Applicant's Application for leave to appear and defend the main suit. Counsel submitted that the application was dismissed prematurely without affording the Applicant's former lawyers opportunity to appear, be heard and show cause why the application ought to not have been dismissed. That neither the Applicant's lawyers nor himself were served with the impugned Notice to show cause, which prevented them from appearing at the hearing prior to the dismissal.

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That paragraph 5 of annexure D of the applicant's Affidavit in support of the Application shows that the impugned Notice to show cause was ineffectively served upon the applicant's former lawyers because; while the Court Process Server stated that he called the Applicant's former lawyers and that the lawyer did not pick, Court Process Server did not indicate the telephone number which she called to prove that the same belonged to the applicant or his lawyers.

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- 55 Counsel further submitted that the dismissed Application indicated the physical address of the Applicant's lawyer but the Process Server did not labor to serve physically. That the Affidavit of service does not indicate that the Notice was received and endorsed by the Applicant or his former lawyers. That as such the Applicant and his former lawyers were unaware of the Notice since the same was never served upon them.
- 60 That if there were any lapses or default on the Part of the Applicant's former lawyers, the same should not be visited on the Applicant.

Counsel prayed that court allows the instant Application to afford the Applicant an opportunity to be heard.

65 In reply, the Respondent's counsel submitted that the Applicant filed an Application seeking leave to appear and defend the main suit on 2nd June 2017 but never took any recognizable, meaningful or proactive steps for four years to have the matter fixed and heard. That the Applicant's allegation that the reason for his failure to have the Application fixed and heard was due to loss of the main court file is a falsehood because at the time of lodging the Application, the file had been fully reconstituted, summons

to be extracted and served on the Applicant. That if the Applicant harbored legitimate interest in prosecuting their matter, he would not have waited for the Respondent to serve a formal demand to wake up from its seven-year slumber since instituting the Application for setting aside.

Counsel further submitted that much as the Applicant might allege non-service, the court's initiative to have the matter fixed and disposed of did not waive the Applicant's primary duty to follow up on his matter and have it fixed and determined on its merits. That the Applicant's dilatory conduct manifested in the failure to fix and prosecute Miscellaneous Application No. 486/2017 demonstrates their intention to deprive the Respondent of monies lent to the Applicant. That it is the Respondent who continues to suffer substantial loss as its decretal sum continues to be unjustly withheld by the Applicant because of the endless litigation brought by the Applicant's frivolous Applications, which defeats the purpose of summary procedure.

Counsel prayed that the Application be dismissed with costs to the Respondent.

In rejoinder, the Applicant's Counsel submitted that all the Applicant is requesting for is to be heard. That the Respondent will not be prejudiced if the Application is granted.

COURT'S DETERMINATION

According to the Applicant's submissions, the Application demonstrates sufficient cause for setting aside the decree and reinstatement of the Applicant's Application for leave to appear and defend the main suit.

- In the case of Kabarole District Local Government Council vs Gunn Paper 90 Industries Ltd, HCMA No. 103/2022, court held that the law leaves the meaning and application of the phrase sufficient cause to judicial discretion and determination basing on the facts, surrounding circumstances and merits of each particular case for the purpose of ensuring that the ends of justice are met.
- The sufficient cause raised by the Applicant's Counsel in the instant case is the 95 ineffective service of the *Notice to show cause* upon neither the Applicant nor their lawyers. In respect to this, the Applicant's Counsel relied on annexure D to the Affidavit in support which is an Affidavit of service deposed by Alice Adebo the court process

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server. In that Affidavit she stated that she called the Applicant's former lawyers for service but they did not pick.

O.5 of the CPR provides for service of summons. According to annexure D to the Affidavit in support, contrary to R.10 which provides that service shall be made on the defendant in person, unless he or she has an agent empowered to accept service, in which case service on the agent shall be sufficient. Effective service of summons means service that produces the desired or intended result. Conversely, non-effective service of summons means service that does not produce such result. There can be no doubt that the desired and intended result of serving summons on the defendant in a civil suit is to make the defendant aware of the suit brought against him so that he has the opportunity to respond to it by either defending the suit or admitting liability and submitting to judgment. The surest mode of achieving that result is serving the defendant in person. See *Gwiry C)atete and another vs William Liobe* SC(4) No. 7/ 2005. Alice Adebo the court process server did not serve the Notice to show cause upon the Applicant or his lawyers.

115 120 R.15 provides for instances where the serving officer, after using all due and reasonable diligence, cannot find the person on whom service can be made. It provides that in such instances, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued with a report endorsed on it or annexed to it stating that he or she has so affixed the copy, the circumstances in which he or she did so, and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed. I agree with the Applicant's Counsel that the dismissed application which is annexed to the Affidavit in support had the physical

address of the Applicant's lawyer.

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- ¹²⁵ llut from the process server's Affidavit, it, she did not labor to serve physically yet R-16 provides that in their Affidavit it is ordered that the serving officer shall state the time when and the manner in which the summons was served, and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the summons. The provisions of this rule are mandatory...that the rule stipulates about
- service of summons, in my opinion, applies to service of hearing notice. See [Idison Kanlabwera v. Pastoi] (2001). The process server stated that she conducted service of the Notice to show cause by calling both lawyers. She went ahead to indicate the telephone number of the Respondent that she called but did not indicate the applicant's telephone number which she called to prove that she indeed called the applicant's lawyers as alleged. 130-135

I take judicial notice of, and agree with the Respondent's submission that the applicant's allegation that the reason for his failure to have the application fixed and heard was due to loss of the main court file is a falsehood because at the time of lodging the Application, the file had been fully reconstituted, summons extracted and served on the applicant and the applicant had filed an application for leave to appear and defend.

In the case of *Ketty Najanja V Yafesi Wamala and 2 others* Misc. App No.001 of 2019, court held that for the dismissal order to be set aside, it must be proved that the Applicant was prevented from prosecuting his case by sufficient cause.

For an application for setting aside under the provisions of O.36 R.11 to succeed on the ground of non-service, it must be demonstrated that service of summons was ineffective. 145

In the instant case, the process server failed in her cardinal duty to effect effective service on the applicant's former lawyer. It is evident that the Applicant and his former lawyers were unaware of the Notice because the same was never served upon them. Service of the Notice to show cause was therefore ineffective, which would amount

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to sufficient cause for the Applicant and their then lawyers not to have appeared in court on the date of the dismissal.

In the event, this Application succeeds, and it is ordered as follows;

'The Order of this Honorable Court dismissing Miscellaneous Application No. 486/2017 is hereby set aside;

The Judgment/Decree of this Honorable Court in CS No. 282/2017 is set aside;

Miscellaneous Application No. 486/2017 be reinstated and fixed for hearing inter partes;

'The costs of this Application shall be in the cause.

¹⁶⁰ It is so ordered

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