

**Ssebatta v Mayambala (Miscellaneous
Application 2184 of 2024) [2024]
UGHCLD 237 (10 October 2024)**
[2024] UGHCLD 237

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Background;

- 2. That the Respondent instituted Civil Suit No. 1100 of 2021 against the applicant. The Applicant contends he was never properly served and also, he had been assaulted and spent months in the hospital therefore unable to participate in the proceedings later on instruct his Lawyers to file a written statement of defence. Court ordered for substituted service after which the Respondent applied to proceed exparte and the said order was granted.
- 3. The Applicant brings this application to set aside the said orders and also seeks leave to file his written statement of defence out of time.

Applicants' Evidence;

- 4. The grounds of the application are contained in the affidavit in support of the application deposed by SSEBATA CHARLES the Applicant and are briefly that: -
 - i) That I recently discovered a matter that is proceeding exparte against me at High Court Land Division, Civil Suit No. 1100 of 2021 before Justice Aisha Naluzze Batala yet I have never been effectively served with summons to file a defence and plaint.
 - ii) That the Respondent purportedly bought the suit land in which I have a legal interest and was at all times aware of my address but clandestinely avoided to serve the summons to file a defence with a view of using the Court process to illicit and fraudulently take over the land I own.
 - iii) That in addition, I had been assaulted by unknown assailants sometimes at the end of 2021 during which time the Respondent instituted High Court civil suit No. 1100 of 2021.
 - iv) That I was admitted for several months to different medical institutions for treatment of my injuries and thus was unable to become conversant with the institution and proceedings of the suit and to further instruct my lawyers to file a defence on my behalf or personally follow up the same during my admission and period of treatment.
 - v) That my failure to file a defence within the statutory period was on account of the Respondent's failure to effectively serve me with the

summons to file a defence and their resort to a secretive and unjustified use of substituted service of the summons.

- vi) That in addition to the above, due to the fact that I was unable to speak or physically move following my assault, I was unable to follow up on the proceedings in the issues arising from the suit land, hence my failure to file a written statement of defence during the statutory period.
- vii) That the Applicant's interest in the suit land comprised in Bubebere Bunjo Kasanje Sub County, Wakiso District is at stake if the Applicant is not given an opportunity to file a written statement of defence.

- viii) That I am informed by my lawyers that I am entitled to a right to a fair hearing as per the constitution of the Republic of Uganda and it is in the interest of Justice that the orders sought in this application be granted as it raises pertinent questions which require due consideration by the Court.
- 5. The Respondent did not file any pleadings opposing the application thus the same is uncontested and the affidavit evidence led is not controverted thus this Court shall proceed to determine it as is.
- 6. It is trite law that where certain facts are sworn in an affidavit, the burden to deny them is on the other party and if he or she does not, they are presumed to have been accepted. (See; **Samwiri Massa V Rose Achen [1978] HCB 297**)

Representation;

- 7. The Applicant was represented by Muhangi Bob of M/s Turyakira & Co. Advocates whereas the respondent was represented by Patricia Mugisa of M/S Gem Advocates. All parties never filed written submissions.

Issues for determination;

- 8. The ultimate question of issue for determination of this application is;
- *i) Whether the applicant should be granted leave to file a written statement of defence out of time?*

Resolution and determination of the issue;

Whether the applicant should be granted leave to file written statement of defence out of time?

- 9. Section 98 of the Civil Procedure Act empowers Court to make such orders as may be necessary for the ends of justice.
- 10. The law created gates of justice through which people seeking justice pass to reach courts to be redressed. The gates open and close at

given intervals in accordance with the rules of procedure. In rare circumstances gates which are closed may be opened to allow in a late entrant. *(Tushabe Chris v Co-operative bank ltd (in receivership/statutory liquidation) Civil Application No.08 of 2018)*

- 11. Under these circumstances, the Applicant must have been impeded from filing their respective pleadings either by sufficient reason and must not be guilty of any dilatory conduct. *(Guliano Gariggio v Claudio Casadio SCCA No. 1 of 2013 and Narittam Bhatia & Anor v Boutique Shazim ltd CACA No. 3 of 2017 and Shanti v Hindocha & others [1973] EA 207 at 2019)*

On whether there is sufficient cause;

12. Sufficient cause is defined to mean an expression which has been used in a large number of statutes. That the meaning of the word sufficient is adequate or enough in as much as may be necessary to answer all purposes intended. Therefore, the word sufficient embraces no more than that which provides a platitude which when the act is done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. *(See;*

Gideon Mosa Onchwati v Kenya Oil Co. Ltd & anor [2017] KLR 650 and Bishop Jacinto Kibuuka v The Uganda Catholic Lawyers Society & anor MA 696 of 2018)

- 13. The Applicant states under paragraph 4,5 and 7 of the affidavit in support of the Application, the applicant states that he was assaulted and admitted for several months thus he was unable to know about the proceedings to instruct his Lawyers to file a written statement of defence on his behalf. This is supported by the medical reports attached to his affidavit in support marked A1, A2 & A3 respectively.
- 14. Owing to the fact that this application is unopposed, this Court is inclined to believe that all facts as pleaded and this is one of the cases where the Applicant should benefit from the unfettered discretionary powers of Court and in order not to contravene the principles of a fair hearing as enshrined under Article 28 of the Constitution of the Republic of Uganda 1995.
- 15. The Applicant has ably demonstrated to Court the reason as to why he was not participating in the proceedings in the first place and this Court finds this to be sufficient enough and thus inclined to grant the Applicant leave to file his written statement of defence and participate in the proceedings in HCCS No. 1100 of 2021.
- 16. Furthermore, the Applicant connotes to issues of failure to effectively serve him the summons to file a defence which resulted into Court granting an order for substituted service and eventually an order to proceed *ex parte*.
- 17. The rules governing service are set out in the provisions of Order 5 of the Civil Procedure Rules SI 71-1 as amended.

Order 5 rule 1 provides that: **When a suit has been duly instituted a**

summons may be issued to the defendant-

- *a) Ordering him or her to file a defence within a time to be specified in the summons; or (emphasis mine)*
- *b) Ordering him or her to appear and answer the claim on a day to be specified in the summons.*

- 18. The primary objective of serving summons is to make the defendant aware of the proceedings instituted against him so as to file a defence in order to ably participate in the same.
- 19. That 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*. (See; Geoffrey Gatete and Anor versus William Kyobe SCCA No. 07 of 2005).*
- 20. The Applicant doesn't show how he got to know about the ongoing proceedings but he knows about an order for substituted service which he seeks to set aside as well.
- 21. This Court finds it fit to set aside the said exparte order since the Applicant now knows about the proceedings and he is now willing to participate in the same.
- 22. Therefore, the instant application succeeds with the following orders;
- i) The Applicant is to file his written statement of defence within 7 days from the date of this ruling.
- ii) No orders as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

10/10/2024

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