

UGANDA / JUDGMENT

Wave Transfer Limited and Another v G4S Secure Solutions Limited (Miscellaneous Application No. 612 of 2025) [2025] UGCommC 178 (12 June 2025)

[2025] UGCommC 178

COURT

Commercial Court of Uganda

BEFORE

Tumusiime Rubagumya, J

CASE / FILE NUMBER

Miscellaneous Application No. 612 of 2025

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5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) MISCELLANEOUS APPLICATION NO. 612 OF 2025
(ARISING FROM CIVIL SUIT NO. 340 of 2024) 10 1. WAVE TRANSFER LIMITED

2. GOLDSTAR INSURANCE CO. LTD ::::::::::::::::::::::::::::::::::: APPLICANTS VERSUS

G4S SECURE SOLUTIONS LIMITED ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. LADY JUSTICE PATIENCE T. E. RUBAGUMYA

15 RULING

Introduction

This application was brought by way of Notice of Motion under **Section 33 (now Section 37) of the Judicature Act, Cap. 16, Section 98 of the Civil Procedure Act, Cap. 71 (now Cap. 282) and Order 52 rules 1 and**

- 20 3 of the Civil Procedure Rules, SI 71-1, seeking orders that:
- 1. The order dismissing *High Court Civil Suit No. 340 of 2024* be set aside.
- 2. *High Court Civil Suit No. 340 of 2024* be reinstated and determined on its merits.
- 25 3. Costs of this application be provided for.

Background

The background of this application is contained in the affidavit in support deposed by **Mr. Enock Mudadi** the 2nd Applicant's Claims Manager, and is summarized below:

- 5 1. That on 20th March, 2024, the Applicants filed *Civil Suit No. 340 of 2024* against the Respondent for recovery of UGX 137,566,850/= arising out of breach of a Security Services Agreement executed between the Respondent and the 1st Applicant.
- 2. That the Respondent filed its written statement of defence and 10 subsequently, the parties filed their Joint Scheduling Memorandum and respective trial bundles on 16th August, 2024.
- 3. That on 14th March, 2025 the Applicants' Counsel discovered, vide ECCMIS, that the main suit had been dismissed without their knowledge.
- 15 4. That the Applicants' Counsel also discovered that the suit had been fixed for hearing on 20th February, 2025 yet no notification was received. That as a result of this technical glitch on ECCMIS, the Applicants' Counsel were not aware of the said date for hearing and therefore, did not enter appearance.
- 20 5. That the technical glitch on ECCMIS was an error that cannot be visited on the Applicants or their Counsel.
- 6. That the Applicants or their Counsel were also not served with the hearing notice indicating that the suit had been fixed for hearing yet the parties had been exchanging their documents and 25 correspondences both physically and on ECCMIS.
- 7. That the Applicants' suit has high chances of success since the Respondent does not deny full liability in its written statement of defence.
- 8. That the application was brought without an undue delay.
- 30 In reply, the Respondent, through an affidavit deposed by **Mr. Edwin Mugumya**, one of the Advocates on the team representing the Respondent, opposed the application contending that:
 - 5 1. The technical glitch alleged by the Applicants is speculative and unsupported by evidence.
 - 2. Court issued a scheduling notice for 26th November, 2024 but neither the Applicants nor their Counsel entered appearance.
 - 3. Despite their nonappearance, the trial Judge adjourned the matter 10 to 20th February, 2025 and a hearing notice was sent via ECCMIS and the matter was referred for mediation before RTD Hon. Justice Yorokamu Bamwine vide *ME No. 352 of 2024*.

- 4. The Applicants and their Counsel did not enter appearance and the mediator adjourned the matter to 28th November, 2024 to which the 15 Applicants still did not appear. That since the Applicants were not entering appearance, the mediator closed the mediation.
- 5. When the matter next came up before the trial Judge on 20th February, 2025, the Applicants were still absent and unrepresented and to that the matter was dismissed under **Order 9 rule 22 of the**

20 Civil Procedure Rules.

- 6. In its written statement of defence, the Respondent averred that the 1st Respondent's employees were negligent and denied liability of the claimed sum. That the mere mention of the limitation clause does not amount to admission of liability.
- 25 In rejoinder, the Applicants, through an affidavit deposed by **Mr. Enock Mudadi** reiterated his previous averments and added that:
 - 1. *ME No. 352 of 2024* is not within the Applicants' knowledge and is not on ECCMIS.
 - 2. The Applicants did not receive any notification for the hearing that 30 was fixed on 20th February, 2025.
 - 5 3. The Respondent's written statement of defence raises triable issues which should be tried on their merits.
 - 4. The Applicants have interest in prosecuting the matter.

Representation

The Applicants were represented by Learned Counsel Lukwago David and 10 Learned Counsel Wasswa Kasim Ssensalo of **M/s Ssemambo & Ssemambo Advocates** while Learned Counsel Arnold Ojakol of **M/s Katende, Ssempebwa & Co. Advocates** represented the Respondent.

Both parties filed their written submissions and the same have been considered by Court.

15 Issues for Determination

Following **Order 15 rule 5(1) of the Civil Procedure Rules** and the case of *Oriental Insurance Brokers Ltd Vs Transocean (U) Limited SCCA No. 55 of 1995*, this Court rephrased the issues to read as follows:

1. Whether there is sufficient cause to set aside the dismissal order of

20 *Civil Suit No. 340 of 2024*?

2. What remedies are available to the parties?

Issue No. 1: Whether there is sufficient cause to set aside the dismissal order of *Civil Suit No. 340 of 2024*?

Applicants' submissions

25 Counsel for the Applicants first relied on **Order 9 rule 23(1) of the Civil Procedure Rules** and the principles that govern applications for setting aside dismissal orders. Counsel then defined the term sufficient cause and then submitted that there is sufficient cause in the instant case which

5 would warrant the setting aside of the dismissal order of *Civil Suit No. 340 of 2024*.

That the Applicants and their Counsel were barred from entering appearance on the day the matter came up for hearing because there was a technical glitch on ECCMIS which prevented the Applicants' Counsel 10 from receiving an ECCMIS generated notification or email of the hearing date. Further, that the Applicants were never served with the hearing notices in respect of *Civil Suit No. 340 of 2024* and the summons in the Mediation Cause. That the failure to serve the summons in the instant case is not a mere irregularity but a defect which renders the order from 15 which it was made a nullity as was held in the case of *Graig Vs Kansen*

[1943] 1 All ER 108.

Also, that the Applicants have at all material times been active and vigilant in prosecuting this matter and that the Applicants' suit has a high probability of success since the Respondent does not deny full liability as 20 per paragraph 10(i) of its written statement of defence.

Respondent's submissions

Counsel for the Respondent also relied on **Order 9 rule 23 of the Civil Procedure Rules**. Counsel submitted that the evidence on record does not disclose sufficient grounds because no credible evidence has been 25 adduced from the administrators of ECCMIS to confirm the alleged technical glitch on ECCMIS.

Further, that much as the Applicants contend that they were not physically served, it is now trite that a notice through ECCMIS is sufficient and there is no need for physical service as was held in the case of

30 *Mwesigye Nicholas Vs P & A Credit Investments Ltd HCMA No. 1677*

5 *of 2022*. That the Applicants' Advocates received prior ECCMIS notices and appeared accordingly and therefore, their failure to monitor ECCMIS would not constitute sufficient cause. In conclusion, Counsel prayed that the application be dismissed with costs.

Applicants' submissions in rejoinder

10 Counsel for the Applicants reiterated his previous submissions and added that whereas they were always receiving ECCMIS notifications, they never received any notification when the matter was coming up for scheduling on 20th February, 2025. That the technical glitch was beyond their control which demonstrates sufficient cause. That the Applicants' lawyers have 15 been vigilant in prosecuting the matter.

Analysis and Determination

Section 98 of the Civil Procedure Act empowers this Court to make such orders as may be necessary for the ends of justice.

Further, Order 9 rule 23(1) of the Civil Procedure Rules stipulates that:

20 *"Where a suit is wholly or partially dismissed under rule 22 of this Order, the Plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he or she may apply for an order to set the dismissal aside, and, if he or she satisfies the Court that there was sufficient cause for nonappearance when the suit was* 25 *called on for hearing, the Court shall make an order setting aside the dismissal, upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit."*

In the cases of *Florence Nabatanzi Vs Naome Binsobedde SC Civil Application No. 6 of 1987* and *Sipiriya Kyarulesire Vs Justine* 30 *Bakanchulike Bagambe SCCA No. 20 of 1995*, the Supreme Court while

- 5 handling such an application laid down principles which can be summarized as follows:
- i) First and foremost, the application must show sufficient reason which relates to the inability or failure to take some particular step within the prescribed time. The general requirement 10 notwithstanding each case must be decided on the facts at hand.
- ii) The administration of justice normally requires that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights.
- 15 iii) Whilst mistakes of Counsel sometimes may amount to an error of judgment but not inordinate delay or negligence to observe or ascertain plain requirements of the law.
- iv) Where an Applicant instructed a lawyer in time, his rights should not be blocked on the grounds of his lawyer's negligence or 20 omission to comply with the requirement of the law.
- v) A vigilant Applicant should not be penalized for the fault of his Counsel on whose actions he has no control.

The term sufficient cause though not defined by our Civil Procedure Rules has been defined in several cases. In the case of *Gideon Mose Onchwati*

25 *Vs Kenya Oil Co. Ltd and Another [2017] eKLR* the Court relied on the definition in the Indian case of *Parimal Vs Veena Alias Bhati [2011] 3 SCC 545*, wherein it was held that:

"Sufficient cause" is an expression which has been used in large number of statutes ... In this context, "sufficient cause" means that* 30 *party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the*

- 5 *party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously."*
- 10 It is also pertinent to note that in such cases, the test to be determined is whether the Applicants honestly intended to attend the hearing of the suit.

In the instant case, the Applicants averred that they were unable to enter appearance on 20th February, 2025 because, they were never served with the hearing notice and that they never received an ECCMIS notification or 15 email regarding the same.

On the other hand, the Respondent contends that the Applicants have no interest in prosecuting their case because they even never entered appearance when the suit was sent for mediation. Further, that the hearing notices were issued and notifications sent as per annexures "B", 20 "C" "D" and "E" attached to the affidavit in reply. In rejoinder, the Applicants maintained their argument that they never received any ECCMIS notification or email and that they were never served. The Applicants also contended that they are not aware of the Mediation Cause and nor is it on ECCMIS.

25 According to the Court record, on 18th October, 2024 a hearing notice was issued fixing *Civil Suit No. 340 of 2024* for scheduling on 26th November, 2024 as per annexures "B" attached to the affidavit in reply. On 26th November, 2024, the Applicants never entered appearance and to that the suit was adjourned by Court to 20th February, 2025 as evidenced by 30 annexure "B" attached to the affidavit in reply, a hearing notice fixing the suit for hearing on 20th February, 2025. Therefore, the hearing notices for

5 17th October, 2024, 26th November, 2024 and 20th February, 2025 were issued by this Court.

Further, the Applicants contended that *ME No. 352 of 2024* is not on ECCMIS. I have checked on the Court record and *ME No. 352 of 2024* is on ECCMIS and sittings were created for the mediation sessions. The 10 mediator, the Hon. Principal Judge (RTD) Yorokamu Bamwine issued a mediation report dated 28th November, 2024 wherein His Lordship stated that the mediation file should be returned to the Registry after three consecutive appearances of the defense without the Plaintiff showing up. Accordingly, there is evidence on the Court record that shows that the 15 Applicants also did not appear for mediation and the file was closed since it was only the Respondent/Defendant who was appearing for mediation.

My view is that it is the duty of a party that files the suit to follow up on the same until its logical conclusion. Also, generally in civil proceedings, the duty to serve summons and hearing notices lies on the Plaintiff, the 20 Applicants in this application. Therefore, the Applicants argument that they were never physically served with the hearing notices lacks merit and it only shows their lack of vigilance regarding the main suit.

In the case of *Mwesigye Nicholas Vs P & A Credit Investments Ltd (supra)*, Court held that:

25 "Being that the system (ECCMIS) is automated, it is practically impossible for the notification to be selectively sent out only to the Respondent."*

Therefore, considering that the Respondent, despite not being served physically, entered appearance when the matter was fixed for hearing in 30 the absence of the Applicants, it implies that the notifications were sent

5 out but the Applicants and their Counsel were not vigilant in following up on their case. This depicts negligence on the part of the Applicants and their Counsel.

It is now trite that Court cannot condone the negligence of parties who fail to be vigilant. (See: *Komakech Christopher & Another Vs Odongo Otto*

10 *Election Petition Appeal No. 02 and 06 of 2021*).

In the premises, I find that the Applicants have not shown sufficient cause for the nonappearance when *Civil Suit No. 340 of 2024* was called for hearing on 20th February, 2025. Therefore, issue No. 1 is answered in the negative.

15 Issue No. 2: What remedies are available to the parties?

Having resolved issue No. 1 in the negative, this application is hereby dismissed. The costs of this application are awarded to the Respondent. 1 so order.

Dated, signed and delivered electronically via ECCMIS this 12th day of

20 June, 2025.

Patience T. E. Rubagumya **JUDGE** 12/06/2025 25 6:40am

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