

THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 119 OF 2022

(Arising from Labour Dispute Reference No. 0039 of 2022 and Labour Dispute No.
MGSLD/LC/275/2019)

NOAH OMONDI & 22 ORSAPPLICANTS

VERSUS

1.CIVICON LIMITED.....RESPONDENTS

2.CIVICON ENGINEERING AFRICA

3.CIVICON SACCO LIMITED

BEFORE:

THE HON. JUSTICE ANTHONY WABWIRE MUSANA

PANELISTS:

1. Mr. JIMMY MUSIMBI,
2. Ms. ROBINAH KAGOYE &
3. Mr. CAN AMOS LAPENGA.

EX-TEMPORE RULING

Introduction

- 1.0 The applicants filed a labour dispute reference against the respondents seeking various remedies. In May 2022, they received summons for service upon the respondents. They hold that all attempts to serve the respondents at their last known address on Plot 53-67, Mulwana Road, Bwala Hill, Kampala, the registered office at Plot 60-64, 6th Street Kampala, and by way of registered mail to the registered address at P.O. Box 24544, Kampala, have been futile. They filed this application for orders of substituted service and enlargement of time to serve the notice of claim.
- 1.1 M/S ALP Advocates, for the applicants, accompanied the chambers summons and affidavit in support with brief written submissions. Counsel submitted that all attempts to serve the respondents had come to naught. Relying on the case of **Oburu Amos & Anor V Equity Bank(U)Ltd[2017]UgCommC 146**, Counsel contended that they had exercised due diligence in trying to effect service. In respect of the enlargement of time, Counsel contended that there was good cause for the extension of time.

Analysis and resolution

2.0 Leave for substituted service

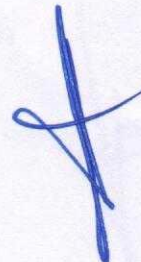
2.1 Order 5 Rule 22 of the Civil Procedure Rules S.I 71-1(CPR) requires a court to be satisfied that the summons cannot be served in the ordinary way before it grants an order of substituted service. The respondents are limited liability companies. Under Order 29 Rule 2 of the CPR, service on a corporation is effected on the secretary, director, or principal officer, sent by registered post to the registered office or left at the place where the corporation carries on business.

2.2 To establish whether leave for substituted service should be granted, this Court would be called to review Mr. Noah Omondi and Mr. Ronald Luusi's affidavits in support of the application. Our examination of the affidavits demonstrates that as a first step, the applicants' Counsel attempted to serve the respondents at their last known address. The applicants also sought to effect service on the respondents' registered address. Copies of the annual returns for the 1st Respondent for the year 2016 were supplied to Court. This indicates a search at the Companies Registry to establish the location of the respondents. The address indicated therein is Plot 60/64 Sixth Street, Kampala. Ultimately, court process was sent to the registered postal address at P.O. Box 24544, Kampala. A postal receipt for registered mail under item RR223022968UG was attached to the affidavit in support. On the basis of the affidavits in support of the application, we find that the applicant attempts at effecting direct service on the respondents were futile.

2.3 We are satisfied that service through the ordinary process of serving the respondents is impracticable and therefore ineffective. We find that this is a proper case for substituted service. We direct service of summons in a newspaper of wide circulation and in prominent form.

3.0 Enlargement of time

3.1 In the case of **Harriet Amony Vs Madhavani Group Ltd LDMA 066 of 2019** this Court in considering its power to enlarge time, posited that where there is a lacuna in the Labour (Arbitration & Settlement (Industrial Court procedure) Rules 2012, the Civil Procedure Rules. Rule 6 of the Labour (Arbitration & Settlement (Industrial Court procedure) Rules 2012 provides for extension of time where a party fails to file documents in time. Applying the decisions in **James Bwogi & Sons Enterprises Ltd. Vs Kampala City Council S.C.C.A No. 09 of 2017** and **Kampala District Land Board, and Honondi Daniel Vs Yolamu Egondi C.A.C.A No.67 of 2003** this court has established the standard that this Court has the power to extend time for sufficient reason.



3.2 Under Rule 5(1),(2), and (3) of the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012, (LADASA Rules) a claimant is required to file a memorandum of reply within 7 days of after receipt of notice of a dispute. The claimant is required to serve the same on the respondent and file an affidavit of service. There appears to be no explicit timeframe within which service of the memorandum of claim is to be effected. However, under Order 5 Rule 1(2) of the CPR, service of summons shall be effected within 21 days from the date of issue. An application for extension of time is made within 15 days after the expiration of the 21 days showing sufficient reasons for the extension. Sufficient reason or good cause has been found to relate to the inability or failure to take a particular step in time¹ and that the delay has not been occasioned by dilatory conduct on the part of the applicant.²

3.3 In the present case, the applicants received a notice of claim on 16th May 2022. The 21 day period would have expired on 6th June 2022. The 15 day period within which to file the application for extension of time would have lapsed on 21st May 2022. An attempt was made to serve the respondents by registered mail on 26th May 2022. This was after the expiration of the 21 day period as well as the 15 day extension period. Ordinarily, this would be out of time. However, the Courts are now enjoined to administer substantive justice without undue regard to technicalities. This is not to suggest that the provision of Article 126(2)(e) is a magic wand³ but in the present case, it is not apparent that the respondents would suffer any prejudice if time within which to serve the summons were enlarged. And we are fortified in this view by the decision of the Honourable Justice Stephen Mubiru in **Ojara Otto Julius vs Okwera Benson**⁴. We have already found that the applicant's attempts to serve the respondents were futile and that there had been due diligence in trying to effect service. This, in our view, is sufficient cause for extension of time to serve summons. The time to effect service is hereby extended.

Orders of the Court

4.0 In the final analysis, we make the following orders:

- (i) The applicant is granted leave to serve the respondents by substituted service.

¹ See Pinnacle Projects Ltd vs Business in Motion Consultants Ltd H.C.M.A No. 362 of 2010

² See Shanti vs Hindocha[1973] EA 207

³ See Kasirye Byaruhanga &Co Advocates Vs Uganda Development Bank S.C.C.A No.2/97

⁴ H.C.M.A 0023/2017



- (ii) Summons shall be placed in either the New Vision or Daily Monitor Newspapers. Such advert shall be placed in the newspapers no later the 21 days from the date hereof.
- (iii) Costs shall abide the outcome of the main claim.

4.1 Before taking leave of this matter, we commend Counsel for the applicant for filing brief written submissions before the hearing. The practice of filing either skeletal arguments or brief written submissions is useful because it enables for a quick consideration of the matter.

Delivered and signed at Kampala this 5th day of December 2022

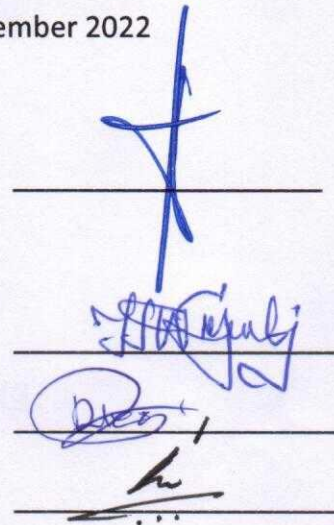
ANTHONY WABWIRE MUSANA, Judge

PANELISTS

MR. JIMMY MUSIMBI

MS. ROBINAH KAGOYE

MR. CAN AMOS LAPENGA



Handwritten signatures of the judge and panelists over horizontal lines.

Delivered in open Court in the presence of:

Ms. Lucy Siky, Counsel for the 1st Applicant
1st Applicant present in Ct.

Court Clerk. Mr. Samuel Mukiza.