



THE REPUBLIC OF UGANDA
IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 132 OF 2023
(ARISING FROM LABOUR DISPUTE REFERENCE NO. 0047 OF 2016)

KRISHNA P. SHARMAAPPLICANTS

VERSUS

1. CHRISTOPHER SSAZI

2. NILE FISHING COMPANY LTD.....RESPONDENTS

Before:

The Hon. Justice Anthony Wabwire Musana

Panelists:

1. Hon. Adrine Namara
2. Hon. Suzan Nabirye &
3. Hon. Michael Matovu

Representation:

Mr. Wilson Okello for the Claimant.

RULING

- [1] The Applicant filed this application seeking leave of Court to effect service on the Respondents by substituted service. In the accompanying affidavit, Mr. Daniel Ariko, Court process server, deposed to the Respondent and their Counsel suddenly ceasing to attend Court. He also deposed to attempting to serve the 2nd Respondent at its principal place of business on the 2nd Floor, Mutaasa Kafeero Building. The 2nd Respondent declined to accept service on the instructions of the 1st Respondent. Counsel on record for the Respondent, M/s. Mungoma, Mabonga, Wakhakha, also refused to accept service on the ground that they needed instructions. M/s. DANRICH

Advocates for the applicants accompanied the pleadings with brief written submissions. Counsel submitted that all attempts to serve the respondents were unsuccessful. The Respondents were elusive and evasive.

- [2] It was also submitted that this Court has inherent powers to make such orders necessary to meet the ends of justice. Counsel cited Order 5 Rule 18 Civil Procedure Rules S.I 71-1(CPR) and the cases of **Franco Mugumya v Total (U) Ltd H.C.M.A No.28/2013** and **Noah Omondi v Civicon LDMA 119 of 2022** in support of the application. The Court was also asked to enlarge time to effect service.

The Decision of the Court


- [4] Under Order 5 Rule 18 CPR, the Court must be satisfied that the summons cannot be served in the ordinary way before it grants an order of substituted service. From our perusal of Mr. Ariko's affidavit in support, we are satisfied that attempts have been made to serve the evasive Respondents. We note that the Counsel on record have declined receipt of service. Ordinarily, where Counsel have lost instructions, Regulation 3(2) of the Advocates (Professional Conduct) Regulations S.I 267-2 requires them to give sufficient notice to their client and the Court of their intention to withdraw. Such notice enables orderly transition, and Counsel would then be off the record.
- [5] The above notwithstanding, we are satisfied that service through the ordinary process of serving the respondents cannot be effected. The Respondents are evasive and elusive. Enlarging time is unnecessary. This case is not on all fours with the facts in **Noah Omondi v Civicon**(ibid) case, where summons to file a memorandum in reply had remained unserved. In this case, the Respondent filed a written statement of defence (Memorandum in Reply) on the 21st of April 2016 and appeared in Court on 21st August 2019. Subsequently, Counsel has not appeared. It is a matter of service of hearing notices. This is a proper case for granting an order of substituted service and direct service in a newspaper of wide circulation. The main cause is fixed for hearing on and we direct the Respondents to

appear on that date. As this matter has proceeded ex parte, there is to be no order as to costs.

- [6] Counsel for the Applicant accompanied the pleadings with written submissions. In short applications like the present one it is an excellent use of scarce judicial resources and has saved time, both for the Court and Counsel.

It is so ordered this 16th day of August 2023.

Anthony Wabwire Musana,
Judge, Industrial Court



THE PANELISTS AGREE:

16 1. Hon. Adrine Namara,



2. Hon. Susan Nabirye &



3. Hon. Michael Matovu.



Ruling delivered in open Court on the 16th day of August 2023 at 11.33am in the fore/noon in the presence of Mr. Wilson Okello for the Applicant.

Court Clerk: **Mr. Samuel Mukiza.**

Anthony Wabwire Musana,
Judge, Industrial Court

