**THE REPUBLIC OF UGANDA,**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**MISCELLANEOUS APPLICATION NO 588 OF 2015**

**(ARISING FROM HCCS NO 48 OF 2015)**

1. **ZIMWE ENTERPRISES HARDWARE & CONSTRUCTION}**
2. **PAUL S. KASAGGA}**
3. **JOSEPHINE KASAGGA}......................................APPLICANTS/DEFENDANTS**

**VS**

**WAVENETS COMMUNICATIONS LTD}.........................RESPONDENT/DEFENDANT**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**RULING**

The Applicant moved the court under section 98 of the Civil Procedure Act as well as Order 9 rule 12, of the Civil Procedure Rules for the ex parte judgement and decree entered against the Applicants in HCCS 48 of 2015 to be set aside; for the Applicants to be allowed to file their written statement of defence and for costs of the application to be provided for.

The grounds of the application are that a warrant of arrest has already been issued against the second and third Applicants. Secondly the Applicant’s were never served with summons in the main suit. Thirdly the Applicants have not been aware of the proceedings and only came to know about the proceedings after the bailiff accosted them. Fourthly the suit is res judicata. Finally the Applicants averred that it is the interest of justice that the application is granted.

The application is supported by the affidavit of Josephine Kasagga, the third Applicant and director of the first Applicant. She deposes that on 15 June 2015 a warrant of arrest was issued against her and the third Applicant. The attached warrant of arrest in execution is for the sum of Uganda shillings 265,678,329/=. Subsequently she contacted her lawyers on the warrant whereupon her lawyers Messieurs Kavuma Kabenge and company advocates perused the court file and discovered that the Respondent had filed HCCS 48 of 2015 against the Applicants and an ex parte judgement had already been entered against the Applicants according to a copy of the judgement attached. Furthermore the affidavit of service on the court record shows that there was service of summons to file a defence or Messieurs Kasekende, Kyeyune and Lutaaya Advocates which was taken to be service of the summons on the Applicant's according to the attached affidavit of service of Edwin Ahimbisibwe. They had never instructed the above firm to receive summons or conduct of proceedings on their behalf in regard to the present suit and those advocates have never informed them of the summons issued and served on them.

The letter applying for default judgment contradicts the affidavit of service because the affidavit deposes that service was effected on Kasekende, Kyeyune and Lutaaya Advocates whereas the letter states that the service was effected on Messieurs Mukwatanise and Company Advocates. Both firms of advocates in any case did not have instructions of the Applicants to represent them in the main suit. On the basis of the above there was no effective service of summons in the main suit on the Applicants.

On the advice of Messieurs Kavuma Kabenge and Company Advocates he deposes that the Respondent was seeking to lift the veil of incorporation of the first Applicant, an order for general and exemplary damages and there was no way a judgement should have been entered ex parte without formal proof. Furthermore the main suit is res judicata as against the first Applicant since the same has already been determined in HCCS 71 of 2012 between the first Applicant and the Respondent according to a copy of the decree attached. Furthermore the case does not disclose any cause of action against the second and third Applicants since they were not parties to the contract of supply between the first Applicant and the Respondent neither did they guarantee any payment pursuant to that transaction.

Consequently the main suit raises many triable issues of law and fact which this honourable court or to adjudicate upon and it is in the interest of justice that the ex parte judgement is set aside and the suit heard inter partes.

The affidavit in reply of the Respondent is deposed to by the director of the Respondent Mr Babigumira Andrew. He deposes that the Applicant’s affidavit in support contains falsehoods and is not true because firstly the Applicants have at all material times use the attorneys Messieurs Kasekende, Kyeyune and Lutaaya Advocates. The affidavit of service was served on the on the 17th of May 2014 and reference to another law firm in the order was a mere typing error and does not cause any injustice. He deposed that Messieurs Kasekende, Kyeyune and Lutaaya Advocates has been the firm handling this particular matter right from the year 2012 when the main suit for recovery of moneys was instituted. The same law firm has made a communication regarding the said application according to annexure "B". The Applicants were duly served and chose not to reply although they were in constant touch with the Respondent over the same issue as evidenced by the letter dated 18th of May 2012. The filing of numerous applications is a ploy to delay the financial obligations to the Respondent and a waste of the time of the court.

Judgement was based on Order 50 rule 2 of the Civil Procedure Rules and therefore the presiding registrar duly followed the law. Furthermore on the advice of his lawyers he deposes that a company acts through its directors and therefore directors are responsible for all acts of the company. The Applicants engaged in ways of avoiding to pay the sums since 2012 and the erroneous applications are overt acts of abuse of the process of the court.

The Applicant is represented by Counsel Muhammad Golooba while the Respondent was represented variously by Counsels Ronald Mugisha and Lillian Kiiza.

The court was addressed in the written submissions. The gist of the Applicant’s submission is that the Applicant was not served because an affidavit of service on the court record demonstrates that service was effected through Messieurs Kasekende, Kyeyune and Lutaaya Advocates. However they never instructed the said firm of advocates. He relies on Order 5 rules 9 and 10 of the Civil Procedure Rules that summons is to be served on each of the Defendants where there is more than one Defendant and it is to be effected on the Defendant personally or on his or her recognised agent. The Applicant’s Counsel relies on the decision of this court in **Mulenga Christopher versus Stanbic bank HCMA 200 of 2013** where it was held that service must be effected on the Defendant personally and it is up to the Defendant to instruct any lawyer of his or her choice. He submitted that HCCS No. 48 of 2015 was a frivolous suit and there was no way that the said Counsel could have personal conduct of the suit which had just been filed.

In reply the Respondents Counsel submitted that the second Applicant is the managing director of the first Applicant while the third Applicant is a shareholder and director of the first Applicant. Some reference was made to the background of this suit and reference may be made to the background if it is appropriate.

As far as the grounds of the application are concerned on the question of service of summons on the Defendants/Applicants, the Respondents Counsel relies on the case of **Geoffrey Gatete and Angela Maria Nakigonya versus William Kyobe SCCA No. 7 of 2005** and the holding of Mulenga JSC that the words "effective service" means having the desired effect of making the Defendant aware of the summons. The affidavit of service was filed on court record and this was done in accordance with the rules. He submitted that Messieurs Kasekende, Kyeyune and Lutaaya Advocates have been the advocates representing the Applicant in respect of this matter to the extent that payment in respect of KCCA contracts was made through the same firm. In those circumstances service on an agent is sufficient according to the case of **UTC versus Katongole and Another (1975) HCB 336**.

Furthermore with reference to the case of **Gizamba Annas vs. Mugobera Massa Moses HCT – 04 – CV – CA – 0096 – 2011**, the court held that service was not in compliance with Order 5 rule 10 of the Civil Procedure Rules which puts the onus on the process server to exercise due diligence while effecting service and only in exceptional circumstances should somebody else other than the Defendant be served. There has to be sufficient reason for another person to be served. He submitted that this reason is contained in the affidavit of service which informed the court. Since 2012 it had been the firm which had been served conducting the matters on behalf of the Applicant and they have always been entitled the Respondent over the same issue as evidenced in a letter dated 18th of May 2015 annexure "C" to the affidavit in reply. The second Applicant wrote to the registrar High Court execution division promising to pay the Respondent's money within 90 days in respect of EMMA No. 871 of 2015 arising from HCCS 2015. The Applicant is not denied being indebted or being aware of the suit.

In the instant case the affidavit of service relied upon establishes that on 5 February 2015 the process server proceeded to the offices of Messieurs Kasekende, Kyeyune and Company Advocates which is the address of the Applicant's and Mr Edmund Kyeyune accepted service of court process on behalf of the Applicant and confirmed that he had instructions. No step was taken to defend the suit and ex parte judgement was entered on the court record.

In the case of **David Ssesanga versus Greenland Bank Ltd Miscellaneous Application No. 406 of 2010 arising from HCCS 61 of 2002** it was held that what the court needs to be satisfied about is whether the service of summons in the particular circumstances of the case was effective or whether there was some good cause to set aside the decree.

In rejoinder on the question of service of summons, the Applicants Counsel reiterated that the advocates are not their authorised agents and have never been instructed to act on behalf of the Applicants in the main suit.

**Whether HCCS NO. 48 of 2015 is res judicata**

The Applicant’s Counsel submitted on the second ground that HCCS 48 of 2015 is res judicata against the first Applicant and inappropriate against the second and third Applicants. He submitted that the suit is barred by the doctrine of res judicata against the first Respondent. This is because there is an existing decree against the first Applicant on the same subject matter. He further submitted that the court issued a decree against the first Applicant in HCCS 71 of 2012 and the Respondent avers in the plaint that it has taken action to realise the judgment debt. The matter is therefore res judicata under section 7 of the Civil Procedure Act Cap 71 laws of Uganda.

The Applicant's Counsel relied on the decision of this court in **Jimmy Mukasa versus Tropical Investments Limited HCCS 232 of 2007**. He submitted that the current suit is res judicata against the first Applicant and the judgement and decree cannot stand on the court record. Secondly as against the second and third Applicants, the current suit is also inappropriate and cannot stand. There is a decree against the first Applicant and the Respondent contends under paragraphs 5 of the Plaintiff that it took action to execute the decree but the company did not have assets. Whereupon the Respondent intends to ask the court to lift the veil of incorporation of the first Applicant in order to make the second and third Applicants liable to satisfy the judgment debt in **HCCS 71 of 2012** personally. He submitted that section 34 (1) of the Civil Procedure Act (supra) bars the filing of original suits where the question relates to the execution or satisfaction of an existing decree between the judgement creditor and the judgement debtor or their representatives and all these issues must be handled at the execution stage and not in a separate original suit. Secondly this is in line with the decision of this court in **Jimmy Mukasa versus Tropical Investments Limited** (supra). In the premises the current suit against the second and third Applicants are inappropriate and the judgement and decree cannot stand.

In reply the Respondent’s Counsel submitted that the Respondent’s suit is not res judicata as submitted by the Applicant's. It is a suit for lifting the veil of incorporation of the first Applicant to recover Uganda shillings 139,547,362/=. The Respondent’s Counsel submitted that it is trite law that a suit for lifting the veil of incorporation can be brought as a fresh suit and can include the directors or shareholders as parties to the suit. Furthermore a fresh suit is not precluded where evidence of fraud has become available which was not known to the Plaintiff at the time of the first suit. It might be discovered and would raise an issue which was not determined in the first suit. The Plaintiff’s paragraph 5 of the plaint avers elements of fraud which were not determined in the first suit. Furthermore section 20 of the Companies Act 2012 gives this court jurisdiction to lift the veil of incorporation in cases of fraud according to the case of **Stanbic Bank Uganda Ltd versus Ducat Lubricants (U) Ltd and others HCMA No. 845 of 2013**. In this suit the second and third Applicants used all the proceeds from the KCCA contracts for their own benefits.

The parties to the suit are different and the matter was not determined to its logical conclusion because the Respondent failed to execute the decree against the first Applicant which has not known properties. The second and third Applicants are in charge of running the affairs of the first Applicant Company. The second Applicant promised to pay on behalf of the first Applicant upon receiving money from KCCA and the first and third Applicants have diverted the money for their own used without clearing the Respondents outstanding balance. The first Applicant received the payments through Messieurs Kasekende, Kyeyune and Company Advocates. The conduct of the Applicants was in bad faith and amounted to fraud and the Respondent filed a suit to lift the corporate veil of the first Applicant. There is no illegality in this suit and the facts of the suit can be distinguished from the case cited by the Applicant’s Counsel of **Jimmy Mukasa versus Tropical Investments Ltd and Others HCCS Number 232 of 2007**.

In rejoinder the Applicant’s Counsel contended that the Respondent failed to respond to ground two which raises the issue of res judicata against the first Applicant and appropriate orders against the second and third Applicants. As a matter of fact there is judgement and decree in HCCS 71 of 2012 between the first Applicant and the Respondent over the same subject matter and therefore the present suit is barred by the doctrine of res judicata against the first Applicant. Secondly it is inappropriate to proceed against the second and third Applicants in accordance with section 34 (1) of the Civil Procedure Act.

**Whether judgment in HCCS No. 48 of 2015 was erroneously entered?**

**O**n the issue of whether the judgment in **HCCS No. 48 of 2015** was erroneously entered? The Applicants Counsel submitted that because the Respondent was seeking lifting of the veil of incorporation, general and exemplary damages, there was no way a default judgement could be entered without setting down the suit for hearing. He further relied on **Stanbic Bank versus Ducat Lubricants (U) Ltd HCMA 845 of 2013** for the holding that although section 20 of the Companies Act 2012 gives the High Court jurisdiction to lift the veil of incorporation in cases of tax evasion, fraud or membership falling below the statutory minimum, by using the word involvement in fraud, it is apparent that it should be established to the satisfaction of the court.

The grounds for lifting the veil against the second and third Applicants or imposing personal liability on a director have to be established by evidence. In the premises the default judgement against the Applicant was erroneous and cannot be left to stand on the court record. In the premises the Applicant prays that the default judgement and decree in **HCCS No. 48 of 2015** issued under Order 9 rule 12 of the Civil Procedure Rules is set aside and the main suit also dismissed.

In reply on whether judgement in default was erroneously entered, the Respondent's Counsel submitted that judgement was duly entered in accordance with Order 50 rule (2) of the Civil Procedure Rules and was unlawful. The second and third Applicants are in charge of running the affairs of the first Applicant Company. The second Applicant promise to pay on behalf of the first Applicant upon receiving money from KCCA and the first and third Applicants instead diverted the money for their own use without clearing the Respondent's outstanding balance.

The first Applicant received payments worth US$350,000 through the said firm of advocates in Standard Chartered Bank Garden City Branch account number 0102040944501. The conduct of the Applicant's was in bad faith and amounted to fraud. In the premises the Respondent’s Counsel prayed that the Applicant's application is dismissed with costs because it is intended to abuse the court process and does not raise any triable issues or sufficient grounds provided for under Order 9 rule 12 of the Civil Procedure Rules and the Applicant should be compelled to pay the Respondent's money without further delay.

In rejoinder the Applicant’s Counsel submitted that as far as the default judgement is concerned, it was erroneously entered without setting down the suit for hearing since it involved proof of fraud and damages against the Applicant’s which must be strictly proved. In the premises the application ought to be allowed.

**Whether the Applicant’s Counsel were duly instructed in this matter?**

In an alternative argument the Respondent’s Counsel submitted that the advocates who filed this application do not have instructions to do so and there is no resolution appointing them to appear on behalf of the Applicant. He relied on the case of **Dennis Mercantile Company Ltd versus Beaumont and Another (1951) Chancery 680** stated in the case of **Kabale Housing Estate Tenants Association versus Kabale Municipal Local Council Civil Application Number 15 of 2013** for the proposition that a solicitor who starts proceedings in the name of the company without verifying whether he has proper authority to do so or under an erroneous assumption of authority does so at his or her own peril.

In reply Applicant’s Counsel submitted that Messieurs Kavuma Kabenge and company advocates were duly authorised and filed the present application by the second and third Applicants who are managing directors and shareholders of the first Applicant. There is no need of the company resolution. He relied on the decision of Justice Kanyeihamba JSC in Messieurs **Tatu Naiga & company Emporium versus Verjee Brothers Ltd SCCA No. 8 of 2000**. In any case there is no need of the company resolution filed the present application on behalf of the second and third Applicants.

**Ruling**

I have carefully considered the Applicant’s application, the grounds of which have been set out above. I have also considered the submissions of the Counsels as summarised above.

The first ground of the application relates to service of summons in the main suit against the Applicants. The second ground is that the suit is res judicata. The third ground is that in any case a default judgement ought not to have been entered against the Applicants who are Defendants in the main suit. Lastly the Respondent raised an issue of whether Messrs Kavuma Kabenge and Company Advocates were duly instructed.

On the question of whether the firm of advocates of the Applicants were duly instructed because there is no resolution of the first Applicant Company, the first response is simply based on the plaint. The second and third Defendants who are the second and third Applicants under paragraph 3 of the plaint where sued in their personal capacity. They do not need any resolution of the first Applicant Company to apply to set aside the judgement entered in default of filing a defence. Secondly a decree has been issued against them. Last but not least it is doubtful whether the issue of whether the first Defendant/Applicant duly instructed the said firm of advocates to file an application to set aside the judgement can be raised by the Respondent who sued. It is admitted that the second and third Applicants are directors and shareholders. That matter cannot be raised in a preliminary objection but ought to be tried. The affidavit in support is made in the capacity of a director of the first Applicant as well as capacity of the third Applicant. Paragraph 3 of the affidavit in support of the notice of motion indicates that she contacted their lawyers upon learning of an existing warrant against the Applicants. In the premises the fact that the first Applicant does not have a company resolution cannot be raised without evidence. The affidavit in reply contains no material to the effect that the said firm of advocates was never duly instructed. In the premises the preliminary point of law as to whether Messieurs Kavuma Kabenge and company advocates were duly instructed is overruled.

The grounds as to whether there was service of summons on the Applicants and whether the default judgement was duly issued can be considered together.

I will first of all consider the evidence. The Respondent who is the Plaintiff in **HCCS 48 of 2015** filed this action on 4 February 2015 and summons was issued the same day. The summons was addressed to the first Applicant who is a limited liability company as well as the second and third Applicants who are natural persons.

The bone of contention arises from the affidavit of Edwin Ahimbisibwe whose affidavit dated 16th of February 2015 was filed on court record on 17 February 2015. He deposes that on 5 February 2015, he received summons to file a defence in respect of civil suit number 48 of 2015 to be served upon the Defendants. The same day he proceeded to the office of Kasekende, Kyeyune & Lutaya advocates which is the known address from the previous services and the found Mr Bwire Lucky to whom he introduced himself and the purpose of his visit. He tendered a copy of the summons to file the defence together with a copy of the summary plaint.

A second affidavit of service was filed on 13 March 2015. It was deposed to by the same process server and he deposes that on 5 February 2015 he received the summons to file a defence in respect of this suit whereupon he proceeded on the same day that is 5 February 2015 to the same firm. Mr. Bwire Lucky made a call on Mr Edmund Kyeyune who has personal conduct of the matter for purposes of receiving summons for all the parties to the suit which he consented to. Secondly he tendered in the summons to file a defence together with a copy of the summary plaint and the Plaintiff’s mediation summary which was received by the said advocate. I have carefully considered the alleged receipt it is received by two persons on the stamp of KKL advocates on 5 February 2015. The acknowledgement is a scanned copy of the summons.

On 5 March there is a letter written by the Plaintiff's advocates Messieurs Kiiza and Kwanza advocates indicating that summons were issued on 4 February 2015 for service on the Defendants. On 5 January 2015 the summons were duly served on the Defendants through their Counsel Mukwatanise and Company Advocates. Secondly the affidavit proving service of summons and plaint was filed on court record on 5 February 2015. They prayed for judgment to be entered under Order 50 rule (2) of the Civil Procedure Act. Default judgement was entered as prayed for on 13 March 2015 by the deputy registrar. The decree that was entered is for Uganda shillings 139,547,362/= with interest thereon at commercial rate.

The decree that was extracted is however at variance with the judgment of the registrar because it is written that judgement is entered in favour of the Plaintiff against the Defendant for Uganda shillings 139,547,362/=. The default judgement is however silent on the amount awarded.

It may be argued that the default judgement was entered under the wrong rules and that wrong citation of the rule can be ignored and so long as there was a jurisdiction to enter the judgement and the wrong citation can be rectified by inserting the correct rule (See **Saggu v Roadmaster Cycles (U) Ltd [2002] 1 EA 258**). I have considered order 50 (2) of the Civil Procedure Rules. There is no such rule as cited. The correct rule is order 50 rule 2 of the Civil Procedure Rules which provides that:

 "2. Judgment in uncontested cases

In uncontested cases and cases in which the parties consent to judgement being entered in agreed terms, judgment may be entered by the registrar."

What is an uncontested case? Uncontested cases include those where no written statement of defence has been filed. In such cases judgement may be entered on the liquidated demand under Order 9 rules 6 or Order 9 rule 7 depending on whether there is one Defendant or there is more than one Defendant where some of them have not filed a defence respectively. This was an uncontested case and the issue is whether the default judgement was for a liquidated amount.

Upon perusal of the plaint the Plaintiffs case against the Defendants jointly and severally is for lifting of the corporate veil in view of recovery of a liquidated amount of Uganda shillings 139,547,362/= together with special damages, commercial interest from the date of default until full payment, general damages and costs of the suit. There seemed to be a liquidated demand and the decree that was extracted was for a liquidated amount that was purportedly claimed in the plaint. A default decree is not on the merits. Order 9 rule 6 of the Civil Procedure Rules provides as follows:

"Where the plaint is drawn claiming a liquidated demand and the Defendant fails to file a defence, the court may, subject to rule 5 of this Order, pass judgment for any sum not exceeding the sum claimed in the plaint together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8% per year to the date of judgement and costs."

The registrar did not lift the veil of incorporation but simply entered a default judgement for the liquidated amount. I have carefully considered the plaint and it is phrased in deceptive language. Paragraph 4 of the plaint avers as follows:

"The Plaintiff’s cause of action against the Defendant is jointly and severally for lifting of the first Defendant corporate veil in lieu of recovery of a liquidated amount of Ugx. 139,457,362/= (also in words…) Being the decretal, special damages, commercial interest from the date of default until full payment, general damages and costs of this suit."

Paragraph 5 (g) of the plaint clearly avers that upon default of the first Defendant/Applicant, the Respondent instituted HCCS 071 of 2012 against the first Defendant/Applicant to this application and obtained a decree against the first and second Defendants for a sum of Uganda shillings 139,547,362/= with interest at commercial rate and costs of the suit. The first and second Defendants in that suit are the first Applicant and another company Messrs Kakan (U) Ltd respectively. A decree was issued on 23 April 2012 according to the attached decree against the first Applicant in this suit only.

Lastly the prayers in the plaint are that the corporate veil for the first Defendant is lifted in view of recovery of the same amount of money.

There was therefore no liquidated demand claimed in the plaint. The prayers for lifting of the corporate veil so as to recover a decretal sum which had been issued against the first Defendant in the suit/first Applicant in this application. The decree extracted for Uganda shillings 139,547,362/= is at variance with the plaint where there is no claim for a liquidated amount as such but a claim for the lifting of the corporate veil could recover a decreed amount against the Defendants/Applicants jointly and severally. Secondly the default judgement entered as prayed on 13 March 2015 in HCCS 48 of 2015 by the registrar does not include any liquidated damages. The application for the judgement is contained in a letter dated fifth of March 2015. In paragraph 5 thereof, the Plaintiff's Counsel prayed that judgement is entered as prescribed by Order 50 rule 2 of the Civil Procedure Rules. The said rule only gives jurisdiction to the registrar to enter judgement in uncontested cases.

Consequently judgment is supposed to be entered under the provisions of Order 9 of the Civil Procedure Rules. The order of the registrar does not specify under which default rule judgement was entered. Consequently the decree as much as awarded Uganda shillings 139,547,362/= was erroneously issued and is at variance with the plaint as well as the default judgement. Before taking leave of the matter because the Plaintiffs sought to lift the veil of incorporation, the matter ought to have proceeded under Order 9 rule 10 of the Civil Procedure Rules which provides as follows:

"In all suits not by the rules of this Order otherwise specifically provided for, in case the party does not file a defence on or before the day fixed therein and upon a compliance with rule 5 of this Order, the suit may proceed as if the party had filed a defence."

It was not a case for the assessment of damages wherein the provisions of Order 9 rule 8 of the Civil Procedure Rules would be applicable. Where a party seeks to lift the veil of incorporation, he or she has to prove the grounds. In the premises the decree issued by the court was erroneously issued. Having entered judgement, the matter ought to have been fixed for formal proof of the grounds for lifting the veil and the registrar has no jurisdiction to hear the suit. It would have been fixed for hearing before a judge of the High Court. I therefore agree with the Applicant’s Counsel that the decree was erroneously issued and is hereby set aside. The question that remains is whether the interlocutory judgement ought to remain.

The question of whether the interlocutory judgement ought to remain depends on resolution of the issue of whether the Applicants were duly served. I do not need to consider whether the first Applicant was duly served. There is a decree against the first Applicant for Uganda shillings 139,547,362/= by the registrar on 20 April 2012. There cannot be another order for the same amount of money against the first Defendant. As I understand it, this order sought is for lifting of the corporate veil of the first Defendant in order to proceed against the second and third Defendants. I will not comment about the propriety of the suit as such but will deal with the issue of whether service of summons was duly effected.

Service of summons was not duly effected on the directors of the first Applicant. The affidavit of service clearly indicates that the Plaintiff sought Messieurs Kasekende, Kyeyune and Lutaaya advocates. There is no evidence that the said advocates were appointed agents of the second and third Applicants. An agent is defined by Order 3 rule 2 of the Civil Procedure Rules which provides that:

“2. Recognised agents.

The recognised agents of parties by whom such appearances, applications and acts may be made or done are—

(a) persons holding powers of attorney authorising them to make such appearances and applications and do such acts on behalf of parties; and

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.”

The persons so were not persons holding powers of attorney. Secondly they are not persons carrying on trade or business for and in the names of the second and third Applicants. It may be argued that advocates are agents under Order 3 rule 1 of the Civil Procedure Rules which provides that any application to or appearance or act in any court required or authorised by law to be made or done by a party in such a court may, except where otherwise expressly provided by law for the time being in force, be made or done by any party in person or by his or her recognised agent or by an advocate duly appointed to act on his or her behalf. The lawyers served were not advocates duly appointed to act in respect of a fresh civil suit. In any case they are individuals and not the company namely the first Applicant. In the premises they had to be served personally in terms of Order 5 rule 10 of the Civil Procedure Rules which provides that service be made on the Defendant in person unless he or she has an agent empowered to accept service. Secondly where there is more than one Defendant, service is to be made on each Defendant (See Ord. 5 r.9 CPR).

Messrs Kasekende, Kyeyune and Lutaaya Advocates were not duly authorised by the second and third Applicants to receive service of court process on the behalf. I have carefully considered the letters relied upon by the Respondent and all of them where written for or on behalf of the first Applicant which is a limited liability company. As I have held above, as far as this suit for lifting the veil is concerned, the first Applicant can only be a party in a nominal sense says that is already a decree for the same amount of money claimed against the second and third Applicants against the first Applicant. This is a separate suit and not proceedings in execution for lifting the veil under section 34 of the Civil Procedure Act. Without having to determine whether a suit in which there are grounds alleged for lifting the veil of incorporation should be commenced by way of an original action and original action has been decided against individual directors of the first Applicant. They have to defend the action in their own capacity and not on behalf of the first Applicant Company.

Last but not least the **Advocates (Professional Conduct) Regulations Statutory Instrument 267—2** and section 2 (1) prohibits an advocate from acting without instructions. It provides that:

“2. (1) No advocate shall act for any person unless he or she has received instructions from that person or his or her duly authorised agent.”

Messrs Kasekende, Kyeyune and Lutaaya Advocates had no authority of the second and third Applicants received summons to file a defence. A summons is a court order that should not be taken lightly. Secondly a Defendant served with summons has a right to choose which advocate should represent him or her. In the premises there is no need to refer to further authorities on the subject of walk had received summons on behalf of a new party. The second and third Applicants have never been the parties represented by any advocate far as the claim of money in HCCS NO. 71 of 2012 is concerned. As directors they had acted on behalf of the first Applicant which is a limited liability company. Secondly if they are to be made liable for the judgment debt of the first Applicant, it can be raised in execution under section 34 of the Civil Procedure Act by way of execution proceedings and the question of whether the corporate veil should be lifted can be tried. In a separate action, the directors are entitled to represent themselves and to instruct advocates of the choice. In the premises they had to be served personally.

In the premises the Applicant's application is granted. I have already set aside the decree extracted by the Plaintiff/Respondent because it is at variance with the interlocutory judgement entered by the deputy registrar on 13th of March 2015. In the premises the default judgement entered on 13 March 2015 is hereby set aside.

The second and third Applicants are awarded the costs of this application.

The summons and plaint attached to the affidavit in reply as well as in the proceedings in this application is sufficient service of the summons to file a defence the suit.

The second and third Applicants have leave to file a written statement of defence within 15 days from the date of this order.

Ruling delivered on 2 October 2015.

**Christopher Madrama Izama**

**Judge**

Ruling delivered in the presence of:

Golooba Muhammad counsel for the Applicant

No body for the Respondents.

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

**2nd October 2015**