

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA

MISC. APPLICATION NO. 28/95
(CIVIL SUIT NO. 11/95)

SAMBIH BROTHERS LTD ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

SCOUL ::::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: THE HONOURABLE JUSTICE C.M. KATO

R U L I N G

This ruling refers to a preliminary objection raised by Mr. Okalang the learned counsel for the respondent/plaintiff. The substance of the objection is that the Notice of motion which the applicant is pursuing was improperly brought before the court as it was brought under Order 33 and Order 9 of the CPR instead of being brought under Order 9 rule 20 of the C.P. Mr. Mukasa the learned counsel for the applicant/defendant was of the view that the application was properly lodged before this court under Order 33 rule 11 of the CPR as he was only applying for the ^{ex-parte} judgment to be set aside and he was not applying for re-instatement of the earlier application which had been dismissed.

The application which is the subject of this preliminary objection seeks for leave to appear and defend the suit which was filed under summary procedure under Order 33 of CPR. I have looked at the Notice of motion, I have also listened to the arguments of the learned counsel in court and I have looked at the relevant provisions of Civil Procedure Rules and I am satisfied that this preliminary objection has been validly raised because the applicant had earlier on applied for leave to appear and defend but that application was dismissed on 14-7-95. The applicant cannot therefore be heard to raise the issue of leave to appear and defend without having applied for the ex-parte dismissal set aside. As far as this court is concerned the application for leave to appear and defend was dismissed and if the present applicant wanted it to be entertained again

the only course open to him was to appeal against that dismissal or to apply to this court under Order 9 rule 20 of the Civil Procedure Rules to have it reinstated.

In this circumstances the objection is upheld and fresh application for leave to appear and defend is dismissed with costs to the respondent/plaintiff:

[Signature]
C. M. KATO

JUDGE

18-9-1995