

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
[FAMILY DIVISION]**

**MISCELLANEOUS APPL. 500 OF 2019
(ARISING MISC. APP. NO. 319 OF 2019)
(ARISING OUT OF CS NO. 13/2019)**

1. NUULU NABABI

2. KIBERU ADAM :::::::::::::::::::::::::::::::::::::: APPLICANTS

VERSUS

1. ADMINISTRATOR GENERAL

2. NUMANI MUBI AKULAMUSA :::::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. LADY JUSTICE KETRAH KITARIISIBWA KATUNGUKA

RULING

[1] This is an application brought by Chamber Summons Under 0.5 Rules 2 and 32 of the Civil Procedure Rules for Orders that the time within which to serve the 1st & 2nd Respondents with MA No. 319/2019 be extended and that costs stay in the cause. The grounds detailed in the Affidavits of the 1st & 2nd Applicants are briefly that vide Misc. App No. 319 of 2019 seeking for leave to amend the plaint in CS No. 13/2009 a letter was written requesting for a hearing date before the Chamber Summons could be served on the Respondents in vain; that a second letter was written and still no date was given yet the notice had already been endorsed so time was running out; that on 6/9/2019 another letter was written but no action was taken, till the application was fixed for 24/9/2019 after the time within which to serve had expired; that the applicant had been vigilant and that in the interest of justice this application should be granted.

REPRESENTATION;

[2] The Applicants are represented by Ms Tiishekwa A. Rukundo & Co. Advocates who filed written submissions.

5 [3] I have considered the Application together with the submissions and the relevant law. Counsel relied on the cases of Fredrick James Jjunju & Anor vs Madhivani Group LTD & Anor HC Misc. App. No. 688/2015, Amdan Khan vs Stanbic Bank (U) Ltd HCMA 900/2013 and Kanyabwera vs Tumwebaze SCCA No. 6 of 2004; for his argument on service of summons equally
10 applying to service of hearing notices.

He also relied on Article 126(2) (e) of the Constitution of Uganda 1995 & the case of Jan Mohamed Alibhai Kaba & Ors vs Haji Sulaiman Mugwaji HCMA No 73/93 on the fact that technicality avoidance does not mean that rules of
15 procedure should not be allowed or gotten rid of .I agree that that is the position of the law.

The issue for determination is whether the application has merit.

20 [4] The law governing applications of this nature was correctly cited by Counsel for the Applicant viz 0.5 r 1 & r 32 to the effect that if it is proved that there is sufficient reason for extension of time within which to serve, then the time for service may be extended provided application for extension is made within 15 days after the expiration. The record shows that the Chamber Summons was
25 endorsed by the Registrar on 17/6/2019. The hearing date of 24/9/2019 was given by this court on 10/9/2019. The request for the hearing date was filed on 12/7/2019 and brought to the docket Clerk on 15/7/2019 - this was during court vacation.

[5] The next letter was on 23/7/2019 also during court vacation. If the Chamber Summons was endorsed on 17/6/2019 it was endorsed without a hearing date. Time in practical terms would have begun to run effective 10/9/2019 when a date was fixed but the issuing Judicial Officer - the Registrar's date - is earlier and the fixture date is not communicated to the parties. So the Chamber Summons endorsed on 17/6/2019 for a date of 24/9/2019 to be served after 10/9/2019 would clearly be out of time and I hold so.

Having considered the genesis as chronicled above delay was not occasioned by the Applicant but first by the court calendar and the endorsement of the summons before a date was fixed.

[6] On the requirement to apply for extension within 15 days after the expiration pursuant to O 5 r 1(2), paragraph 2 of the Affidavit in support of the Application deposed by Kiberu Adam the 2nd Applicant shows that the endorsed Chamber Summons was brought to the attention of the 2nd Applicant on 19/9/2019 yet it had expired on 7/9/2019. This Application for extension of time to serve was filed on 7/10/2019. Assuming that the expiry was practically brought to attention of the Applicant on 19/9/2019, then this application is within time.

On the result the application has merit and it is hereby granted.

I hereby Order as follows;

- 1) The time within which to serve the 1st & 2nd respondent with copies of Chamber Summons in MA No. 319 of 2019 is hereby extended.

- 2) Let the Applicant serve the said 1st & 2nd Respondent with copies of Chamber Summons in MA No. 319/2019 by 5/12/2019.
- 3) Costs of the application shall stay in the cause.

5 I so Order.

Dated at Kampala this 25th day of November 2019.

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KETRAH KITARIISIBWA KATUNGUKA
JUDGE

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