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REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION NO. 2267 OF 2023
(ARISING FROM CIVIL SUIT NO. 0574 OF 2020)

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STANDARD CHARTERED BANK (U) LTD

]APPLICANT

VERSUS

15

GEOFFREY ONGINO KERITO

] RESPONDENT

Before: Hon. Justice Ocaya Thomas O.R

RULING

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Introduction:

This application was brought by way of Notice of Motion under Sections 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act, Cap 71, Order 52 Rules 1 and 3 of the Civil Procedure Rules, SI 71-1 seeking the following orders:

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- (1) That the order for dismissal in Civil Suit No. 574 of 2020: Standard Chartered Bank V Geoffrey Ongino Kerito be set aside.
- (2) That Court enters a default judgment in Civil Suit No. 574 of 2020: Standard Chartered Bank V Geoffrey Ongino Kerito.
- (3) Costs be provided for.

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Background:

According to the applicant, the facts leading to this application were as below; the Applicant/Plaintiff commenced Civil Suit 574 of 2020 in this court against Respondent/Defendant and the same was dismissed on the 25th July, 2023 for lack of service of summons pursuant to Court's direction.



5 The grounds of the application are set out in the Notice of Motion and detailed in the supporting affidavit and briefly are that;

- a) The Applicant has sufficient cause for setting aside the dismissal order.
- b) The Applicant is still interested in pursuing the matter.
- c) An application for a default judgment was filed on 31st January 2022.
- 10 d) That an affidavit of service was filed on the 25th of January, 2022.
- e) It is in the interest of justice that this application be granted.

In the supporting affidavit of Mr. Kato Ronald an authorized process server of this honorable court and C/o M/s S&L Advocates. he averred that the Applicant filed a suit
15 for the recovery of UGX 50,444,890/= on 13th/08/2020 against the Respondent. That following failure to personally serve him with summons, an application for substituted service was made and granted on the 11th/09/2020.

The Respondent was served through a newspaper on the 5th/11/2021 and an affidavit
20 of service was filed on the court record on the 25th /01/2022. Further that following the Defendant's failure to file a defense under the prescribed time, an application for default judgment was made on the 31st/01/2022.

He further averred that since Civil Suit No. 574 of 2020 is undefended it is likely to
25 succeed whereas the Applicant stands to lose UGX. 50,444,890/= if the dismissal order is not set aside. Further that, the application has been filed without unreasonable delay, and that it is in the interest of justice that the application is granted with the prayers sought.

30 This Application came for hearing on the 08th December, 2023 and was exparte.

Representation:

Mr. Pius Kitamirike from the law firm of M/s S&L Advocates represented the Applicant/Plaintiff.



5 **Evidence and Submissions**

The Applicant led evidence by way of an affidavit in support deponed by Mr. Kato Ronald an authorized process server. The Applicant filed written submissions and counsel for the Applicant made oral clarifications on the submissions before court, which I have considered before arriving at my decision below.

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Decision:

Having carefully perused the Applicant's motion and the affidavit attached thereto, I have arrived at the following conclusion.

15 That Civil suit no. 0574 of 2020 was filed on the 13th August, 2020 and summons to file defense was issued on the 17th of August, 2020. On the 15th of November, 2021 an application for substituted service via a newspaper of wide coverage was granted to the Applicant on the 15th of November, 2021. The Applicant has adduced evidence of the service vide Exhibit B of the Affidavit of Service where the substituted service was placed
20 in the Daily Monitor Newspaper of 17th November 2021 on page 32 and the same was filed on court record together with the affidavit of service on the 25th January, 2022.

The suit had been earlier dismissed for none service of the summons, no record of service of the same having been found on the Court record.

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Hon. Lady Justice Patricia Mutesi in *Standard Chartered Bank v Geoffrey Feta Miscellaneous Application No. 0331 of 2023* being faced with a similar scenario went on to grant an Order setting aside the dismissal order and held that since the Applicant had proved that they filed an affidavit of service, Court was satisfied that there is
30 sufficient cause for setting aside the dismissal order and it was in the interest of justice that this application be granted in that respect.

In the Present case, while there was no record of service of the summons on the court record. It was proved that the summons in this matter were served in the daily Monitor
35 Newspaper of 17th November 2021. I therefore find that there is sufficient proof that



5 service was made and it is a ground to set aside the dismissal order in Civil Suit No. 574 of 2020.

I however take issue with counsel for the Applicant for not having ensured that ensuring that the court record properly reflected the actions they had taken. had they done so this
10 application would certainly have not been necessary in the first place.

Further upon the sufficient service, there was still no Defense filed by the Respondent within the prescribed time nor is there an application for an extension of time to file defense, an application for Default judgment was made on the 31st of January, 2022 under
15 Order 9 rule 6 which verbatim provides that-

*"Where the plaint is drawn claiming a liquidated demand and the defendant fails to file a defense, 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 any rate specified, if any, or if no rate is specified, at the rate of 8% per year to the date of
20 judgment and costs."*

At the hearing of the application Counsel for the Applicant/Plaintiff abandoned the prayed for General damages in the head suit. And prayed that judgment be entered in favour for the Plaintiff in the rest of the terms of the suit. He specifically guided court to
25 annexure 1 to the plaint at page 5 of the facility under interest rates which provided that Interest of 23% based on the facility agreement and fees.

Honorable Justice Mr. FMS Egonda - ***Ntende in Dembe Trading Enterprise Limited V Uganda Confidential Limited and Another CC-CS-01612-2006*** noted that the input of
30 Order 9 rule 6 is that rule 6 is restricted to liquidated claims, which basically are specified sums of money in the category of debts or an already ascertained sum of money due to one from another by the time the suit is filed.



5 The Applicant/Plaintiff filed Civil Suit No. 574 of 2020 for recovery of UGX 50,444,890/= being money owed to the Applicant/ Plaintiff by the Respondent/ Defendant.

In this present case, the Respondent's failure to file a defense leaves the Applicant/plaintiff's claims undisputed, and therefore an undisputed claim is one
10 admitted in law due to the choice not to challenge it.

In the premises, I find that the Respondent/Defendant's failure to file a defense entitles the Plaintiff to Judgment as prayed.

15 Costs

As a rule of law, costs ordinarily follow the event and a successful litigant receives his or her costs in the absence of special circumstances justifying some other order. Where the successful party has been guilty of some misconduct, an order of costs may not be granted. *See Section 27(2) Civil Procedure Act, Harry Ssempe v Kambagambire David*
20 *HCCS 408/2014, Iyamuleme David vs. AG SCCA NO.4 of 2013, Anglo-Cyprian Trade Agencies Ltd v. Paphos Wine Industries Ltd, [1951] 1 All ER 873.*

Given the findings above, the Applicant/Plaintiff is entitled to the Costs of the suit only. I shall not award her any costs of the application which would have been wholly
25 unnecessary had the Plaintiff fully complied with the provision of the law and had the affidavit of service placed and properly recorded as filed on the court record.

Conclusion:

In the premises, I make the following orders;

- 30 (a) The order for dismissal in Civil Suit No. 0574 of 2020; Standard Chartered Bank (U) Limited V Geoffrey Ongino Kerito is hereby set aside. With are no orders as to Costs.
- b) A default judgment is entered in Civil Suit No. 0574 of 2020; Standard Chartered Bank (U) Limited V Geoffrey Ongino Kerito, for;
- 35 1. Recovery of UGX 50,444,890/= by the Plaintiff.

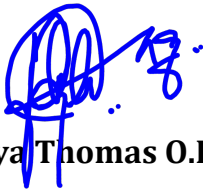
5 2. Interest on (1) above at the commercial bank rate of 23% from the date of
cause of action, 13th August 2020 until payment in full.

c) The Plaintiff is awarded cost of the suit.

I so order.

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Delivered electronically this 8th day of December 2023 and uploaded
on ECCMIS.

A handwritten signature in blue ink, appearing to read 'Ocaya Thomas O.R.', with a stylized flourish at the end.

15 **Ocaya Thomas O.R**

Judge,

8th December, 2023

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