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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION No. 0527 OF 2023
(ARISING FROM CIVIL SUIT No. 0029 OF 2023)

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UGANDA ELECTRICITY TRANSMISSION
COMPANY LIMITED **APPLICANT**

VERSUS

M3VENTS CONSULTS **RESPONDENT**

15

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

20 This application was brought by Notice of Motion under the provisions of Order 36 Rule 11 and Order 52 of the Civil Procedure Rules SI 71-1, seeking orders that:

1. The Default judgment entered against the Applicant in Civil Suit No. HCT-00-CC-CS-0029-2023 M3vents Consults Vs. Uganda Electricity Transmission Company Limited be set aside.
- 25 2. The application for unconditional leave to appear and defend vide HCT-00-CC-CS-0029-2023 M3vents Consults Vs. Uganda Electricity Transmission Company Limited be reinstated and heard on its merits.
3. In the alternative but without prejudice to prayer 2 above, the Applicant be granted unconditional leave to appear and defend Civil Suit No. HCT-00-CC-CS-0029-2023: M3vents Consults Vs. Uganda Electricity Transmission
30 Company Limited.
4. Costs of this application be provided for in the cause.

Facts

35 This application is supported by an affidavit of Edward Rwabushenyi the Applicant's Principal Legal Officer-Litigation, deponed in paragraphs 1-12, and summarized as follows:

5 That the Applicant has a good, and or just cause for Court to set aside the default judgment in this matter. due to the fact that the Applicant filed its application for unconditional leave to appear and defend within the statutory timelines that is on 23rd January 2023.

10 That the Applicant has a plausible and complete defence against the whole of the Respondent's claim in the said suit in that;

- i. The Applicant has never executed any agreement whatsoever or entered into any arrangement or otherwise with the Respondent to train an excess of 105 trainees.
- 15 ii. That the Applicant has never been, and is not indebted to the Respondent in the suit claim of USD. 30,000 (United States Dollars Thirty Thousand) or any part thereof.
- iii. That the Applicant does not have any contractual relationship with the Respondent.
- 20 iv. That the Respondent did not train any staff in excess of what the parties had agreed to. On the contrary, the 200 staff allegedly trained by the Respondent were majorly found to be fictitious and non-existent.

That it is in the interest of Justice that this application is granted.

Representation

25 Counsel Raymond Mwebesa of M/S Kampala Associated Advocates, appeared for the Applicant. The Respondent's Counsel of M/S Mugarura, Kwarisiima & Co. Advocates, were served with Court process, as seen in the affidavit of service, but did not enter appearance. Counsel for the Applicant proceeded exparte, as directed by Court.

Issues for determination

30 Counsel for the Applicant did not frame the issues for determination however, in accordance with Order 15 Rule 3 of the Civil Procedure Rules, SI 71-1, this Court framed the issues as below:

1. Whether this application discloses sufficient grounds to warrant the grant of reliefs sought for?
- 35 2. What are the available remedies?

5 Issue No.1: Whether this application discloses sufficient grounds to warrant the grant of reliefs sought for?

Submissions of Counsel for the Applicant

10 Counsel for the Applicant contended that since the Respondent has not filed an affidavit in reply, this application is unchallenged, and relied on the decision in *Serefaco Consultants Ltd Vs Euro Consult BV & Anor*, C.A.C.A No. 16 of 2007 to support his submission.

Counsel further contended that service of summons in Civil Suit No. 0029 of 2023, was effected upon the Applicant on 11th January, 2023, and that the application for leave to appear, and defend was filed on 23rd January, 2023.

15 Counsel submitted that the provision of the law under Order 51 Rule 4 of the Civil Procedure Rules, SI 71-1, on computation of time, requires that the period between the 24th day of December in any year, and 15th day of January in the following year, are not taken into account; that from 16th January 2023, and 23rd January, 2023, when the Applicant filed the application for leave to appear, and defend, the prescribed period of 10 days, which would fall on 25th January, 2023, had not yet lapsed.

25 Counsel relied on the case of *Hon. Maj. Gen.(Rtd)Kahinda Otafire Vs The New Vision Printing, and Publishing Corporation & Two Others*, H.C.C.S No. 505 of 2019, in support of his submission that the Applicant filed the application for leave to appear, and defend on 23rd January, which was within the prescribed period of time.

Decision

Order 51 Rule 4 of the Civil Procedure Rules, SI 71-1, provides that:

“4. Time expiring between 24th December and 15th January.

30 Unless otherwise directed by the court, the period between the 24th day of December in any year and the 15th day of January in the year following, both days inclusive, shall not be reckoned in the computation of the time appointed or allowed by these Rules for amending, delivering or filing any pleading or for doing any other act; except that this rule shall not apply to
35 any application for an interim injunction, or to any business classified by the registrar or by a magistrate's court as urgent.”

In the instant case, the Applicant contends that the application for leave to appear, and defend the suit, was filed on time on 23rd January, 2023, when the period from 16th January, and 23rd January, 2023, is taken into account on

5 computation of time, as required under the provision of Order 51 Rule 4 of the Civil Procedure Rules, SI 71-1.

It is settled law that if the Applicant supports his application by affidavit or other evidence, and the Respondent does not reply by affidavit or otherwise, and the supporting evidence is credible in itself, the facts stand as unchallenged. (See
10 **Serefaco Consultants Ltd Vs Euro Consult BV & Anor, C.A.C.A No. 16 of 2007**, relied upon by Counsel for the Applicant, in which the case of **H.G Gandesha, and Kampala Estates Ltd Vs G.J Lutaya, S.C.C.A No. 14 of 1989**, was cited with approval)

The foregoing position of the law is in tandem with the well-established principle
15 that, whoever alleges a given fact, and desires the Court to give judgment on any legal right or liability dependent on the existence of any fact, has the burden to prove that fact unless, it is provided by law that the proof of that fact shall lie on another person. (See sections 101, and 103 of the Evidence Act, Cap 6, and **Jovelyn Barugahare Vs Attorney General, S.C.C.A No. 28 of 1993[1994] KALR 190**)

20 In the given circumstances of this case, I find that the evidence adduced by the Applicant in the supporting affidavit is credible in itself; therefore, the facts stand unchallenged.

In addition, I am in agreement with the case of **Hon. Maj. Gen.(Rtd)Kahinda Otafire Vs The New Vision Printing, and Publishing Corporation & Two Others**,
25 (*supra*), on the proposition of the law on computation of time, cited by Counsel for the Applicant however, the facts in that case are distinguishable from the instant case. This Court will not delve into the distinctions here.

The suit, in which this application arises was brought by summary procedure under Order 36 of the Civil Procedure Rules, SI 71-1.

30 Order 36 Rule 3 (1) of the Civil Procedure Rules SI 71-1, provides that a Defendant served with summons in Form 4 of Appendix A of these Rules, issued upon the filing of an endorsed plaint and affidavit under Rule 2 of this Order endorsed "Summary procedure", shall not appear and defend the suit except upon applying for, and obtaining leave from Court. [Emphasis is mine]

35 The requirement in the summons is that the Defendant should apply for leave from Court to appear, and defend the suit within ten days from service of the summons.

5 I have taken into account the above provision of Order 15 Rule 4 of Civil Procedure Rules, SI 71-1, on computation of time, to find that the application for leave to appear, and defend the suit, was filed on 23rd January, 2023; following the period from 16th January, and 23rd January, 2023, only 9 days had lapsed.

Accordingly, I find that the application for leave to appear, and defend the suit
10 was filed on time, since the prescribed period of 10 days had not yet lapsed.

Order 36 Rule 11 of the Civil Procedure Rules SI 71-1 provides that:

11. Setting aside decree.

“After the decree the court may, if satisfied that the service of the summons was not effective, or for any other good cause, which shall be recorded, set aside the
15 decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the court so to do, and on such terms as the court thinks fit.”
(Emphasis is mine)

In the instant case, it is not disputed that the Applicant's Lawyers were served with
20 a copy of the plaint and summons in Civil Suit No. 0029 of 2023, and that the Applicant filed an application for leave to appear and defend on 23rd January, 2023.

It is my understanding that the phrase “good cause” as above, is synonymous with the phrase “sufficient cause”.

25 The settled position is that what amounts to sufficient cause is a matter of Court's discretion. **(See Noble Builders (U) Ltd & Anor Vs Jabal Singh Sandhu, S.C.C.A No.15 of 2002)**

Accordingly, this Court finds that the miscalculation of time amounts to good cause to warrant the setting aside of the Default judgment entered against the
30 Applicant in Civil Suit No.0029 of 2023.

Issue No.2: What are the available remedies?

This Court having found issue (1) above in the affirmative, further finds that this application has merit.

Consequently, this application is allowed, and Court makes orders that:

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1. The Default Judgment entered in H.C.C.S No.0029 of 2023 be set aside.
 2. The application for leave to appear, and defend shall be heard on its merits.
 3. Costs of this application shall be in the cause.

5 Dated, and delivered electronically this 11th day of January, 2024.



SUSAN ABINYO

JUDGE

11/01/2024

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