

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA HOLDEN AT MUKONO  
MISCELLANEOUS APPLICATION NO. 14 OF 2021  
(ARISING FROM CIVIL SUIT NO. 77 OF 2020)**

**NYANZI MUHAMMAD** ..... **APPLICANT**

**VERSUS**

**1. NASSOLO HARRIET  
2. NSUBUGA AMAN RAJAB  
3. KIBERU EDMOND** ..... **RESPONDENTS**

**BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA**

**RULING**

1. This is a ruling on a preliminary objection orally raised by the 2<sup>nd</sup> Respondent's counsel to the effect that this application was filed on 5<sup>th</sup> March, 2021 but it was served out of time on the 2<sup>nd</sup> Respondent on 12<sup>th</sup> July, 2022 at 2:50 p.m. It was further objected that this application was not endorsed by the Registrar of court and does not bear a seal and the date of lodgment as required by Order 5 rule 1 (5) of the Civil Procedure Rules, S.I 71-1. None of the annexures was attached to the affidavit served on the 2<sup>nd</sup> Respondent's counsel. The 2<sup>nd</sup> Respondent's counsel submitted that the application is incompetent

and a nullity since it does not meet the required standard as provided for under Order 5 rule 1 (5) of the Civil Procedure Rules.

2. In reply, the Applicant's counsel contended that this application was filed on 5<sup>th</sup> March, 2021 and sealed by the Registrar on 9<sup>th</sup> March, 2021. That the annexures were attached to the Applicant's affidavit including the amended plaint. Counsel prayed that this court finds that the application meets all the requirements and the matter proceeds without undue regard to technicalities. He relied on Article 126 of the Constitution of the Republic of Uganda, 1995. The Applicant's counsel provided court with a copy of an application which was endorsed by the Registrar on 9<sup>th</sup> March, 2021 with annexures "A", "B" & "C" for reference.
3. In rejoinder, the 2<sup>nd</sup> Respondent's counsel averred that the copy of the Application served on them neither had a hearing date nor a signature of the Registrar. Counsel also provided this court with the summons which bears no hearing date and not signed by the Registrar but filed on 5<sup>th</sup> March, 2021. Counsel re-iterated his earlier prayer that the application be dismissed with costs to the 2<sup>nd</sup> Respondent.
4. On the 29<sup>th</sup> March, 2023, when the preliminary objection was raised, the Applicant was represented by Counsel Jacob Kalaabi from M/s KSMO Advocates. The 2<sup>nd</sup> Respondent was represented by Counsel Asiimwe John Baruga from M/s Baruga Associated Advocates.





**Issue**

**Whether this application is incompetent before this court and should be struck out.**

5. Order 5 rule 1 (5) of the Civil Procedure Rules, S.I 71-1 provides thus:  
*“Every such summons shall be signed by the judge or such officer as he or she appoints, and shall be sealed with the seal of the court.”*

The word “shall” is construed as mandatory. Therefore, it is a mandatory requirement for any summons issued by court to be signed and sealed by the Judge of that court or any officer appointed by the Judge before it is taken out for service on the opposite party.

6. Order 5 rule 1 (2) of the Civil Procedure Rules provides that:  
*“Service of summons issued under sub-rule (1) of this rule shall be effected within twenty-one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after the expiration of the twenty-one days, showing sufficient reasons for the extension.”*

The timelines that apply to service of summons in an ordinary plaint also apply to service of applications.

7. This provision automatically invalidates summonses which may have been issued and are not served within twenty-one days from the date of issuance. It is settled law that the provisions of Order 5 of the Civil Procedure Rules are mandatory and should be complied.



8. An applicant who fails to serve summons in applications within the stipulated twenty-one days from the date of issuance of the summons upon him or her for service is required to make a formal application within fifteen days after the expiration of the twenty-one days for extension of the time within which to serve the summons on the opposite party. Under Order 5 rule 32 of the Civil Procedure Rules, the application must be made by summons in chambers. The Court must be satisfied by evidence in the said application and clearly state the reasons for permitting the applicant in effecting service beyond the stipulated period.
  
9. I have perused the court record of this application. It is clear that the summons served on the 2<sup>nd</sup> Respondent's counsel though filed in this court on 5<sup>th</sup> March, 2021, does not bear the hearing date. It also lacks a signature of the Registrar of this court and court seal. This is in total contravention of Order 5 rule 1 (5) of the Civil Procedure Rules, which gives mandatory requirements as already noted in this ruling.
  
10. Even if court was to believe that the summons was signed and sealed as per the applicant's copy, it was issued to the Applicant for service on 9<sup>th</sup> March, 2021. Consequently, it should have been served on the Respondents within 21 days from the date of issuance, otherwise an extension of time within which to effect service ought to have been sought formally by the Applicant. The latter chose to proceed with service of the pleadings on 12<sup>th</sup> July, 2022 despite the expiry of time.





11. While relying on Article 126 of the Constitution of the Republic of Uganda, 1995, the Applicant's counsel prayed that the application proceeds without undue regard to technicalities. In the case of **Iron and Steel Wares Limited v. C.W. Martyr and Company (1956) 23 E.A.C.A. 175 at 177** the East African Court of Appeal held thus:

*"Procedural rules are intended to serve as the handmaidens of justice, not to defeat it, and we think the High Court in its inherent jurisdiction to control its own procedure ..... has a duty to ensure that each party is given a fair opportunity to state its case and to answer the case made against it."*

12. I agree that in deserving cases, the court may rightfully exercise its discretion to overlook the failure to comply with rules of procedure, upon such conditions as it may deem fit to guard against the abuse of its process. However, each case is to be decided on its own facts depending on the prevailing circumstances.

13. In the case of **Byaruhanga & Co. Advocates v. Uganda Development Bank, S.C.C.A No. 2 of 2007**, the Supreme Court held that:

*"A litigant who relies on the provisions of Article 126 (2) (e) of the Constitution must satisfy the court that in the circumstances of the particular case before the court it was not desirable to have undue regard to a relevant technicality. Article 126 (2) (e) is not a magical wand in the hands of defaulting litigants."*



14. Considering the circumstances of the instant application, it is not sufficient for the Applicant to file an application against a party and neglect to take steps to properly effect service of summons as required by law. I find that the Applicant's failure to adhere to such clear and elaborate procedural requirements of Order 5 of the Civil Procedure Rules, on the validity of the application and service of the summons outside the stipulated time periods is not a mere procedural technicality that can be sacrificed at the altar of substantive justice. The applicant's counsel has the obligation to follow up an application and ensure that proper documents with annexures, if any, are served on the respondents. Therefore, serving an unsigned and unsealed application on the 2<sup>nd</sup> Respondent was uncouth.
15. In my judgment, this court has no jurisdiction to deal with an application until it has been properly served and an affidavit of service filed on court record. Proof of service activates further proceedings in the application. Until summons have been issued and properly served, the application remains redundant.
16. Pursuant to the foregoing, I find merit in the preliminary objection and uphold it. The application is hereby dismissed with costs to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who filed a response to the application.  
I so rule and order accordingly.



This ruling is delivered this 2nd day of May 2023 by



**FLORENCE NAKACHWA**  
**JUDGE.**

*In the presence of:*

- (1) Counsel Kuteesa Joseph from M/s KSMO Advocates, for the Applicant;*
- (2) Counsel Asiimwe John Baruga from M/s Baruga Associated Advocates, for the 2<sup>nd</sup> Respondent;*
- (3) Mr. Nyanzi Muhammad, the Applicant;*
- (4) Mr. Nsubuga Aman Rajab, the 2<sup>nd</sup> Respondent;*
- (5) Mr. Kiberu Edmond, the 3<sup>rd</sup> Respondent;*
- (6) Ms. Pauline Nakavuma, the Court Clerk.*