

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**COMMERCIAL DIVISION**  
**MISCELLANEOUS APPLICATION NO. 1189 OF 2024**  
**(ARISING OUT OF MISCELLANEOUS APPLICATION NO. 0979 OF 2024)**  
**(ARISING OUT OF MISCELLANEOUS CAUSE NO. 0053 OF 2024)**

1. INYATSI CONSTRUCTION LIMITED  
2. INYATSI GROUP HOLDINGS (PTY) LIMITED ..... APPLICANTS  
**VERSUS**  
1. PLINTH CONSULTANCY SERVICES LIMITED  
2. ABSA BANK UGANDA LIMITED ..... RESPONDENTS

Before Hon. Lady Justice Harriet Grace Magala

Ruling

**Background**

This is an application that was brought under section 98 of the Civil Procedure Act, section 33 of the Judicature Act and Order 52 rule 1 of the Civil Procedure Rules. The application is for orders that the Administrative Interim Order issued by this honourable court on the 14<sup>th</sup> June 2024 and extended on the 18<sup>th</sup> June 2024 vide Miscellaneous Application No. 0979 of 2024 be set aside and discharged; and costs of the Application.

The Affidavit in support of the application was deposed by Derrick Shiba, a director of the 1<sup>st</sup> Applicant and a person that is very conversant with the facts pertaining to the matter. The affidavit evidence of the Applicants is to the effect that service of the Administrative Interim Order was never effected on them.

**Representation and Hearing**

The Applicants were represented by M/s K&K Advocates (*formerly Kiwanuka & Karugire Advocates*) while the 1<sup>st</sup> Respondent was jointly represented by M/s Nexus Solicitors & Advocates, Meritas Advocates and Kasiko Advocates.



When this matter was called for hearing on the 28<sup>th</sup> June 2024, learned counsel for the Applicants, Mr. Bibangamba raised a preliminary objection to the effect that the 1<sup>st</sup> Respondent filed her affidavit of service on the 18<sup>th</sup> June 2024 at 1:19am and thereby violated the provisions of **Order 50 rule 3A sub rules (6) & (7)** of the Civil Procedure Rules as amended.

**Sub-rule (6) states that:**

*“The applicant shall, within the three days referred to in sub-rule (5), present proof of effective service on the opposite party”.*

**Sub-rule (7) states that:**

*“where proof of effective service is not presented within the period stipulated in sub-rule (6), the order shall lapse”.*

The learned counsel for the 1<sup>st</sup> Respondent argued that whereas the affidavit of service was uploaded onto ECCMIS on the 18<sup>th</sup> June 2024, service was effected on the 14<sup>th</sup> June 2024 onto the 1<sup>st</sup> Applicant at their office located in Naguru on the 14<sup>th</sup> June 2024 which was well within the three days as required by law.

Whereas the 1<sup>st</sup> Applicant prayed to court to make a ruling on the preliminary objection, court declined and allowed the 1<sup>st</sup> Respondent up to the close of business on the 2<sup>nd</sup> June 2024 to file their reply to the Application and file their submissions. Learned Counsel for the Applicants did not deem it necessary to file any written submissions. In his view, the application and affidavit in support thereof spoke for itself.

The affidavits in reply to the application by Mr. IBM Muguluma Mbazzi and Mr. Akampumuza Raymond show that the 1<sup>st</sup> Applicant has an office in Naguru opposite NBS (Next Media). This is where the 1<sup>st</sup> Respondent took the Court Order and pleadings to Misc. Cause 0053 of 2024 and the same were received by “a certain” gentleman who directed the receptionist to receive them.

During the hearing on the 28<sup>th</sup> June 2024, learned Counsel for the Applicants denied any knowledge of a Mbabazi Dianah as an officer of the 1<sup>st</sup> Applicant and that the office of the 1<sup>st</sup> Applicant was not located in Naguru. According to the Court record, counsel for the Applicants were served with the extended Order on the 18<sup>th</sup> June 2024. The Administrative Interim Order that was issued on the 14<sup>th</sup> June 2024 along

with the pleadings in Miscellaneous Cause No. 0053 of 2024 were also sent via e-mail by Andrew Wandera the In-House Counsel to the 1<sup>st</sup> Respondent on the 18<sup>th</sup> June 2024 to the civilis, shibad, Sophie, Ivan and Peterson. According to annexure F of the 1<sup>st</sup> Respondent's affidavit in reply, the e-mail communication dated 21<sup>st</sup> December 2023 shows that the email address that appears as "shibad" belongs to Derrick Shiba, a director of the 1<sup>st</sup> Applicant.

### **Determination**

The 1<sup>st</sup> Applicant is a company or a corporation. It is therefore important to first determine whether service upon the 1<sup>st</sup> Applicant was effective within the meaning of Order 50 rule 3A (6) before determining whether the same (service) was effected within three (3) days.

Order 29 rule 2 of the Civil Procedure Rules as amended is very instructive on service of process on corporations.

Rule 2 states that:

*"Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served –*

*(a) On the secretary, or on any director or other principal officer of the corporation; or*

*(b) By leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office, then at the place where the corporation carries on business."*

In the case of **Kyambogo University – vs - The Heights Ltd, Miscellaneous Application No. 0954 of 2015**, it was defence of the Respondent that service onto the Applicant was effected and therefore deemed effective when the summons to file a defence were served onto a clerical secretary of the Applicant and stamped. The Learned trial judge, Christopher Madrama Izama, J (as he then was) held that:

*"In the premises, service was effected on a person who was not authorized and to make matters worse, the summons and copy of the plaint was not brought to the attention of an authorized person in time.*

*In the premises, there was no good service on the Applicant and the interlocutory judgment entered by the Registrar on the 2<sup>nd</sup> October 2015 is hereby set aside”.*

The **Companies Act, Act 1 of 2012** defines a **director** as “includes any person occupying the position of director by whatever name called and shall include a shadow director”. The Companies Act does not have a definition of a principal officer but it defines an **officer** as “in relation to body corporate, includes a director, manager or secretary”.

A principal in law can be defined as a person who has controlling authority of who is in a leading position. The Companies Act does not define who a secretary is but under **sections 187,188 and 190** it mandates every company to have a secretary, states who can and cannot be a secretary and guides on the qualifications of a company secretary especially for public companies. A secretary can be a person or body corporate that is appointed by the directors to carry out the duties and functions of a secretary key among which is to ensure that the organization complies with existing relevant legislations and regulations; and keeps members of the board informed of their legal responsibilities.

I therefore find that Ms. Mbabazi Dianah who received the court papers on the 14<sup>th</sup> June 2024 was a clerical secretary or front desk officer and not a secretary within the meaning of the Order 29 rule 2(a) of the Civil Procedure Rules as amended, the Companies Act of 2012 as amended or the common law on companies or corporations. **See Vision Fund Uganda Limited vs Buwembo Monday Kasule Civil Appeal No. 98 of 2017 and Spenco Services Limited vs ONENCAN Civil Appeal No. 0092 of 2016.**

To the Affidavit in support of this application was attached Company Form 24 registered with the Uganda Registration Services Bureau (*hereinafter URSB*) which indicates who the directors and secretary of the 1<sup>st</sup> Applicant are. In addition, company form 25 that was filed with the URSB on the 2<sup>nd</sup> September 2022 clearly indicates that a one Richard Mugenyi is the person authorized to accept service of behalf of the Company which is incorporated outside Uganda.

It was the submission of the Applicants that they do not have an office in Uganda. The 1<sup>st</sup> Applicant is a foreign company that was registered in Swaziland then (now Eswatini) under certificate number 213/1982. Attached to the affidavit in support of the Application was Company Form A22 on the full address of the registered or principal office of a company incorporated outside Uganda. This form was filed on the 30<sup>th</sup> April 2012 and it does not state where in Uganda is the established place of business of the 1<sup>st</sup> Applicant (**see S.M Ssebowa & Family Limited vs Manna Harvestors International Limited, Court of Appeal Civil Appeal No. 161 OF 2017**). Whereas the 1<sup>st</sup> Respondent attached photographs that point to the possibility that the 1<sup>st</sup> Applicant has an office in Naguru, this is not conclusive. It does not even help matters that the photographs attached do not have a date and time, the 1<sup>st</sup> Respondent states that documents were received by “a certain gentleman” whose name and designation was not indicated and lastly; the 1<sup>st</sup> Applicant denies any knowledge of a one Mbabazi Dianah.

Lastly, the Court Order and pleadings in Miscellaneous Cause No. 0053 of 2024 were only served onto Shiba Derrick via e-mail on the 18<sup>th</sup> June 2024. It is not clear from the email whether what was sent to Shiba Derrick was the order issued



on the 14<sup>th</sup> June 2024 or the extended order that was issued on the 18<sup>th</sup> June 2024.

I therefore find that the 1<sup>st</sup> Applicant was not effectively served within the meaning of Order 29 rule 2 and Order 50 rule 3A sub-rules (6) & (7) of the CPR.

The application to set aside and discharge the Administrative Interim Order issued by this honourable court on the 14<sup>th</sup> June 2024 and extended on the 18<sup>th</sup> June 2024 vide Miscellaneous Application No. 0979 of 2024 is hereby allowed.

Costs shall abide the outcome of the main cause.

**Dated and signed at Kampala this 4<sup>th</sup> day of July 2024.**



**Harriet Grace MAGALA**

**Judge**

**Delivered on ECCMIS (online) this 4<sup>th</sup> day of July 2024.**