

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

MISCELLANEOUS APPLICATION NO. 0449 OF 2023

(ARISING FROM CIVIL SUIT NO. 412 OF 2020)

SMSONE LIMITED:.....APPLICANT

VERSUS

ZEENODE LIMITED :.....RESPONDENT

Before: Hon. Lady Justice Patricia Kahigi Asimwe

Ruling

Introduction:

1. The Applicant brought this Application by way of Notice of Motion under Order 9 Rules 12 & 27 of the Civil Procedure Rules; Section 96 & 98 of the Civil Procedure Act, Section 33 of the Judicature Act, Order 52 Rules 2 and 3 of the Civil Procedure Rules S.I 71-1 seeking orders that:
 - a) The default judgment/ex-parte judgment entered by this Honourable Court in Civil Suit No. 412 of 2020 in favour of the Respondent be set aside and
 - b) That costs of this Application be in the cause.
2. The background to this case is that on 10th July 2020, the Respondent instituted Civil Suit No.412 of 2020 against the Applicant and Henry Tumusiime for breach of contract.
3. The grounds of the Application as stated in the affidavit in support sworn by Mr. David Mushabe the Managing Director of the Applicant company stated that:

- a) He became aware of the Civil Suit on 20th July 2020 when he received a call from the 2nd Defendant informing me of a suit against him and my company;
 - b) He instructed their lawyers to defend the suit and they duly filed a written statement of defence on 30th July 2020;
 - c) He was informed that during summons for directions, the Respondent's lawyers sought to strike out the Applicant's written statement of defence on the basis of a default judgement having been granted;
 - d) The averment in the affidavit of service deposed by Alex Igiraneza, that he directed that the plaint and summons to be served on Muwema & Co. Advocates is false as he has never received any such phone call.
 - e) No staff, director, or company secretary authorised to receive service on behalf of the company has ever received the court summons in Civil Suit No. 412 of 2020.
4. In an affidavit in reply Mr. Kenneth Agaba Mugira an advocate with Kyagaba & Otatiina Advocates a firm of lawyers representing the Respondents, stated that:
- a) On 15th July 2023 the respondent's advocates instructed Mr. Alex Igiraneza, a duly authorized process server to serve summons in HCCS No. 412 of 2020 upon the Applicant.
 - b) That Mr. Igiraneza's affidavit of service filed in this court on the 29th of July 2020, indicates that he duly served the process on the Applicant.
 - c) That the applicant has at all material times been aware of the default judgment of 3rd August 2020 and there is no excuse for the delay to file this application.
5. In rejoinder, Mr. David Mushabe the Managing Director of the Applicant company further stated as follows: