

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 604 OF 2004
(Arising from Civil Suit No. 457 of 2004)

VENTURE COMMUNICATIONS LIMITED:::::::::APPLICATION/DEFENDANT

VERSUS

VERTEX PRUDENTIAL COMMERCE INC:::::::::RESPONDENT/PLAINTIFF

BEFORE: HON. JUSTICE GEOFRREY KIRYABWIRE

RULING:

This an application by way of Notice of Motion under sections 33 of The Judicature act, 98 of The Civil Procedure Act Orders 48 rr1 and 3 of The Civil Procedure rules. The application seek orders that this court extends time within which the applicant can file an application for leave to appear and defend HCCS 457 of 2004.

The brief facts are that the respondents filed a summary suit against the Applicant under order 33 of The Civil procedure rules. The Applicant did not file an application for leave to appear and defend but chose to have the matter settled out of court. The Respondent on its part agreed to settle the matter and

receive payments in installments; it did not apply for Judgment to be entered against the applicant. The back ground to the dispute revolved around the supply of stationery from the Respondent to the Applicant worth Ug. Shs. 34,257,600/= between 15th January 2004 and 18th March 2004.

The applicant had started to pay this amount in installments and at one stage issued a cheque that was dishonoured. This lead to the filing of this summary suit HCCS 457 of 2004 to recover the outstanding amount at the time of Ug. Shs. 18,765,200/=.

The applicant however through the affidavit of Andrew Babigumira its accounts Manager dated 7th September 2004 depones that the applicant now has credible evidence that this transaction is tainted with fraud as a result of improper dealings between are its employees Emma Ouchor and one Mr. Anywar EL Sadat the CEO of the Respondent Company.

Mr. Babigumira depones that its employee Mr. Ouchor revealed to the Applicant Company that Mr. Sadat had offered him a bribe of Ug. Shs. 2,500,00/= to make this order for stationery. Indeed Mr. Babigumira further depones that the stationery would last the company twenty working years. Mr. Babigumira in his further affidavit dated 22nd September 2004 now depones that Mr. Ouchor has been charged with the offence of embezzlement contrary to section 268 of The

Penal Code Act of Uganda and has been released on Police bond I must however observe that since a Police bond was given and not bail it appears Mr. Ouchor was not formally charged in court.

Mr. Muwanga counsel for the applicant has argued that when these fraudulent actions came to light the applicant rightly discontinued negotiations for settlement of the dispute. He further argues that even if the applicant did not apply for leave to appear and defend they now have a defence to the claim in light of this new information. He says it is in the interests of Justice and equity that court grants the reliefs sought.

Mr. Lukwago counsel for the Respondent argues that the application is incompetent. He first argues that the application is brought under the wrong law. He cites the correct law as being order 47 rule 6.

Secondly Mr. Lukwago argues that the application has no merit as the applicant had no defence. He submitted that the applicant has already paid a substantial amount of the debts leaving a current balance of Shs. 7,649,286/= only. Mr. Lukwago say the applicant does not deny the supply of the goods and that his clients did not apply for Judgment as there was a settlement on the table. He further submits that the fact that Mr. Ouchor has been charged does not affect the case at hand.

I have listened to the submissions of both counsel and read the pleadings together with supporting affidavits filed in court. On the issue of procedure, the applicant principally relies on S. 33 of the Judicature Act, which is a general provision empowering the court to give such remedies as it deems fit and section 98 of the Civil Procedure Act, which deals with the inherent powers of the court. Mr. Lukwago referred me to order 47 r 6 as being the correct law.

I agree with Mr. Lukwago that the specific law on procedure for court to take into account is order 47 r 6 which reads

" where a limited time has been fixed for doing any act or taking any proceedings under these rules or by order of the court, the court shall have power to enlarge such time upon such terms, if any, as the Justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

Provided that the costs of any application to extend such time any order made there on shall be borne by the parties making such application, unless the court shall otherwise order."

To this Mr. Muwanga states that court has inherent power to see that Justice is done, despite the rules of procedure relied upon.

I find that prima facie rules of procedure are to be followed that is why there are there. In this particular case the actual procedure used of S. 33 of the Judicature Act and section 98 of the civil procedure rules and the procedure, which was more appropriate, being O 37 r 6 are all used by court in the exercise of its judicial discretion. Article 126 (2) (e) of the 1995 constitution provides that substantive Justice shall be administered without undue regard to technicalities. Since the application made is one that rests on judicial discretion in substance no real harm or prejudice has been occasioned by the procedure used to bring this application before court so I will overrule the Respondent's challenge in this respect.

As to the merits of the case, order 47 rule 6 gives the court very wide power to extend time. The current practice also in the UK on extension or abridgement of time is also instructive in this respect. Halsbury's laws of England 4th edition Vol 37 para 30 states

"The court has power on such terms as it thinks just by order to extend or abridge the period within which a person is required or authorized by the rules of the supreme court or by any Judgment, order or directions to do any act in the proceedings even if the

application for extension is not made until after the expiry of that period.

This is an extensive power, designed to give court a wide discretion with a view to the avoidance of injustice and ordinarily the court will extend time where any injury cause by the delay may be compensated for by the payment of costs. On the other hand, the court in the its discretion will decline to extend time where there has been excessive delay or where the litigant has had his trial or hearing and lost, or where no explanation is offered for substantial delay. Apart from this rule, the court has very wide Inherent Jurisdiction to enlarge any time within which an act has been ordered to be done."

In this particular case the suit was filed on the 1st July 2004 just over 2 ½ months ago. I do not find this delay excessive. Secondly the parties immediately engaged in settlement without the Plaintiff applying for Judgment. I do not also see given the above why this delay cannot be compensated with costs.

I therefore in light of the wide powers afforded to court in such applications and in the interests of Justice allow the application for extension of time on the following terms.

1. The court hereby extends the time within which the applicant can file an application for leave to defend within 14 days from the date of this ruling.
2. That the applicant shall pay the respondent the costs of this application.



Hon. Justice Geoffrey Kiryabwire

4/10/2004