

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KITGUM

MISCELLANEOUS APPLICATION No. 09/2024

(Arising from CHIEF MAGISTRATE'S COURT, PADER – MISC. CAUSE
No. 06/2023)

(Arising from LC 3 Court Committee Decision Porogoli Sub County, Pader
District vide Case No. 1/2021)

LATIGO JOSEPH

APPLICANT

Versus

OYARO JOSEPH

RESPONDENT

BEFORE HON. MR. JUSTICE PHILIP W. MWAKA.

RULING.

Introduction and Background.

- [1]. The Applicant seeks Orders from this Court firstly for grant of leave to file an Appeal out of time and secondly for provision of Costs of the Application.
- [2]. The Motion instituting the Application was filed on the 17th January, 2024 following the stated decision subject of the intended Appeal by His Worship Ssajjabbi Noah, Chief Magistrate, Pader delivered on the 9th November, 2023 – a period of about two (2) months and one (1) week later.
- [3]. The Application is instituted by way of Notice of Motion under **Section 98 and 79 of the Civil Procedure Act, Cap. 71 (now Cap. 282) and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules, SI 71 - 1.**
- [4]. These citations were revised by the **Law Revision Act, Cap. 3 and Statutory Instrument No. 049/2024: The Law Revision (Commencement of the 7th Revised Edition) (Principal Laws) Instrument, 2024.**

[5]. The Application arises from a Complaint (Case) filed by the Applicant herein against the Respondent herein in an LC 2 Court which was subsequently Appealed by the Respondent against the Applicant to an LC 3 Court which found in favour of the Respondent and later the decision of the LC 3 Court was confirmed by the Chief Magistrate's Court, Pader in respect of which the Applicant seeks to file an Appeal belatedly with the leave of Court - hence the instant Main Application.

[6]. The subject matter is competing claims of ownership of customary land measuring about ten (10) acres in Aringo Mone Village, Latigi Parish, Porogali Sub County in Pader District.

Representation.

[7]. Counsel, Mr. Oneka Christopher, represented the Applicant. The Applicant was present in Court.

[8]. Counsel, Mr. Jude Ogik, represented the Respondent. The Respondent was present in Court.

Proceedings of the Court.

[9]. The matter was in Court on the 26th March, 2024 and the 13th June, 2024.

The Applicant's Submissions on a Preliminary Point of Law.

[10]. At the proceedings on the 13th June, 2024 prior to the Main Application being heard by the Court, Counsel for the Applicant raised an oral objection based on a point of Law to the effect that he had been served with the Respondent's Affidavit that very day which had similarly been filed on the Record of the Court that day and it was his contention that **Order 12 Rule 2 of the Civil Procedure Rules** requires the filing of an Affidavit in Reply within fifteen (15) days from the date of service of the Application on the Respondent.

[11]. It was his contention that the Affidavit of service on the Record of the Court of the 20th February, 2024 indicated that service was effected on the Respondent on the 28th January, 2024 with the Affidavit in reply being filed and served on the day of the hearing being the 13th June, 2024 which was about five (5) months later thus offending the Rules cited and consequently there was in effect and in Law no Affidavit in reply to be relied on by the Respondent as the Affidavit in reply was filed without the leave of Court. The Applicant prayed that the impugned Affidavit in reply is struck out.

The Respondent's Submissions on a Preliminary Point of Law.

[12]. In response to the oral objection, the Respondent Counsel contended that he received instructions on the 29th May, 2024 from the Respondent who was previously unrepresented and based on documents he was availed he prepared the Affidavit in reply which he concedes was filed and served that very morning of the 13th June, 2024.

[13]. The Respondent opposes the Application to strike out his Affidavit in reply and pleads that he was previously representing himself. The Respondent further contends that there are discrepancies in the Affidavit of service in respect of which it is submitted that the Application could not have been served before it was filed or issued – referring to a mention in the Affidavit of service of obtaining copies of the Application on the 28th January, **2022** whereas the Application was issued by the Deputy Registrar, High Court Kitgum Circuit on the 28th January, 2024, as far as can be discerned.

The Applicant's Rejoinder on a Preliminary Point of Law.

[14]. The Applicant re-joined conceding that there is a discrepancy in dates in the Affidavit of service insisting the Return of Service includes an endorsement of 28th January, 2024 stating that the Respondent refused to sign a copy of the Application which in any case he submits amounts to service being effected.

[15]. The Applicant accuses the Respondent of not appearing in Court and only waiting until he was required to get Counsel to do so and in any case he should have sought leave of the Court to file the Affidavit in reply belatedly.

Issues for Consideration.

[16]. The Issue for consideration to be addressed by the Court arising from the preliminary point of Law raised is – **Whether the Respondent’s Affidavit in Reply was filed belatedly and ought to be struck out.**

Considerations and Determination of the Court.

[17]. The Applicant in his Submissions cited **Order 12 Rule 2 of the Civil Procedures Rules** as the basis of his Application being a preliminary objection on a point of Law and related prayer for the Court to strike out the Affidavit in reply for being filed belatedly beyond fifteen (15) days from the date of service of the Main Application - which he specified as the time within which the Respondent had to respond in order to file timely. The Court observes that the Order cited does not relate to Counsel’s submissions and instead provides for matters relating to alternative dispute resolution.

[18]. Similarly, **Order 12 Rule 3 of the Civil Procedure Rules** – though not cited by Counsel for the Applicant - deals with “*remaining interlocutory Applications*” under the broad theme of scheduling conference and alternative dispute resolution where one would find provisions relating to filing interlocutory Applications within fifteen (15) days following attempts at alternative dispute resolution and in the context of a Scheduling Conference. This would seem to generally relate to suits and not the instant Application where the matter in contention is for leave to Appeal out of time with no pending or existing Appeal and as such could be considered an originating Application.

See: Misc. Application No. 114/2018 (Jinja): Muwanga Vs. Sun Huawen.

[19]. It is apparent that the Submission is misconceived and made entirely out of context. On this ground alone the preliminary point of Law raised would fail.

[20]. A review of the Civil Procedure Act and the Civil Procedure Rules does not indicate any specific provision stipulating the time frame within which an Affidavit in reply to an Application such as the instant one should be filed. The Courts have been quite liberal and for the most part held that there is no designated timeline for filing an Affidavit in reply, though its filing should give the Applicant fair opportunity to respond and thus rejoin where required. This consequently would require the filing of the Affidavit in reply to be concluded well before the matter is fixed for hearing of which notice would have been duly given by the Court. This should not be seen as license to file Affidavits in reply simply when or as one chooses.

See: Misc. Cause No. 7/2016 (Arua): Dr. Lam Lagoro James Vs. Muni University.

[21]. An important consideration in determining the fate of any Affidavit objected to would be of prejudice caused to any Party and the extent thereof by such abrupt filing and whether any remedial measures may be taken including giving allowance to the affected Party in terms of time for filing rejoinders, if any. In the present circumstances the Court observes that it did not emerge that the Applicant intends to file a rejoinder.

[22]. In the circumstances of this case, the Court is therefore inclined to allow the Affidavit in reply filed and should the Applicant intend to file any Rejoinder he may do so not more than a fortnight from the date of delivery of this decision.

[23]. Having carefully given due consideration to the preliminary objection on the point of Law raised by the Applicant, the response by the Respondent as well as the Rejoinder and upon consideration of the Law Applicable and taking into account all relevant factors the Court in the final result finds no merit in and dismisses the objection raised. No Order is made as to Costs.

140 **Orders of the Court.**

[24]. Accordingly, the Court makes the following Orders: -

1. The preliminary objection on the point of Law raised by the Applicant is without merit and is hereby dismissed.
- 145 2. The Applicant may file a Rejoinder in respect of matters raised in the Affidavit in Reply which must be filed within a fortnight of the date of delivery of this decision.
3. The Deputy Registrar High Court Kitgum Circuit shall fix the Main Application for the next convenient date.
4. No Order is made as to Costs.

150 It is so Ordered.

Signed and Dated on the 29th day of October, 2024 at High Court Kitgum Circuit.



155 **Philip W. Mwaka**

Acting Judge of the High Court.

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Delivery and Attendance.

165 This signed and dated Ruling has on the directions of the Presiding Judge been delivered to the Parties electronically on **Wednesday, the 30th day of October, 2024** by the Deputy Registrar, High Court Kitgum Circuit.

1. Deputy Registrar,
High Court Kitgum Circuit: - Her Worship Suzanne Aisia Musooli.
- 170 2. Counsel for the Applicant: - Mr. Oneka Christopher.
3. The Applicant - Mr. Latigo Joseph.
4. Counsel for the Respondent: - Mr. Jude Ogik.
5. The Respondent: - Mr. Oyaro Joseph.
6. Court Clerk and Interpreter: - Mr. Atube Michael.
- 175 7. Interested and Affected Persons and Entities.



Philip W. Mwaka

Acting Judge of the High Court.

High Court Kitgum Circuit.

180 **29th day of October, 2024.**