5 **THE REPUBLIC OF UGANDA**

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISCELLANEOUS APPLICATION NO. 540 OF 2026

(ARISING FROM CIVIL SUIT NO. 1411 OF 2024)

10 **BLUE PEARLS COMPANY LIMITED :::::::::::::::::::::::::::::::::: APPLICANT**

VERSUS

ORYX ENERGIES UGANDA LIMITED :::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. LADY JUSTICE PATIENCE T.E. RUBAGUMYA

RULING

15 Introduction

This application was brought by way of Notice of Motion under **Section 98 of the Civil Procedure Act, Cap. 282**, **Order 9 rules 12 and 27 and Order 52 rules 1 and 3 of the Civil Procedure Rules, SI 71-1**, seeking orders that:

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1. The interlocutory judgment entered against the Applicant on 5th June, 2025 in ***Civil Suit No. 1411 of 2024*** be set aside.
2. The Applicant be granted leave to file and serve its written statement of defence out of time.
3. Costs of this application be provided for.

25 Background

The background of this application is detailed in the affidavit in support deponed by **Mr. Okello Jessel**, the Applicant's Managing Director, and is summarized below:

5 1. That on 21st August, 2020, the Respondent instituted ***Civil Suit No. 642 of 2020*** against the Applicant seeking recovery of UGX 655,129,147/=, damages, interest and costs.

2. That on 9th September, 2020, the Applicant duly filed its defence but on 30th November, 2022, the said suit abated for failure of the
10 Respondent to take the necessary procedural steps.

3. That after the lapse of two years, it has now come to the Applicant's attention that on 19th November, 2024, the Respondent instituted ***Civil Suit No. 1411 of 2024*** claiming the same amount of UGX 655,129,147/=.

15 4. That the Applicant was purportedly served by way of publication in the Monitor Newspaper on 19th May, 2025 but the Applicant never saw or became aware of the said summons and publication and became aware of the suit on 17th March, 2026 after being informed by its lawyers.

20 5. That the Applicant has, at all material times, been ready and willing to defend the Respondent's claims and has a good, bonafide and triable defence on the merits of the entire suit.

6. That the Respondent will suffer no prejudice if the interlocutory judgment is set aside and the Applicant was prevented by sufficient
25 cause from appearing in Court, of having no knowledge of the suit.

In reply, the Respondent through an affidavit deponed by **Ms. Najjuma Mercy**, the Respondent's Legal and Compliance Manager, opposed the application contending that:

1. The Applicant's lawyer, Mr. Magezi Tom, was duly served with the
30 plaint and summons to file a defence on 16th December, 2024 but chose not to file a defence and on 5th May, 2025 when the matter

came up for mention, the Registrar directed that the Respondent serve the Applicant by way of substituted service, hence the newspaper publication.

2. Service of Court summons as directed by Court is effective regardless of whether a party sees it or not.
3. The Applicant was given a chance to file its defence and therefore, its retrospective act of seeking to file a written statement of defence should not be entertained by Court.
4. The Respondent is a business entity and allowing the application will prejudice it since it will deny it the opportunity to realize the fruits of its judgment, which is equally its business income.

In rejoinder, the Applicant reiterated its previous averments and added that:

1. It is admitted that ***Civil Suit No. 642 of 2020*** abated and the Respondent subsequently, filed ***Civil Suit No. 1411 of 2024*** and this does not validate the injustice that the Respondent shall face if the subsequent suit is not heard on its merits.
2. The Applicant's lawyers were never instructed to act for the Applicant in ***Civil Suit No. 1411 of 2024***.
3. The Applicant's lawyers were never served with the plaint and summons as evidenced by lack of any acknowledgement of receipt by the said lawyer, any acknowledgment stamp of the form as well as the identity, name or signature of any person alleged to have received the said documents.
4. The allegation that service was effected at the Applicant's office in "Naguru" is false and misleading since the Applicant's offices are at Akamwesi Complex, Nakawa Portbell Road.

5 5. The substituted service was premature, irregular and ineffective.

Representation

The Applicant was represented by **M/s Tumusiime, Kabega & Co. Advocates** while **M/s KSMO Advocates** represented the Respondent.

Both parties filed their written submissions. However, I have not seen the
10 need to reproduce them but the same have been considered therein.

Issues for Determination

Following **Order 15 rule 5(1) of the Civil Procedure Rules** and the case of ***Oriental Insurance Brokers Limited Vs Transocean (U) Limited, SCCA No. 55 of 1995***, this Court has rephrased the issues so raised to
15 read as follows:

1. Whether there is sufficient cause to set aside the interlocutory judgment vide ***Civil Suit No. 1411 of 2024***?
2. What remedies are available to the parties?

Issue No. 1: Whether there is sufficient cause to set aside the interlocutory
20 judgment vide ***Civil Suit No. 1411 of 2024***?

Analysis and Determination

I have considered the pleadings, the law and submissions of the parties to find as follows:

Section 98 of the Civil Procedure Act empowers this Court to make such
25 orders as may be necessary for the ends of justice. **Order 9 rule 27 of the Civil Procedure Rules** stipulates that:

> *"In any case in which a decree is passed ex parte against a Defendant, he or she may apply to the Court by which the decree was*

passed for an order to set it aside; and if he or she satisfies the Court that the summons was not duly served, or that he or she was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him or her upon such terms as to costs, payment into Court, or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit; except that where the decree is of such a nature that it cannot be set aside as against such Defendant only, it may be set aside as against all or any of the other Defendants also."

In the cases of ***Florence Nabatanzi Vs Naome Binsobedde, SCCA No. 6 of 1987*** and ***Sipiriya Kyarulesire Vs Justine Bakanchulike Bagambe, SCCA No. 20 of 1995***, the Supreme Court while handling such an application, laid down the principles to apply and these are summarized as follows:

i. First and foremost, the application must show sufficient reason which relates to the inability or failure to take some particular step within the prescribed time. The general requirement notwithstanding each case must be decided on the facts at hand.

ii. The administration of justice normally requires that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights.

iii. Whilst mistakes of Counsel sometimes may amount to an error of judgment but not inordinate delay or negligence to observe or ascertain plain requirement of the law.

5 iv. Where an Applicant instructed a lawyer in time, his rights should not be blocked on the grounds of his lawyer's negligence or omission to comply with the requirement of the law.

v. A vigilant Applicant should not be penalized for the fault of his Counsel on whose actions he has no control.

10 The term "sufficient cause" though not defined by our Civil Procedure Rules has been defined in several cases. In the case of ***Gideon Mose Onchwati Vs Kenya Oil Co. Ltd and Another, Civil Suit No. 140 of 2008 [2017] eKLR 65***, the Court relied on the definition in the Indian case of Parimal Vs Veena Alias Bhati, [2011] 3 SCC 545, in which the Court
15 observed that:

> *"In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However,*
> 20 *the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously."*

Also, in the case of ***Rossete Kizito Vs Administrator General & Others,***
25 ***SCCA No. 9 of 1986***, it was stated that "sufficient reason (cause)" relates to some inability or failure to take a particular step in time.

The Supreme Court in the case ***of Capt. Philip Ongom Vs Catherine Nyero Owota, SCCA No. 14 of 2001*** stated that a litigant's right to a fair hearing in the determination of civil rights and obligations which is
30 enshrined in Article 28 of the Constitution of the Republic of Uganda, 1995 should not be defeated on grounds of his/her lawyer's mistake.

5 According to the Court record, on 19th November, 2024, the Respondent instituted ***Civil Suit No. 1411 of 2024*** against the Applicant seeking recovery of UGX 655,129,147/=, general damages, interest and costs of the suit. On 16th December, 2024, this Court issued summons to file a defence and these were served on the Applicant's lawyer on 16th December,
10 2024 as per the affidavit of service dated 22nd January, 2025 deponed by Mr. Balyegisa Charles. On 5th May, 2025, this Court issued fresh summons to file a defence and these were served on the Applicant by way of substituted service in the Daily Monitor newspaper of 19th May, 2025 as per the affidavit of service dated 20th May, 2025 deponed by Mr.
15 Balyegisa Charles. The Applicant did not file its defence and on 5th June, 2025, this Court entered an interlocutory judgment under **Order 9 rule 8 of the Civil Procedure Rules** in favour of the Respondent**.**

The Applicant seeks to set aside the said interlocutory judgment on grounds that the substituted service of the summons was not effective. On
20 the other hand, the Respondent contends that the service of the summons was effective considering that the Respondent, had prior to the substituted service, served the Applicant's lawyer.

In the case of ***Geoffrey Gatete and Another Vs William Kyobe, SCCA No.7 of 2005***, the Supreme Court explained what amounts to effective
25 service when it stated that:

> *"The Oxford Advanced Learner's Dictionary defines the word "effective" to mean "having the desired effect; producing the intended result". In that context, effective service of summons means service of summons that produces the desired or intended result… There can be*
30 *no doubt that the desired and intended result of serving summons on the Defendant in a civil suit is to make the Defendant aware of the suit*

5 *brought against him so that he has the opportunity to respond to it by either defending the suit or admitting liability and submitting to judgment."*

The Supreme Court went on to hold that:

"…in appropriate circumstances service may be lawfully made on the
10 *Defendant's agent. If the agent omits to make the Defendant aware of the summons, the intended result will not be achieved. Similarly, the Court may order substituted service by way of publishing the summons in the press. While the publication will constitute lawful service, it will not produce the desired result if it does not come to the*
15 *Defendant's notice… Although service on the agent or the substituted service would be 'deemed good service' on the Defendant…if it is shown that the service did not lead to the Defendant becoming aware of the summons, the service is 'not effective'…"* [**Emphasis Mine**]

In the instant case, it is undisputed that the first service of the summons
20 was effected on the Defendant's agent while the second service was by way of substituted service. The Applicant averred that it never saw or became aware of the said summons and publication and became aware of the suit on 17th March, 2026 after being informed by its lawyers. Considering that the Applicant's agent omitted to inform the Applicant of the service and
25 the Applicant did not become aware of the suit despite the substituted service, I find that although the service of the summons was good, it was not effective since the intended result was not achieved.

In the premises, there is sufficient cause, to warrant the setting aside of the interlocutory judgment in ***Civil Suit No. 1411 of 2024***. Therefore,
30 this issue is answered in the affirmative.

5 <u>Issue No. 2: What remedies are available to the parties?</u>

Having resolved issue No. 1 in the affirmative, the Applicant is hereby granted leave to file its written statement of defence out of the time.

Accordingly, this application is granted with the following orders:

1. The interlocutory judgment entered against the Applicant in ***Civil***
10 ***Suit No. 1411 of 2024*** is hereby set aside.
2. The Applicant is hereby ordered to file and serve its written statement of defence with fifteen (15) days from the date of this Ruling.
3. The Respondent shall file and serve its reply to the written statement
15 of defence within fifteen (15) days from the date of service of the written statement of defence.
4. Costs of the application shall be in the cause.

I so order.

Dated, signed and delivered electronically this **23rd** day of **April, 2026.**

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Patience T.E. Rubagumya
JUDGE
23/04/2026

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Delivered via ECCMIS

Under the Judicature (Electronic Filing, Service and Virtual Proceedings) Rules, 2025.