

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

**MISCELLANEOUS APPLICATION No.1463 OF 2022
ARISING FROM CIVIL SUIT No.250 OF 2022**

LAKHI HIGH TECH LTD ::APPLICANT

VERSUS

DELHI PUBLIC SCHOOL INTERNATIONAL:::::::::: RESPONDENT

10 Before Hon. Lady Justice Patricia Kahigi Asimwe

Ruling

Background:

The Applicant filed this application under Order 9 Rules 12 and 27 of the Civil Procedure Rules seeking the following orders:

- 15 a) The interlocutory judgement entered on 28th September 2022 in H.C.C S No. 250 of 2022 be set aside;
- b) The Applicant be granted leave and extension of time within which to file a written statement of defence; and
- c) The costs of the application be provided for.

20 The background to this matter is that on 25th February 2022, the Respondent filed a suit against the Applicant seeking orders for breach of contract. On 28th February 2022, summons were issued to the defendant to file a defence. On 1st March 2022, Mr. James Okori swore an affidavit of service in which he stated that he called
25 the Applicant's Director, Mr. Raghunath Kishori Vijay, about the summons. The director told him that he would come to his office to receive the summons and negotiate a settlement. The following day the director of the Applicant proceeded to the office and
30 acknowledged receipt of the summons. On 28th September 2022, the matter was called for hearing and the Respondent applied for interlocutory judgement against the Defendant/Applicant for failure to file a defence within the stipulated time and that the

35 matter be set down for formal proof. Prior to doing so court directed
the clerk to find out from Mr. Raghunath Kishori Vijay whether he
had received the summons. Mr. Raghunath Kishori Vijay
confirmed to the clerk that he had received the summons.
Accordingly, judgement was entered against the Applicant and the
40 matter set down for formal proof. On 12th October 2022, the
Applicant filed the present Application in court.

The Application was supported by an affidavit sworn by Mr.
Raghunath Kishori Vijay, the Applicant's Director who stated as
follows:

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- i) That he was called by the Respondent's lawyers to receive
summons to file a defence. He then spoke to the Respondent's
director Mr. Sudhir Ruparelia, who assured him that the
dispute would be resolved by settlement and advised him to
50 see the Respondent's lawyers and have the matter closed.
- ii) He subsequently proceeded on a business trip to South
Sudan and India under the belief of the verbal assurances of
the Respondent's director that the matter would be settled.
He did not take any steps to file a Written Statement of
55 Defence until he received a phone call from a court clerk on
28th September 2022 informing him that the case was coming
up on 13th October 2022.
- iii) He subsequently engaged and instructed their lawyers whose
search on the file discovered that an interlocutory judgement
60 was entered against the Applicant on 28th September 2022.
- iv) He made an error of judgement and a mistake in failing to file
a defence.
- v) The Applicant was not served with any hearing notice or
summons for the hearing of 28th September.
- 65 vi) The Application was filed without delay; the Applicant is
interested in defending Civil Suit No.250 of 2022 to which he
has a counterclaim.

The Respondent in response filed an affidavit in reply sworn by Mr.
Sanjay Kumar Chandarana who stated as follows: