

UGANDA / JUDGMENT

Atoo Grace v Onen Rubangakene Wilson
(Miscellaneous Application 44 of 2021)
[2023] UGHC 210 (13 October 2023)
[2023] UGHC 210

COURT

High Court of Uganda

CASE / FILE NUMBER

Miscellaneous Application 44 of 2021

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA HOLDEN AT GULU****MISCELLANEOUS APPLICATION No. 044/2021****(ARISING FROM CIVIL SUIT No. 05/2010).****ATOO GRACE $\text{\textit{S}}$** **APPLICANT*****Versus*****1. ONEN ANTHONY****2. RUBANGAKENE WILSON****RESPONDENTS****BEFORE HON. MR. JUSTICE PHILIP W. MWAKA.****RULING.****Factual Background.**

- The Applicant seeks Orders from this Court reinstating High Court Civil Suit $\text{\textit{S}}$. No. 05/2010 (Hereinafter the "Main Suit") and making provision for Costs of the Application. The Application was filed on the 27th day of May, 2021.

- High Court Civil Suit No. 05/2010 was dismissed for want of prosecution by 15 \$[2]\$. the Hon. Justice Stephen Mubiru under "Order 17 Rule 6 of the Civil *Procedure Rules*" by Ruling/Order dated the 11th day of February, 2021. Both parties were absent on the day of dismissal of the Main Suit. An Order dismissing the Main Suit was also extracted on the 11th day of May, 2022.
- The significance of the provision under which the Main Suit was dismissed \$[3]\$. 20 (Order 17 Rule 6 of the Civil Procedure Rules) shall become more apparent during the Court's consideration of the Submissions of the respective parties and of the Issues raised.
- The Application is instituted by way of Notice of Motion under Order 52 \$[4]\$. Rules 1 and 3 of the Civil Procedure Rules and Section 98 of the Civil **Procedure Act** with a Supporting Affidavit deponed by the Applicant.

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The Applicant's Case.

- The Applicant states her grounds for reinstatement of the Main Suit as follows \$[5]\$. in the order reproduced hereunder: -
 - 1. The Applicant filed Civil Suit No. 05/2010 claiming ownership of the suit land from the Respondents.
 - 2. The Applicant always appeared before the Court while the Respondents were at all times absent.
 - 3. On perusal of the Court file, the Respondents were served through Substituted Service.
 - 4. The Respondents abandoned the suit land Two (2) years after the filing of the suit.
 - 5. The Applicant hence had constructive possession of the suit land.
 - 6. The case could not proceed because the Respondents had already vacated the suit land.
 - 7. On the 11th February, 2021 the suit was dismissed for want of prosecution on Motion of the Honourable Court.
 - 8. In the month of April, the Respondents returned to the suit land and started construction on the land.
 - 9. The Applicant is not dilatory in filing the Application for reinstatement.
- 10. It would be in the interests of justice to grant the Application.

\$[6]\$. The Application is supported by the Affidavit of the Applicant which restates Grounds 1 - 8 cited herein-above *Verbatim* in Paragraphs \$2 - 9\$.

There are however the following additions in Paragraphs 10, 11, 12, 13 and § 15 of the Affidavit in Support of the Application, which are mostly based on the advice of her Advocates and her belief in their advice, reproduced in their order hereunder:-

> 1. The Applicant is advised by her Advocates that the Court can reinstate a case under special circumstances when it is time barred.

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- 2. The Applicant is advised by her Advocates that the Respondents did not move the Court to have the Suit dismissed, hence the Court can have the Suit reinstated.
- 3. The Applicant is advised by her Advocates that the Court has inherent powers to reinstate the said Suit.
- 4. The Respondents shall suffer no damages if the suit is reinstated and the matter is heard and disposed of on its merits.
- 5. The Application should be granted in the interests of substantive justice.

Respondents' Case.

[8]. The Respondents oppose the Application. In so doing, they filed Two (2) Affidavits in Reply. An Affidavit of the 1st Respondent/ 1st Defendant in the Main Suit, Onen Anthony, and an Affidavit of Obol Richard - as an Administrator of the 2nd Respondent's Estate whom he states is deceased. Both Affidavits in Reply were filed on the 1st day of September, 2021.

The 1st Respondent's Case.

- The 1st Respondent, Onen Anthony, replied the averments of the Applicant § 9. in his Affidavit in Reply which is as stated therein based in different Paragraphs on fact, the advice of his Advocates and belief.
- The Court shall delineate the factual averments and allegations deposed to by § 10. 75 the 1st Respondent from those based on advice of his Advocates and belief.
- As far as can be discerned from the 1st Respondent's Affidavit in Reply, he § 11. makes the following averments and allegations: -
 - 1. The 1st Respondent works abroad with the United Nations (High) Commissioner for Refugees while his family lives in Kitgum District in Uganda. He was neither served with the instant Application nor the summons in the Main Suit (or Hearing Notices). He was informed of the instant Application by the children of the 2nd Respondent - whom he states is deceased - from whom he obtained a copy.

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- 2. The 1st Respondent built a permanent house on the suit land. In 2005 he constructed rental housing units on the Suit land. In 2017, in his absence, the Applicant illegally and without a Court Order evicted his tenants and installed her own tenants from whom she has since been collecting rent.
- 3. The 1st Respondent claims to have suffered great inconvenience from the Applicant's constant disturbance of his possession and quiet enjoyment of the suit land and the Applicant has forcibly collected rental income from his rental properties for Five (5) years and prays that the Applicant pays to him all the rental income she has collected from the house since 2017.
- 4. The 1st Respondent contends that the Applicant has not shown any good cause for reinstatement and in the interests of justice the Application should be dismissed.

The 2nd Respondent's Case.

- The Court similarly discerns the following averments and allegations from the 100 \$[12]\$. Affidavit in Reply of Obol Richard: -
- 1. The Deponent is one of Two (2) Administrators of the Estate of the 2nd Respondent who died on the 7th June, 2002 and was buried at Kapwota Village, Ywaya Parish, Padibe West Sub County, Lamwo District. There is variance in the names "Obol" and "Obel".
- 2. Attached to his Affidavit is the 2nd Respondent's Death Certificate dated 7th June, 2002 showing the date of death as 7th June, 2002 marked as **Annexure "A"** and Letters of Administration in respect of the 2nd Respondent's Estate issued by the Hon. Justice Moses Mukiibi on the 17th July, 2003 as **Annexure "B"**.
- 3. Prior to the death of the 2nd Respondent he was in active possession of the suit land which they have never lost possession of and he had already started construction on the land.

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- 4. The Estate of the 2nd Respondent was not served with Court Summons.
- 5. The Deponent claims that the Main Suit was illegally instituted against the 2nd Respondent at a time when he was already deceased to prevent his Estate from using the suit land thereby disturbing their possession and quiet enjoyment and causing economic loss.
- 6. The Applicant has not shown good cause for reinstatement of the main suit and the Application should be dismissed with costs.

- Both of the Deponents make similar sweeping statements based on the advice \$[13]\$. of their Advocates and belief which are reproduced hereunder:-
- 1. The Application lacks merit; it is frivolous, vexatious, misconceived and an abuse of Court process.
- 2. The Applicant is accused of dilatory conduct, not attending Court on dates the case was fixed for Hearing and failing to prosecute her suit for Eleven (11) years which has not been satisfactorily explained.
- 3. The Applicant wishes to file a fresh suit against the Respondents in respect of the suit land but is barred by limitation - hence her Application for reinstatement.
- 4. The Court has Inherent Powers under Section 98 of the Civil **Procedure Act** to grant reliefs to meet the ends of Justice including reinstatement of the Main Suit - but cannot do so without good cause.
- 5. The Applicant filed the Main Suit to block them from using the suit land.
- 6. The Respondents are honestly interested in settling the matter on the merits but the claim is barred by limitation and does not disclose a Cause of Action.
- 7. No good cause for reinstatement has been shown and the Application ought to be dismissed with costs.

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There is no Affidavit in Rejoinder filed on the Court Record. \$[14]\$.

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Representation.

- Counsel, Mr. Doii Patrick, represented the Applicant. The Applicant was \$[15]\$. absent. 145
- \$[16]\$. Counsel, Mr. Walter Okidi Ladwar, represented the Respondents. The Respondents were absent.

<u>Proceedings of the Court.</u>

- [17]. At the proceedings of the Court on the 8th September, 2023 Mr. Walter Okidi 150 Ladwar, Counsel for the Respondents, informed the Court that he had consulted with Counsel for the Applicant and they had agreed to expedite by filing Written Submissions with the Applicant filing and serving her Written Submissions within Two \$(2)\$ weeks and the Respondents filing and serving their Written Submissions within Two (2) weeks.
- 155 \$[18]\$. Mr. Doii Patrick, Counsel for the Applicants, confirmed that position and indicated that he had no objection to the schedule for filing the respective Submissions.

- \$[19]\$. The Court issued Directions for the parties to file their Written Submissions with the Applicant required to file and serve on or before close of business on the 15th September, 2023, the Respondents to file and serve their Written Submissions on or before close of business on the 22nd September, 2023 and any Rejoinder to be filed and served on or before close of business on the 29th September, 2023.
- \$[20]\$. The main Submissions were not to exceed Ten (10) pages while the Rejoinder would not exceed Three (3) pages.
- The Ruling was fixed for Wednesday, 11th October, 2023. (The Ruling could \$[21]\$. not be delivered on that date so the date of the Ruling was adjusted to **Friday**, 13th October, 2023 at 11:00am.)
- The Applicant filed Submissions on 15th September, 2023 and Respondent on \$[22]\$. 26th September, 2023. No Submissions in Rejoinder are on Court Record.

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Applicant's Submissions.

- \$[23]\$. The Applicant in her brief Submissions raised and addressed the following issue as the sole issue: - Whether the Court can reinstate the dismissed Civil Suit No. 005/2010.
- The Applicant argued that High Court Civil Suit No. 05/2010 was dismissed 175 \$[24]\$. on the 11th February, 2021 under a non-existent provision *Order 17 Rule 6* of the Civil Procedure Rules, SI 71-1 (as Amended).
- The Applicant contends that the Civil Procedure (Amendment) Rules, SI \$[25]\$. 33/2019 substituted and merged Rule 5 and Rule 6 of Order 17 of the old provisions of the *Civil Procedure Rules* as one Rule - being *Rule 5*. Accordingly, **Rule 6** was defunct and not available to be invoked as a basis of dismissing the Main Suit for want of prosecution.
- Rule 5 of the Amended Civil Procedure Rules is entirely different and \$[26]\$. provides for the automatic abatement of a suit if no step is taken by either party for a period of Six (6) months after a mandatory Scheduling Conference.
- The Applicant, citing *Miscellaneous Application No. 192/2019*, \$[27]\$. Muhammed Njagala Vs Mutumba Andrew & 2 Others (Hon. Justice Olive Kazaarwe Mukwaya) in relation to Rule 5 goes on to argue that there was no mandatory Scheduling Conference which took place between the parties that warranted the dismissal of the suit for want of prosecution.
- The Respondents had only recently filed their Written Statements of Defence, \$[28]\$. indicating in her view that they were fully interested in having the matter resolved inter-parties.

- The Applicant further contends that the Respondents had previously \$[29]\$. abandoned the suit land leaving it in her possession and had only recently returned to start construction on the land.
- The Applicant concludes by arguing that the suit should be resolved by the \$[30]\$. Court and prays that the Court invokes its inherent powers to have Civil Suit No. \$05/2010\$ reinstated with costs.

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Respondents' Submissions.

- The Respondents raised and addressed the following issue as their sole issue \$[31]\$. - Whether the Applicant has sufficient cause to warrant reinstatement of Civil Suit No. 005/2010.
- The Respondents cited numerous authorities defining sufficient cause. The \$[32]\$. Respondents then proceeded to contend that whereas the Court has Inherent Powers under Section 98 of the Civil Procedure Act, Cap. 71 to grant reliefs to meet the ends of Justice including reinstatement of the suit, that discretion should not be applicable in the specific circumstances of this case.
- In their view, the suit is already time barred with the cause of action being a \$[33]\$. land sale that occurred in 1999, the Applicant was guilty of negligent and dilatory conduct for Eleven (11) years and the Application is devoid of merit having been brought in bad faith and is an abuse of Court process.
- The Respondents argue that the Applicant should have appealed against the \$[34]\$. Order as opposed to seeking reinstatement or in the alternative filed a fresh suit subject to the Law of Limitation.
- The Respondents contend that the reference to *Order 17 Rule 6* by the Hon. \$[35]\$. Justice Stephen Mubiru in dismissing the suit for want of prosecution was a "typographical error" and the dismissal of the suit should have instead been properly directed under Order 17 Rule 5 of the Civil Procedure
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(Amendment) Rules, SI 33/2019.

- The Respondents argue that sufficient cause or justifiable reason has not been \$[36]\$. demonstrated for grant of an Order of reinstatement and it is not enough to argue that there had been no mandatory Scheduling Conference.
- There must be an end to litigation and the Respondents claim that they will \$[37]\$. be disadvantaged by reinstatement as the Applicant simply seeks reinstatement to beat limitation.

- Finally, Civil Suit No. 05/2010 was filed against the 2nd Defendant Eight (8) \$[38]\$. years after he had died with the suit still bearing his name which is a nullity.

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Issues for Consideration.

- The Court is persuaded that the Issues as framed are appropriate for the \$[39]\$. 230 disposal of this Application and shall consider them in the form raised by the respective parties but in the reverse order as follows: -
- 1. Whether the Applicant has sufficient cause to warrant reinstatement of Civil Suit No. 005/2010.
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- 2. Whether the Court can reinstate the dismissed Civil Suit No. \$005/2010.\$

Considerations of the Court.

- As far as can be ascertained from the Court Record, the Procedural Posture \$[40]\$. of High Court Civil Suit No 05/2010 is as follows: -The Plaintiff was filed on the 17th February, 2010 with the suit alleging fraud and seeking declaratory orders of ownership of land located at Plot 36, Chua County at Gangdyang, Kitgum Municipal Council, a permanent injunction restraining the Defendants and their agents from interfering with the Plaintiff's land rights, general damages for trespass, mesne profits and costs. An amended Plaintiff was filed on the 23rd February, 2010 reflecting one Kinyera Samuel said to be the son of the 2nd Defendant. This is not carried into the present Application.
- A Written Statement of Defence was filed for the 2nd Defendant on the 22nd \$[41]\$. October, 2012 in which limitation was asserted and averments made to the effect that the 2nd Defendant bought the suit land and was a bonafide purchaser for value without notice. There is no Written Statement of Defence on the Court file filed by or on behalf of the 1st Defendant.
- Surprisingly, the 2nd Defendant is named and maintained as a Party to the \$[42]\$. Main Suit and instant Application yet as indicated by the Respondents and evidenced by the Death Certificate and Letters of Administration Annexure "A" and Annexure "B" respectively, he had already been deceased for more than Seven (7) years at the time the Plaintiff/Applicant filed the Main Suit.

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- [43]. Based on the Letters of Administration granted by the Hon. Justice Moses Mukiibi on the 17th July, 2003 over the Estate of the Late Rubangakene Wilson with Mrs. Zeulia Birungi Rubangakene and **Mr. Obel** (at variance with Deponent **Obol**) Richard being Widow and Brother of the Deceased respectively, there should have been a substitution of

the parties – the \$2^{nd}\$ Defendant/ \$2^{nd}\$ Respondent specifically – to reflect the present realities. There has, however, been no contestation in regards to the identity of the Deponent. Apparently, despite the averments of the Respondents in their Affidavits in \$[44]\$. Reply regarding their contestation of the Applicants actions of allegedly seizing or interfering with their land and profiting from rental income from 2017 to date, there is no Counter-Claim or Counter-Suit filed.

- There were proceedings had on the 29th June, 2022 in Miscellaneous \$[45]\$. Application No. 118/2022 where the Applicant sought the grant of an Interim Order of Injunction restraining the Respondents and their agents from damaging the land and executing construction works. The Application was dismissed on the basis that it arises from a non-existent suit with the Main Suit having been dismissed on the 11th day of February, 2021.
- Another Miscellaneous Application No. 063/2021 arising from the instant \$[46]\$. Application and seeking grant of a Temporary Injunction on similar grounds as the dismissed Application for Interim Order is as yet undisposed of.

Resolution of the Issues Raised.

Resolution of Issue No. 1: Whether the Applicant has Sufficient Cause to Warrant the Reinstatement of Civil Suit No. 05/2010.

Sufficient cause or sufficient reason, as the case may be, refers to a legal \$[47]\$. 280 determination that there exists sufficient grounds to support a case or a decision. It is a recurring requirement in numerous substantive and procedural Statutes and Regulations for justification of the triggering of the Court's judicious exercise of its discretion.

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The Court must be satisfied as to the reasons or explanation provided and the 285 \$[48]\$. sufficiency of the grounds should relate to an inadvertency, inability, failure or bonafides to take a proactive, necessary or mandatory measure or steps to further one's case timely which would exonerate the litigant from the presumption or assertion of dilatory conduct, indolence, negligence or inaction which in the first place led to the negative outcome which the litigant 290 now seeks to have remedied.

> See: Black's Law Dictionary 8th Edition, Supreme Court Civil Appeal No. 8/1998: Banco Arabe Espanol Vs. Bank of Uganda, Supreme Court Civil Appeal No. 9/1993: Nicholas Roussos Vs. Ghulam Hussein Habib Virani.

The Court is cognisant of the line of cases which hold that the Court's §[49]§ . inherent powers to judiciously exercise its discretion - including to reinstate a dismissed suit - is circumscribed by the requirement of sufficient cause.

See: Supreme Court Civil Appeal No. 8/1998: Banco Arabe Espanol Vs. Bank of Uganda, Supreme Court Constitutional Application No. 1/2006: John Sanyu Katuramu & Others Vs. The Attorney General.

- It is trite that the burden of proof under the *Evidence Act, Cap. 6* is placed §[50]§ . on the Applicant who has the duty to demonstrate sufficient cause by providing a factual explanation for the delay or delinquency before reinstatement is allowed with each case being determined on its own circumstances. It therefore cannot simply be left to the Court to impute sufficient cause for reinstatement of any matter without a factual or otherwise legal basis.
- In this Application presently before the Court, the issue of whether sufficient §[51]§ . cause has been demonstrated to the Court by the Applicant to warrant reinstatement of the Main Suit - or for that matter to otherwise appropriately judiciously exercise its discretion, as earlier indicated, was raised by the Respondent in their Submissions.
- The Applicant is entirely silent on the issue. Upon review of her pleadings, §[52]§ . 315 the grounds of her Application in the Motion and her supporting Affidavit, the Court finds that no attempt has been made by the Applicant to explain any circumstances that may or would constitute sufficient cause or otherwise address the issue to any extent in her Submissions.
- §[53]§ . Rather, the Applicant in her Submissions simply insists on her entitlement to the suit land and her desire to continue with the litigation before the Court.
- The Respondents, on the other hand, refer to Authorities defining Sufficient §[54]§ . Cause and in regard thereto argue that the Applicant has not demonstrated any sufficient cause for reinstatement of the Main Suit and go to great lengths to restate and justify the dismissal of the Main Suit for want of prosecution.
- §[55]§ . Their core argument is that whereas the Court has inherent powers to grant reliefs to meet the ends of justice, this is not a case in which the exercise of such discretion can be judiciously made and proceed to cite numerous technical and substantive arguments against reinstatement of the Main Suit.
- Tellingly, the Applicant did not file a rejoinder to the Submissions of the §[56]§ . Respondent disputing their arguments on the absence of Sufficient Cause.

- §[57]§ . The Court therefore finds that it has not been provided with any assistance or basis by way of an explanation to exonerate the Applicant from the averments of dilatory conduct, indolence, negligence or inaction which would enable a determination of the issue and would otherwise justify the judicious exercise of its discretion to even consider reinstatement of the Main Suit or otherwise provide an appropriate remedy by virtue of its inherent powers under Section 98 of the Civil Procedure Act, Cap. 71.
- §[58]§ . The Court should be careful not be seen to casually, carelessly or wantonly invoke its inherent powers without any effort of a litigant who purports to be affected providing sufficient cause or any cause whatsoever as is the case in this litigation. This is stated without prejudice to the Courts powers to take action Sua Sponte in appropriate circumstances.

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The Court concludes resolution of this first issue by holding that in the §[59]§ . circumstances of this case sufficient cause has not been provided or established for the judicious exercise of its discretion to invoke its inherent powers under Section 98 of the Civil Procedure Act, Cap. 71.

Issue No. 2: Whether the Court can Reinstate the Dismissed Civil Suit No. \$05/2010.\$

- §[60]§ . This issue may seem redundant by virtue of the finding of the Court in the 350 first issue herein-above but the Court shall entertain it since it raises fundamental points of Law and in order to ensure the comprehensiveness of this decision.
- The Applicant focuses her Submissions on pointing out that the dismissal of §[61]§ . the suit for want of prosecution was effected under certain old provisions of the *Civil Procedure Rules, SI 71-1* and yet amendments to those provisions which are core to this case had already taken effect under the *Civil Procedure* (Amendment) Rules SI 33/2019.
- Specifically, **Rule 6 of Order 17** which was the provision cited for dismissal §[62]§ . of the Main Suit did not exist at the time of the dismissal having been consolidated with and into a new **Rule 5** which is fundamentally different from the old provisions in its substance, application and effect.
- §[63]§ . This Court finds, as was rightly pointed out by the Applicant, that the Main Suit was dismissed under "Order 17 Rule 6 of the Civil Procedure Rules". The citation in the Ruling/ Order is not complete, but it can reasonably be inferred that the consideration was under the old provisions of **SI 71-1**. There was no mention of the *Civil Procedure (Amendment) Rules, SI 33/2019*.

- Whilst the Respondents suggest that citation of *Order 17 Rule 6 of the Civil* \$[64]\$. **Procedure Rules (SI 71-1)** of the old Rule as the provision for dismissal of the Main Suit was a "typographical error" and the Court instead meant to cite the introduced provision being *Order 17 Rule 5 of the Civil Procedure* (Amendment) Rules, SI 33/2019, this Court does not share their view.

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The Ruling/Order speaks for itself and after citing Order 17 Rule 6 of the \$[65]\$. Civil Procedure Rules the Court directs that "The suit is dismissed for want of prosecution under the above-mentioned provisions." The Court will not belabour to distinguish the application of the now defunct old **Order 17 Rule 5** from Order 17 Rule 6 which would in any case simply be an academic exercise. Suffice it to say that reference may be made to decisions on the old provisions prior to the Amendment.

See: Miscellaneous Application No. 772/2016: Comtel Intergrators Africa Ltd Vs. National Social Security Fund (Hon. Justice Christopher Izama Madrama).

The Civil Procedure (Amendment) Rules, SI No. 33/2019 provided \$[66]\$. Amendment of *Order XVII* in the following terms: -

Amendment of Order XVII.

The Principal Rules, are amended in Order XVII by substituting for Rules 5 and 6 the following -
Rule 5 - "Dismissal of suit for want of prosecution.

- 1) In any case, not otherwise provided for, in which no application is made or step taken for a period of six months by either party with a view to proceeding with the suit after the mandatory scheduling conference, the suit shall automatically abate; and,
- 2) Where a suit abates under Subrule (1) of this Rule, the Plaintiff

may, subject to the law of limitation bring a fresh suit."

[67]. This Court finds that what was previously Rule 6 of Order 17 of the Civil **Procedure Rules SI 71-1** was expunged by virtue of the amendment effected by way of substitution upon the making of the Civil Procedure (Amendment) Rules SI 33/2019 in respect of which the chronology indicates that SI 33/2019 was made on the 25th January, 2019 and its date of commencement was the 31st May, 2019.

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- It goes without saying that at the time of dismissal of the Civil Suit No. 400 \$[68]\$. 05/2010 for want of prosecution on the 11th February, 2021 the amendment had already taken effect and the existing provision was Order 17 Rule 5 of the Amendment and not Order 17 Rule 6 - which was by then defunct and non-existent. This was not contested by either Party.
- The Court reiterates its finding that the Civil Procedure (Amendment) 405 \$[69]\$. Rules SI 33/2019 upon being made merged Rule 5 and Rule 6 of Order 17 into a new single **Rule 5** which is materially different in substance, effect and application introducing provisions relating to new circumstances for dismissal of suits for want of prosecution by way of the automatic abatement of suits
- The matter that remains for the Court to decide is In view of the totality of 410 \$[70]\$. the circumstances of the instant case what powers does it have?
- Can the Court judiciously exercise discretion invoking the inherent powers \$[71]\$. provided under Section 98 of the Civil Procedure Act, Cap. 71 considered in conjunction with Article 126(2)(e) of the 1995 Constitution to achieve the ends of substantive justice in this case without undue regard to technicalities and at the same time resolve the conundrum of Legal limbo the Applicant finds herself in by falling victim to a defunct provision?
- The Court is of the considered view that if it were to take the avenue of setting \$[72]\$. aside the earlier decision dismissing the Main Suit under the old provision Order 17 Rule 6 of the Civil Procedure Rules on the basis that the decision was erroneously reached since the provisions were defunct, it would be entering the realm of the Appellate Courts under the guise of exercising its Inherent Powers.
- It is not lost on this Court that the Applicant insinuates that the decision to \$[73]\$. dismiss the Main Suit on a defunct provision is a nullity and stops short of asking for declarations to set it aside - instead digressing to Order 17 Rule 5 of the Civil Procedure (Amendment) Rules, SI 33/2019 which is not the provision which led to dismissal of the Main Suit in the first place.

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- The Court therefore finds that it would untenable to invoke its Inherent \$[74]\$. Powers to reinstate the Main Suit as prayed for by the Applicant in 430 circumstances involving setting aside the decision of another like Court of parallel Jurisdiction on a matter which would be a subject of Appeal, should she so choose to pursue. Otherwise, a fresh suit may be filed.
- Regarding arguments of prejudice based on supposed limitation, any party is \$[75]\$. at liberty to pursue and seek enlargement of time in any fresh litigation which the presiding Court will be bound to consider. The insinuations and counter insinuations in trespass would in any case be a continuing Tort.

Determination of the Court.

- Having carefully given due consideration to the Application by Motion and [76]. the grounds therein, the supporting affidavits, the responsive affidavits, the submissions of Counsel for both parties and the circumstances and totality of the Application and the responses on the merits, the Court holds that the Applicant clearly has not provided sufficient cause or for that matter any cause whatsoever for the Court to judiciously exercise its discretion in relation to the prayer for the re-instatement of Civil Suit No. 005/2010.
- Upon due consideration, the Court holds that it is unable to and it is untenable \$[77]\$. for the Court to invoke its inherent powers and set aside the decision of another like Court of parallel jurisdiction on a matter which would be subject of an Appeal and should it purport to do so it would be entering the realm of the Appellate Courts and exercising powers preserved for the Appellate Courts under the guise of exercising its Inherent Powers.
- The Applicant is not without remedy and may Appeal these decisions or in [78]. the alternative file a fresh suit subject to the Law on Limitation and enlargement of time, as may be appropriate.
- In the final event, the Application fails and is therefore dismissed. \$[79]\$. 455
- In view of the unique circumstances and novelty of this litigation, the Court [80]. considers it fair and just that each party shall bear its own costs.

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Orders of the Court.

- [81]. Accordingly, the Court makes the following Orders: -
- 1. Miscellaneous Application No. \$44/2021\$ is hereby dismissed.
- 2. Each party shall bear its own Costs.

It is so Ordered.

Signed and Dated on the 13th day of October, 2023. (High Court, Gulu).

Philip W. Mwaka

Acting Judge of the High Court.

Delivery and Attendance.

This signed and dated Ruling, upon the instructions of this Court, was delivered in Court by the Deputy Registrar, Gulu High Court on Friday, the 13th day of October, 2023 at 11:00am and the parties present were recorded.

- 1. Counsel for the Applicant, Mr. Doii Patrick, Present.

- 2. The Applicant Present.
- 3. Counsel for the Respondents, Nandutu Jessica, holding brief for Mr. Walter Okidi Ladwar - Present.

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- 4. The Respondents Absent.
- 5. Court Clerk, Mr. Manano Davis, Present.

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Philip W. Mwaka

Acting Judge of the High Court. 480

13th day of October, 2023.

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