

UGANDA / JUDGMENT

Bamanyisa and 156 Others v National Forestry Authority (HCT-01-LD-CS 27 of 2020) [2023] UGHC 271 (7 December 2023)

[2023] UGHC 271

COURT
High Court of Uganda

BEFORE
Wagona, J

CASE / FILE NUMBER
HCT-01-LD-CS 27 of 2020

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT – 01 – LD – CS – 0027 OF 2020 BAMANYISA MALIKO & 156
OTHERS ::::::::::::::: PLAINTIFFS 5 VERSUS NATIONAL FORESTRY
AUTHORITY ::::::::::::::: RESPONDENT BEFORE: HON. JUSTICE VINCENT
WAGONA RULING**

Introduction:

This ruling follows an oral application by learned counsel for the defendant, Mr. Kwesiga Joseph under Order XIA rule 1 (6) of the Civil Procedure Rules as amended in 2019 to the effect that the suit abated and have the same dismissed with costs.

15 Background:

The plaintiffs filed Civil Suit No. 0027 of 2020 for reliefs among others, a declaration that the suit land approximately 600 acres covering Kyakabwa stretching to Busese villages in Kyankaramata Parish, Kihura Sub County, 20 Kyenjojo District is theirs by way of first acquisition.

The summons to file a defense were filed on 7th October 2020 and served upon the defendant. The defendant went ahead and filed a written statement of defense and counter claim on 3rd November 2020 and a reply to the written statement of defense and counter claim on 19th 25 November 2020.

Page 1 of 6

When this suit was cause listed for hearing on 31st October 2023, learned counsel, Mr. Kwesiga Joseph for the defendant raised an objection under Order XIA Rule 1(6) that the suit had abated and as such the same should be dismissed with costs.

5 Representation and hearing:

Mr. Rwabwogo Richard appeared for the plaintiffs while Mr. Kwesiga Joseph appeared for the defendant. Both counsel addressed me on the point of law by way of oral submissions which I have considered herein.

Issues:

Whether or not Land Civil Suit No. 027 of 2020 abated.

15 Legal arguments:

Mr. Kwesiga contended that this suit was filed and summons issued on 7th October 2020. That the defendant filed a written statement of defense by 3rd November 2020 and served the same upon the plaintiffs on 4th November 2020. That the plaintiff made a reply to the counter claim on 17th 20 November 2020 and the pleadings closed. That since the 17th of November 2020, the plaintiff did not take out summons for directions within 28 days from the date of closure of pleadings as required under the Civil Procedure Rules as amended. That it is now two years and 5 months since pleadings were closed. He thus asked court to find that the suit abated.

Page 2 of 6

In reply Mr. Rwabwogo asserted that they just recently took over instructions to have the case prosecuted. That court should consider substantive justice and have the case tried.

5 Consideration by Court:

Order 11A r 2 of the *Civil Procedure (Amendments) Rules 2019*states thus;

"Where a suit has been instituted by way of a plaint, the plaintiff shall take out Summons for Directions within 28 days from the date of the last reply or rejoinder 10 *referred to in Rule 18 (5) of Order VIII of these Rules."*

Rule 6 of the above order adds thus:

"If the plaintiff does not take out a Summons for Direction in accordance with sub rules (2) or (6), the suit shall abate."

15 There has been a debate in legal discourse as whether the failure to take out summons for directions abates the suit automatically. Courts have offered guidance on the application of the said order in different precedents.

In **Geofrey Waswa Vs. Amy for Africa Ltd & 2others, Civil Suit No. 127 of 2020,** a 20 similar point of law was raised and the Hon. Lady Justice Florence Nakachwa in her ruling attempted to give the contextual application of the verb "**shall**" in legislative sentences and she stated thus:

Consideration of the principles governing shall in a legislative sentence in its ordinary significance, shall is a word of command. It is a word which* 25 *should normally be given compulsory meaning because it is intended to

denote an obligation. The auxiliary verb shall should be used only where a person is commanded to do something. However, shall is sometimes intended to be directory only. In that case, it is equivalent to May and would be construed as merely permissive to carry out the legislative intention. This* 5 *usually applies in cases where no right or benefit accrues to any one where no public or private right is merely impaired by its interpretation as directory.

In addition to the above the Hon. Lady Justice Olive Kazaarwe Mukwaya in **Kagimu* 10 *Moses Gava& 7 other Vs. Sekatawa Muhammad and 11 others, Civil Appeal No. 25 of 2020** arising from Civil Suit No. 145 of 2020 while interpreting the implications of Order X1A Rules 2 and 6 stated at page 8 thus:

"It is this court's opinion that the intention of the framers of Order XIA rule 1 of the Civil Procedure Amendment Rules 2019 was to mitigate the delays* 15 *and inefficiencies brought on by the actions of officers of court and the parties in civil proceedings. In order that these rules achieve the desired objective, a holistic and judicious approach to their application should be adopted by the courts".

20 I have also previous held in **Gama Distillers Ltd v Bikanza Ezra, Civil Suit No. 0060 of 2021** regarding Order XIA thus;

*"*From the reading of the entire order X1A of the Civil Procedure (Amendment) Rules of 2019, what comes to my mind is that the order was intended to speed up trials by curtailing unnecessary delays. It was not* 25 *intended to be used as a sword against parties' live claims by strangling all under the guise that the summons for directions procedure was not strictly**

adhered to. Each case should be considered on its own merits and peculiarities. It is my humble view that the application of the said order should not be a universal one but should be applied on a case by case basis.

5 *Articles 28 and 44 of the Constitution stress the right to a fair hearing which includes availing parties an opportunity to present their cases and a decision is made after taking into account the views of either party to a suit. In some circumstances it would not serve any great purpose to have the suit abated under Order X1A Rules 2 and 6 yet later parties can file the same claims."*

The sole purpose of taking out summons for directions is to ensure that party's cases are progressed and delays in prosecution are curtailed.

In this case, the plaintiff had the case fixed for mention on 21st March 2023 before 15 the Hon. Justice Emmy Mugabo. The plaintiff's Counsel Mr. Robert prayed for directions to have the matter progressed. Court proceeded to issue directions where the parties were to file a joint scheduling memorandum by 10th April 2023. The plaintiffs were to file their trial bundles and witness statements by 28th April 2023 and the defendant was to file by 15th May 2023 and the matter was adjourned for mention on 15 20 th March 2023.

On 15th May 2023, the plaintiff filed Misc. Application No. 042 of 2023 seeking boundary opening in respect of the suit land. When the said application came up for hearing before the Hon. Justice Emmy Mugabo, a prayer was made by counsel 25 Rwabwogo Robert to have the case moved to me to determine the same with a

similar matter arising from eviction from land claimed to be part of the forest reserve that is in issue herein.

It is thus my view that since directions were issued by court and there is a subsequent 5 application for boundary opening, I believe the application of Order XIA rule 2 and 6 was overtaken by the events of the progress since made. The main purpose which the summons for directions was meant to serve being to give directions to the parties to have their cases progressed, the directions issued by court in my view served the said purpose. I believe justice shall best be served when the application for boundary 10 opening is heard on the merits and the case progressed as opposed to having the suit abated. The case shall proceed on the merits.

I so order.

15 Vincent Wagana **High Court Judge FORTPORTAL**

> **DATE: 7 th December 2023**

Page 6 of 6

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Prepared on 14 October 2026 · Esheria