

UGANDA / JUDGMENT

Busia Forward Secondary School v Fabiano Oketcho (Misc. Application No. 206 of 2024) [2024] UGHC 1280 (23 April 2024)

[2024] UGHC 1280

COURT

High Court of Uganda

BEFORE

Kaweesa, J

CASE / FILE NUMBER

Misc. Application No. 206 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT TORORO MISC.
APPLICATION NO. 206 OF 2024 (ARISING FROM BUSIA CM COURT CIVIL SUIT NO.84
OF 2010) BUSIA FORWARD SECONDARY SCHOOL::::::::::::::::: APPLICANT VERSUS
FABIANO OKETCHO:::RESPONDENT

RULING ON A PRELIMINARY OBJECTION (P. O)

BEFORE: HON. DR. JUSTICE HENRY 1. KAWESA

Introduction

1. The application was brought by the Applicant seeking for the following orders:
 - a. An order for extension of time to file an appeal from the judgment of Her Worship Mariam Namubiru passed in Civil Suit No.84 of 2010.
 - b. Costs of the application abide the outcome of the appeal.
- 2. When the application came up for hearing in the presence of Counsel Kamba Hassan, for the Respondent, and Counsel Kiirya Twaha and Mayor Rogers, for the Applicant, Counsel for the Respondent informed Court of his intention to raise a P. O. Accordingly, the Court directed Counsel to file written submissions in respect of the same; and they complied.

Brief Facts

3. The Applicant filed Civil Appeal No. 110 of 2019 at the High Court of Uganda at Mbale in respect of the judgment against the aforesaid suit. However, the appeal was struck out in a ruling by Namundi L, upon a P. O by the Respondent.
4. The ruling indicates that the Court recognised the validity of said appeal on ground that its memorandum of appeal had been filed within time. Nevertheless, Court also found that the memorandum had been served on the Respondent outside the time envisaged by the law and without leave of Court, hence dismissing it pursuant to **Order 49 Rule 2 and Order 5 Rules 1(1), (2) and (3) of the Civil Procedure Rules SI 71-1**.

Substance of the P. O

- 5. According to Counsel for the Respondent, a dismissal of a matter under the said laws is final and that the parties are restored to their status quo. He supported that with the Supreme Court authority of **Bitamisi Namuddu vs Rwabuganda Godfrey SCCA No. 16 of 2014**, among others. His P. O, therefore, is to the effect that the consequence of the dismissal of the previous appeal bars the Applicant from filing the instant application.
- 6. On the other hand, Counsel for the Applicant, cognisant of the facts already outlined, among others, contended that the Applicant is not barred from seeking leave to extend time within which to file another appeal.

Court's Decision

- 7. I do agree with Counsel for the Respondent that the provisions of **Order 49 Rule 2 and Order 5 Rule 1(1), (2) and (3) of the Civil Procedure Rules SI 71-1** are mandatory, as the **Supreme Court** noted in **Bitamisi Namuddu vs Rwabuganda Godfrey**, **supra**.
- 8. Further, I also note, from that decision, the proposition that once a matter is dismissed under the said laws, *"the parties to the suit [or appeal in this case] must be restored to their original position, i.e. to the state in which they were before the suit [or appeal in this case] was filed (their status quo ante*)"*. This means, in this case, that when the Applicant's Civil Appeal No. 110 of 2019 was dismissed, the position to which the parties were restored to is one of absence of

an appeal. Since the matter went on appeal and parties were reverted back to the position before the appeal, That position is the **status quo** of the Court decision which was sought to be appealed. That means that the successful party had to go ahead and enforce the Judgment the appeal having been finally dealt with by the High Court. Re-opening this matter is akin to flogging a dead horse which has no possible lifespan. This is informed by the fact that in all matters before Court there should be an end to litigation.

In my opinion this application is trying to reopen a matter which is mooted by passage of time. According to **Black's law Dictionary (9th Edition)**, 'a matter is moot if a Court 's decision would no longer have a practical effect on the parties because the issue has become academic or theoretical (*see cases of Abdu Katuntu vs MTN Uganda Ltd and others. HCT-CS-NO-248/2012, Julius - Maganda vs NRMHCMC NO 154/2010*).

- 9. These cases emphasise the principle that Courts of law do not decide cases where no live disputes between parties are in existence, and also Courts do not issue orders for academic purposes only. I therefore find no merit in the arguments raised in rebuttal to the PO. It is my finding that the consequence of the dismissal of the previous appeal given the passage of time, bars the Applicant from filing the instant application. This PO is sustained and the application is dismissed with costs to the Respondents.
- 10.1 so order.

Delivered at Tororo this . day of . . 2025

HON.

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