

UGANDA / JUDGMENT

Herman Ssemakula and Others v Lubega Twaha Yiga and Others (Miscellaneous Application 1220 of 2021) [2025] UGHCLD 73 (26 May 2025)

[2025] UGHCLD 73

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Application 1220 of 2021

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

MISCELLANEOUS APPLICATION NO. 1220 OF 2021

(ARISING FROM MISC. APPLICATION NO. 717 OF 2019)

(ALL ARISING FROM CIVIL SUIT NO. 327 OF 2019)

1. HERMAN SSEMAKULA

- 2. DAVID SSEMPALA
- 3. FRANK BAINE
- 4. JAMES SSENGENDO ::::::::::::::::::::::::::::::::::: APPLICANTS
- 5. GLADYS NAKIBUUKA MBAZIIRA
- 6. WILLIAM KASIBANTE
- 7. BATTE VICENT
- 8. MORIS KIZITO
- 9. MUHAMMAD SSERWADDA
- 10. MUKASA AHMED

- 11. NEZIA NABAKOOZA

VERSUS

- 1. LUBEGA TWAHA YIGA
- 2. RITA WALIGO :::::::::::::::::::: RESPONDENTS
- 3. WASSWA BASUDDE
- 4. GIBWA MBEKEKA SSEBBOWA

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING

- 1. This was an application by way of notice of motion under Section 98 of the Civil Procedure Act, Order 9 rule 23 and Order 52 Rule 1 and 3 of the Civil Procedure Rules S. I.71-1 for orders that;
- i) The orders dismissing Miscellaneous Application No. 717 of 2019 as against the Respondents be set aside.
- ii) Miscellaneous application No. 717 of 2019 be reinstated as against the respondents so that it is determined on its merits.
- iii) The costs of this application be in the cause.

Applicants' evidence;

- 2. The application is supported by an affidavit deponed by Mr. David Ssempala which briefly states as follows;
- i) That the Applicants filed HCCS No. 327 of 2019 against the Respondents seeking orders inter alia; a declaration that the 1st Respondent purporting to buy a registrable interest in the suit land to defeat the Applicants equitable interest who were at all material times tenants by occupancy, acted illegally and fraudulently, a declaration that the 1st Respondent's acts of subdividing and threatening to transfer the land to third parties by way of

sale or otherwise is a breach of the plaintiff's rights as tenants by occupancy and an order for cancellation of the 1st Respondent's certificate of title and all subsequent titles divided therefrom.

- ii) The Applicants filed HCMA No. 717 of 2019 and HCMA No. 718 of 2019 for an interim and temporary injunction orders which were dismissed on grounds that the Applicants failed to prove imminent threat to property.

- iii) Then the applicants filed Civil Application No. 194 of 2019 being dissatisfied by the said decision and when the said application came up for hearing on 26th May 2021, both the application and the main suit were dismissed for nonappearance by both parties under Order 9 rule 17 and Order 5 rule 1,2 and 3 of the Civil Procedure Rules and non-service of the application on the Respondents.
- iv) That on the contrary the Respondents had been served and the 1st Respondent even filed his affidavit in reply on 11th May 2021 and this shows that the Respondents were served with the application and there is an affidavit of service to that effect.
- v) That Counsel in personal conduct was prevented from attending Court on the day the matter came up for hearing because he was not aware of the new dates since he was not notified or served with the new hearing date.
- vi) That the application came up on the 13th day of May 2021 which was a public holiday and another date as to when the application was coming up (26th May 2021) was not known by the Applicants but nevertheless, I filed a hearing notice so that Court gives us a hearing date.
- vii) That without notifying us or serving us with a new hearing date, court fixed the matter on the day of which no party appeared and the application was dismissed.
- viii) That the following week when I had gone for follow up and get a new hearing date it's when I learnt that the matter had been dismissed.
- ix) That we have a good case with a high like hood of success and we are still interested in prosecuting the case. That it is just and fair that the order dismissing the suit and the application as against the respondent be set aside and the suit reinstated for determination.

Respondent's evidence;

- 3. The application is responded to by an affidavit in reply deposed by **LUBEGA TWAHA YIGA** the 1st respondent which briefly states as follows;
- i) That the instant application is res judicata due to the prior Misc. Application Number 1914 of 2019 that sought to set aside the dismissal order of Misc. Application No.717 of 2019.
- ii) That the main application for a temporary injunction was rightfully dismissed for the applicants lacking grounds to be granted the same which were distinct reasons from the ones based on to dismiss the application for an interim injunction.
- iii) That the affidavit of David Ssempala is incurably defective in so far as swearing the affidavit on behalf of other applicants as no such authority was available or attached to his affidavit and the application is also incurably defective.
- iv) That it is in the interest of justice and fairness that this application is dismissed with costs to me and I affirm this

affidavit objecting to the grant of the orders sought in this Application/appeal.

Rejoinder;

- i) That no Court of law has ever sat and adjudicated on the merits that MA No. 717 of 2019 and the same cannot therefore be res judicata.
- ii) The Respondent's affidavit goes to the merits of the main application that we seek to reinstate making it relevant, just and fair to have the same adjudicated upon by court in the interest of justice.
- iii) That this application is not only supported by the affidavit of David Ssempala (who is a statutory Attorney and who needs no further authority to swear on behalf of his clients) but it is also supported by my affidavit that was sworn on 10th/6/2021 and since my case or legal grievance is similar to the rest of my co- applicants; each one of them need not have to swear an affidavit as the respondent and his counsel seem to suggest.
- iv) That according to the respondent's affidavit in reply, he demonstrates no injustice that he will suffer if this

application is granted save for technical arguments that do not serve the ends of justice.

- v) That I, like the rest of the applicants will be grossly prejudiced if this application is not granted since we are willing to prosecute the application and main suit that we filed in this court.

Representation;

4. The applicants were represented by Counsel David Sempala M/S KSMO Advocates whereas the 1st respondent was represented by Counsel Seninde Saad of M/s Okecha Baranyanga & Co. Advocates. The applicants and the 1st respondent filed written submissions which I have considered in the determination of this application.

Issues for determination;

- *i) Whether there is sufficient cause to set aside the order dismissing Miscellaneous Application No. 717 of 2019.*
- *ii) What remedies are available to the parties.*
- 9. However, for proper determination of this application, this Court is enjoined under Order 15 rule 5 of the Civil Procedure

Rules to frame issues on which the right decision of the case appears to depend.

- 10. I am also cognizant of the provisions of Order 15 rule 2 of the Civil Procedure Rules that where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part of it may be disposed of on the issue of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.
- 11. I have had the benefit of reading the 1st Respondent's submissions who allege that Civil Suit No. 327 of 2019 was dismissed and that the instant application cannot succeed as a stand-alone. Upon perusal of the Court record, it reveals that the said suit abated on 26th May 2021. This is an issue of law which if determined has the effect of disposing of the instant application.
- 12. Therefore, for proper determination of this application I shall consider this issue.

Whether this application is proper before this Honourable Court?

Resolution and determination of the issues;

Whether this application is proper before this Honourable Court?

- 13. The applicable legal framework in applications for reinstatement is found under Order 9 Rule 23 of the Civil Procedure Rules, it provides that if a suit is dismissed due to the plaintiff's failure to appear, they are barred from filing another suit but can apply for reinstatement if they can demonstrate sufficient cause.
- 14. Further still, Section 98 of the Civil Procedure Act Vests Court with inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of Court process. Whilst making orders of this nature such as reinstatement of a suit dismissed for non-appearance, Court exercises discretion but the same ought to be done judiciously. In the circumstances therefore, the burden lies on the Applicants to demonstrate sufficient cause why they failed to appear when the matter was called for hearing.
- 15. This principle was restated in **Atoo Grace v Onen Anthony & Anor HCMA No. 44 of 2021**, where the court

noted that it must be satisfied as to the reasons or explanation provided and the sufficiency of the ground should relate to an inadvertency, inability, failure or bonafide to take proactive, necessary or mandatory measures or steps to further one's case timely which would exonerate the litigant from presumption or assertion of dilatory conduct, indolence, negligence or inaction which in the first place led to the negative outcome which the litigant now seeks to have remedied.

- 16. Sufficient cause must relate to the failure to take a specific step in time, and that the applicant must show both good faith and diligence. The discretion of court must be exercised judiciously and only when the conduct of the applicant merits it.

- 17. The Applicants contend that the hearing had initially been scheduled for 13th May 2021, a public holiday, (Idi day) and that they were not notified of the new hearing date of 26th May 2021. They further assert that upon attempting to obtain a new hearing date thereafter, they discovered the matter had already been dismissed.
- 18. A cursory perusal of the court file reveals that when Miscellaneous Application No. 717 of 2019 was dismissed, the Applicants filed an appeal against the decision of the Learned Registrar vide Civil Application No. 1914 of 2021 and the same was fixed for hearing on the 13th May 2021 which happened to be a public holiday (Eid al-Fitr) thus the matter was adjourned to 26th May 2021 and following the nonappearance by both parties on the said date, the same was dismissed.
- 19. On the same day, 26th May 2021, Civil Suit No. 327 of 2019 from which all these applications arise abated under Order X1A rule 1 (2) and (3) of the Civil Procedure (Amendment) Rules of 2019, for failure to take out summons for directions and an order was extracted by the same Advocates to the Applicants on the 17th day of August 2021, therefore the main suit, Civil Suit No. 327 of 2019 abated.
- 20. This particular application is Miscellaneous Application No. 1220 of 2021 arising from Miscellaneous Application No. 717 of 2019 all arising from Civil Suit No. 327 of 2019. The Applicants seek the following orders; the order dismissing Miscellaneous Application No. 717 of 2019 as against the

Respondents be set aside, Miscellaneous Application No. 717 of 2019 be reinstated as against the Respondents so that it is determined on its merits and costs be in the cause.

- 21. The rule of the thumb is that when a suit abates under the provisions of Order XIA, the plaintiff may file a fresh suit subject to the law of limitation. (Order XIA rule (7) of The Civil Procedure (Amendment) Rules 2019).
- 22. In this application the Applicants seek to reinstatement an application arising from an abated suit. Reinstating such an application without a main suit would contradict procedural logic. Court cannot reinstate an application where the main cause no longer exists which renders this application a moot.
- 23. It is trite law that Courts of law do not decide cases where no live disputes exist between the parties. Courts do not decide cases or issue orders for academic purposes only. Courts cannot issue orders where the issues in dispute have been removed or merely no longer exists. It is now a mere moot case. *(See; Okumu Wengi v Attorney General (2007) 600 KaLR)*
- 24. The Civil Suit No. 327 of 2019 from which the current application and the other applications arose abated, Court cannot reinstate, hear and determine applications arising from an abated suit.
- 25. Having determined the said issue in the affirmative, I find it superfluous to delve into the issues raised by the parties.

- 26. Therefore, this application is not only incompetent but also improper before this Honourable Court for it constitutes an abuse of Court Process and the same is hereby dismissed with costs to the Respondents.

I SO ORDER.

NALUZZE AISHA BATALA Ag. JUDGE 26 th /05/2025 Delivered Electronically via ECCMIS on the 26 th day of May 2025.

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