

UGANDA / JUDGMENT

Kabagesera v Kabatooro (HCT-01-CV-CS-LD 6 of 2021) [2025] UGHC 133 (28 February 2025) [2025] UGHC 133

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

HCT-01-CV-CS-LD 6 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01-CV-CS-LD NO. 06 OF 2021

1. IMMACULATE KABAGESERA
2. GORRETI KAHWAGARA ::::::::::::::: PLAINTIFF

VERSUS

1. KABATOORO JUSTINE LIELAH BITAMAZIRE
2. COMMISSIONER FOR LAND REGISTRATION ::::: DEFENDANT

**BEFORE: HON. JUSTICE VINCENT WAGONA

JUDGEMENT**

Introduction:

The Plaintiffs filed this case on 16th March 2021, the 1st Defendant did file her Written Statement of Defence on 8th April 2021 and summons for directions were extracted on 11th May 2021.

When the matter came up for summons for directions on 26th May 2021 before the learned Assistant Registrar, the matter was referred for mediation at the request of both parties. Between then and March 2023, the case was under mediation.

On 29th March 2023, the matter came up before this court for mention and the parties requested for schedules to file a Joint Scheduling Memorandum, Witness Statements and Trial Bundles. This court gave schedules as follows; the Joint Scheduling Memorandum to be filed by 19th April 2023; the Plaintiffs' Witness Statements and Trial Bundles to be filed and served by 10th May 2024; and the Defendants' Witness Statements and Trial Bundles to be filed by 10th June 2023.

The case was consequently fixed for mention on 12th June 2023. On 12th June 2023, the Plaintiffs' and 1st Defendant's Counsel appeared and requested for more time to file the Joint Scheduling Memorandum, the trial bundles and witness statements. The Court consequently extended the schedules as follows; the Joint Scheduling to be filed by 26th June 2023, the Plaintiffs' Witness Statements and Trial Bundle by 26th July 2023 and the Defendants' Witness Statement and Trial Bundle by 25th August 2023. The case was then fixed for mention on 25th August 2025.

On 25th August 2023, both parties and their counsel were absent without explanation and the Court was compelled to adjourn the matter for further mention on 22nd September 2023. On 22nd September 2023, *Counsel Bernard Musinguzi* appeared for the 1st Defendant, and the Plaintiffs' Counsel was absent but the 2nd Plaintiff was present. The 1st Defendant's Counsel prayed for new schedules which were given and the case was given a last adjournment of 27th November 2023. On 27th November 2023, both Counsel were present but the Plaintiff's Counsel prayed for an adjournment and the matter was adjourned to 11th March 2024.

On 11th March 2024, both Counsel were absent but the 2nd Plaintiff was present and she informed the Court that her Counsel was unable to come. The case was adjourned to 22nd April 2024 and the parties were reminded to comply with the directions previously issued by the Court. On 22nd April 2024, both Counsel were present but they were both not ready to proceed as they were just in the early stages of coming up with a Joint Scheduling Memorandum. New schedules were issued and the case was adjourned to 4th June 2024 for mention.

The case then came up on various dates of 4th June 2024, where only the 1st Defendant's Counsel appeared, on 5th July 2024 where both parties appeared but had not fully complied with the court directives, 9th September 2024 where only the 1st Defendant's Counsel appeared, 8th November 2024 and 27th November 2024 where both parties and their Counsel were absent despite the case being on a last adjournment.

The parties have up to date never filed a Joint Scheduling Memorandum. I am aware that on 22nd April 2024, the Plaintiffs filed their respective Witness Statements, but the filing was followed by the non-attendance of the Plaintiffs and their Counsel.

Representation and Hearing:

Samuel Dusabe appeared for the Plaintiffs while ***Bernard Musinguzi*** appeared for the 1st Defendant. The 2nd Defendant was represented throughout the proceedings and also never filed a Written Statement of Defence. In the absence of an Affidavit of Service on record, I am unable to confirm whether the 2nd Defendant was served with summons and it's therefore my finding that the 2nd Respondent was never served.

Consideration by Court:

Order 11A Rule 8 of the Civil Procedure Rules states that; -

*****8. Compliance with summons for directions***

*The summons for directions shall be complied with within forty five days from the date of hearing the summons for directions under rule 1 (3) and thereafter, the plaintiff shall, within seven days from the last of the compliances in the summons for directions, have the suit fixed for a scheduling conference before the trial judge.” **[**Emphasis mine**]***

In the instant case, the parties appeared for summons for directions on 26th May 2021 when the matter was instead referred for mediation. They received fresh directions on 29th March 2023 which were renewed on 12th June 2023, 22nd September 2023, and 22nd April 2024 but the parties have up to date never complied in total violation of the **Order 11A Rule 8 of the Civil Procedure Rules**. The court has extended various opportunities for the parties to comply in vain thereby curtailing the progress of the suit.

Order 17 rule 5(1) of the Civil Procedure Rules (as amended) provides as follows;

“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.”

In this case however, the parties have not filed a joint scheduling memorandum, although they were directed to do so, and as such, the mandatory scheduling conference has not yet been held. Even when there is an inordinate delay in prosecuting the matter, the Court lacks the basis upon which it may calculate the six month's period provided for under **Order 17 rule 5(1)** of the Civil Procedure Rules. The suit therefore does not qualify for abatement since the directions were also taken out in accordance with **Order XIA** of the Civil Procedure Rules, even when these directives have never been complied with.

However, Order 17 Rule 4 of the Civil Procedure Rules provides that; -

“Where any party to a suit to whom time has been granted fails to produce his or her evidence, or to cause the attendance of his or her witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding that default, proceed to decide the suit immediately.”

In my view the above rule should be applied taking into other principles of law so as to ensure the substantive administration of justice and that it is not a mandatory requirement under Order 17 rule 4 of the CPR, that if a party is given time to do a specific act and fails to do so, the court must go ahead and determine the suit immediately. This depends on the nature of the act that a party has defaulted on. Order 17 rule 4 of the CPR gives the court a discretion, which must be exercised judiciously. Thus **Order 17 rule 4** of the CPR must be applied with kin regard to the facts of the matter and the interests of administering substantive justice.

In this case, there has been non-compliance with the court directives on filing of a joint scheduling memorandum since 29th March 2023 to date. The court has renewed the schedules to accommodate the parties on three different occasions but at all times, the parties did not comply. On 22nd April 2024, the Plaintiffs belatedly filed their Witness Statements but have not attended court since then thereby leaving the case redundant in the court system and causing a delay of justice and yet this is an old case which has been in the court system for approximately four years without a hearing, occasioned by endless adjournments sought by the parties and their continuous unexplained absence during scheduled appearances. Both parties did not attend Court on 8th November 2024 and 27th November 2024 when the matter last came up before me despite the fact that the case was on a last adjournment.

In **Allen vs. Sir Alfred McAl Pine & Sons Ltd (1968)*, All ER 543* at PP 546 & 547, Lord Denning noted that;

“The delay of Justice is a denial of Justice..... to no one will we deny or delay the right or justice...it is impossible to have a fair trial after a long time. The delay is far beyond anything which we can excuse. This action has gone to sleep for nearly two years. It should be dismissed for want of prosecution”.

It is prudent for a Plaintiff who is in pursuit of a remedy, to take all necessary steps at his/her disposal to achieve an expeditious determination of his or her claim [See *Nilani vs. Patel & Ors (1969)* EA 340]. In this case however, the Plaintiffs are guilty of laches as they have not taken all necessary steps to ensure the expeditious determination of this suit. The inordinate delay in complying with pre-trial schedules thus holding the Court at ransom as well as keeping the parties in an unproductive endless litigation is inexcusable and has not been explained by the parties. The parties in this case have been given enough time to file a Joint Scheduling Memorandum which is an act necessary for the further progress of the suit but they have failed. As a result, this court is entitled to decide this suit immediately, and it is accordingly dismissed under **Order 17 Rule 4** of the Civil Procedure Rules want of prosecution. I make no orders as to costs since the Defendants equally never attended Court on 27th November 2024 when the matter last came up before me.

I so order.

Dated at Fort Portal this 28th day of February 2025

Vincent Wagona

High Court Judge

FORTPORTAL

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Prepared on 13 October 2026 · Esheria