

UGANDA / JUDGMENT

Kamoga v Nabukeera (MA 3696 of 2023) [2024] UGHCLD 108 (22 April 2024)

[2024] UGHCLD 108

COURT

HC: Land Division (Uganda)

BEFORE

Asiimwe, J

CASE / FILE NUMBER

MA 3696 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MA NO.3696 OF 2023

(ARISING FROM EXECUTION MISC. APPLICATION NO. 0418 OF 2023

AND CrVrL SURT NO.616 OF 2021).

KAMOGA NICHOLAS APPLICANT

VERSUS

NABUKEERA ROBINA..... ... RESPONDENT

BEFORE: HON. MR. JUSTICE TADEO ASIIMWE

RULING

This application was brought under Section 98 of the CPA, Order 46 rules I & 8, and order 52 rules 1,2 &3 of the Civil Procedure Rules (CPR).

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The applicant brought this application seeking for orders that this Court dismissing Civil Suit No. 616 of 2021 be set aside, that stay of execution in civil suit 616 of 2021 be issued and costs.

The application is supported by an affidavit of the applicant dated 6th December 2023.

The grounds of the application as contained in the notice motion and affidavit in support and briefly are that;

- 1. The Applicant and 11 others instituted civil suit NO.616 of ²⁰²¹ against the respondent seeking for orders that a declaration that the defendant illegally sold land comprised in Kyadondo Block 124 Plot 26 at NabutakaGayaza Waliso District; a declaration that the land forms the estate of the late John Peter Matovu, cancellation of the land agreements on the suit land, damages among other reliefs.
- 2. That the applicants instructed their lawyer M/s Lukwago & Co. Advocates to pursue and handle the matter on their behalf.
- 3. That the applicant's lawyers did not pursue the matter and it was subsequently dismissed by the court.
- 4. That there is sufficient cause why the case should be reinstated and heard on its merits.

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- 5. That the applicants have always been interested in prosecuting Civil Suit No. 616 Of 2021.
- 6. That its fair and equitable that civil suit No. 616 of 2021 be reinstated on its merits.
- 1. That it is in the interests of natural and substantive justice that this application is granted.

On the other hand, the respondent opposed the application relying on an affidavit in reply by Nabukeera Robina, the respondent dated 18th April, 2024.

The gist of response is that the application is incurably defective and not tenable in law as it contravenes and offends the Civil Procedure Rules and that there is no sufficient cause to warrant reinstatement due to the applicant's dilatory conduct by failure to prosecute the suit. That the application is frivolous, vexatious and outright abuse of Court process intended to delay the cause of justice.

At the hearing of the application, the applicant was represented by Counsel Ronald Tukachungurwa while Counsel Mukiibi Andrew appeared for the respondent. Both Counsel made oral submissions which I shall consider in this ruling.

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RESOLUTION

I have considered the application, the supporting affidavit and its attachments. I have also considered the arguments for both Counsel.

It is important that the decision of Court from which this application arises is understood. For that matter I shall reproduce it as follows; -

"This suit was filed on the 13th of July 2021. The defendant filed written statement of defence on 27th of July 2021. Since then the plaintiff have not taken any steps to prosecute the suit.

Under O.11A R. 1 (2) and (6) of the Civil Procedure Amendment Rules, 2019, a suit abates if the plaintiff does not take out summons for directions within 28 days from the date of the last reply. It's now over 50 days since the last pleading was filed. Consequently, this suit abated, and is hereby dismissed with costs to the defendant".

From the above order, it is crystal clear that the original suit was abated by the trial Judge 3 years ago. The argument by counsel for the applicant that the suit was simply dismissed is not sustainable.

The position of the law is clear on cases dismissed under abatement. The remedy available to a party whose case has been abated lies in filing afresh as per order I 1A rule 7 of the CPR as amended. The case of Abdul Ddamulira Vs Xsabo Power Limited HCMA No.046 of 2021 supports the above position where it was held that the remedy once the suit abates

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under O. XIA Rule 7 of the Civil Procedure Rules as amended is to file ^a fresh suit subject to the law of limitation.

Therefore, Counsel's argument about mistake of Counsel are immaterial to this application. The Application is clearly improper before this Court and an abuse of Court process which ought to be dismissed summarily which I hereby do.

As regards the prayer for stay of execution, the same cannot be granted since it's not arising from any existing suit or application pending in this Court. P

This prayer to cannot be granted.

Accordingly, the application is hereby dismissed with costs.

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TADEO ASIIMWE

JUDGE

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