

UGANDA / JUDGMENT

Katusiime and Another v Mugabo and Another (Civil Suit No. 120 of 2023)

[2024] UGHC 1205 (1 January 2024)

[2024] UGHC 1205

COURT
High Court of Uganda

BEFORE
Nabakooza, J

CASE / FILE NUMBER
Civil Suit No. 120 of 2023

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

CIVIL SUIT NO. 1201 OF 2023.

1. NAKATO KYABANGI KATUSIIME

2. ELIAS KATUSIIME :::::::::::

VERSES

- 1. CHARLES MUGABO
- 2. COSMAS KAWESA WASSWA:::::::::::::::::DEFENDANTS
- 3. REGISTRAR OF TITLES

BEFORE: HON LADY JUSTICE NABAKOOZA FLAVIA. K

RULING

- 1. The \$1^{st}\$ and \$2^{nd}\$ Plaintiffs sued the defendants jointly and severally for a declaration that the transaction entered into between the \$1^{st}\$ Plaintiff and the \$1^{st}\$ Defendant on 8/9/2015 was purely a money lending loan transaction but not an outright sale and/or purchase of the land comprised in Busiro Block 267 Plot 332 situated at

Lweza, Ssabagabo Makindye Municipality, Wakiso District; a declaration that the sale of land and developments comprised in Busiro Block 267 Plot 332 was fraudulent, illegal, null and void; a declaration that the $\$1^{st}$ Defendant had no legal basis for lending to the $\$1^{st}$ Plaintiff money and charge interest thereon on account that he did not have a valid money lending license on 8/09/2015; among others.

- 2. The $\$1^{st}$ and $\$2^{nd}$ Defendants filed their joint defence on 25/10/2023 wherein, they denied the contents of the plaint. They contended that the transaction between the $\$1^{st}$ Defendant and the $\$1^{st}$ Plaintiff conducted on 8/09/2015 was for purchase of land comprised in Busiro Block 267 Plot 332. They prayed that the Plaintiffs' suit is dismissed with costs.

Page 1 of 6

810912015 was for purchase of land comprised in Busiro Block 267 Plot 332. They prayed that the Plaintiffs' suit is dismissed with costs.

- 3. The 3^d Defendant did not file its defence while the Plaintiffs' rejoinder to the 1st and 2nd Defendant's written statement of Defence is on record.
- 4. Representation; the Plaintiffs were represented by Counsel Magellan Kazibwe from MAGELLAN KAZIBWE & CO.
- 5. while the 1st and 2nd Defendants were represented by Counsel Innocent Talemwa and from Counsel John Chris Kawesa Talemwa & CO ADVOCATES,

Preliminary Objection.

o

o

- 6. On 2610212074, the 1st and 2nd Defendants through a letter dated 2610212024 by Tareemwa & Co. Advocates applied for the dismissal of the Plaintiffs' suit for having abated under Order XI A Rule 1 (2) of the Civil Procedure Rules as amended vide SI No. 33 of 2019.
- 7. During the hearing on 1910312024, Counsel Magellan Kazibwe submitted that they made several appearances not on record and caused the Registrar (HW Kabasinguzi Kayondo) to issue Summons for Direction. That they were later informed that the file had been reallocated to HW Rashida who issued the summons for directions on 7910312024. They were again informed that the matter was before a Judge. That as such, the internal allocations were beyond his powers.

- 8. In reply Counsel Taremwa maintained that the matter abated within 28 days and they applied for its dismissal. That the hearing notice was served on Counsel Magellan on 29/02/2024 and he did not do the needful but went ahead and moved court on 29/03/2024. That he has never taken steps until the matter was called for hearing. He prayed that court finds that the matter abated and dismiss the same with costs.

I s-- rr/, Page 2 of 6)--o

- 9. In rejoinder, Counsel Magellan submitted that the file was before Justice Kazarwe from where it was moved to HW Kabasinguzi Kayondo, then to HW Rashida. That it will be a miscarriage of justice for the matter to abate in light of the changes within the Division. That the application for abatement should be disallowed since the suit is dealing with the Plaintiffs' residential home, and the summons can be issued by court. Counsel prayed that the matter be allowed to proceed for directions and prayed for a short adjournment to confirm from his documents whether he filed summons for directions or not.
- 10. On 31/04/2024, Counsel Magellan further submitted that they availed could with a copy of the Plaintiffs' rejoinder which was filed on 7417U2023. That they applied for Summons for Direction on 7411212023 which was within the statutory period of applying for the same. That in his letter dated 26/03/2024, he explained the mishap caused by their clerk who filed the Plaintiffs' rejoinder and inadvertently took all the copies to the chambers and forgot to serve the same to the defendant's counsel. That it is their error which should not be visited on the Plaintiffs.

o

o

- 11. In reply still, Counsel Taremwa retaliated his earlier prayers and submitted that last document on file was a written statement of defence filed on 25/01/2023 at 4:07 pm and modified on 17/01/2023. That the purported reply to the defence dated 14/11/2023 is a fraud because it was not uploaded on ECCIYIS but created on 25/03/2024 at 4:10 pm after raising the preliminary objection on 29/03/2024. That the document was modified by HW Rashida on the same day at 6:24 pm; and that Counsel's allegation that the last document was filed on 14/01/2023 is not true.
- 12. In rejoinder, Counsel for the Plaintiffs submitted that the defence was received in the Registry on 7417\12023 per the official court stamp on page 1 and that the Letter requesting for Summons for Direction was received on 14/11/2023. That there is no better evidence than the court

'-r'),c1 Page 3 of 6 -t

receiving stamp in the registry. He retaliated his earlier submissions that they retrieved the documents and uploaded on ECCMIS on 26/03/2024.

I have carefully considered Order XI A Rule 1 (2) of the Civil Procedure (Amendment) Rules, 2019 from which the preliminary objection is premised. It provides for taking out summons for directions where a matter has been instituted by way of plaint in the following words:

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

- Magellan Kazibwe submitted that they had several Counsel appearances not on record and caused the Registrar to issue summons for directions. He submitted further that they applied for summons for directions on 14/12/2023 which was within the statutory period of applying for the same. That in a letter dated 26/03/2024, Counsel explained the mishap caused by their clerk who filed the Plaintiffs' rejoinder and inadvertently took all the copies to the chambers and forgot to serve the defence counsel. That it is their error which should not be visited on the Plaintiffs.
- Upon perusal of the letter from M/s Magellan Kazibwe & Co. Advocates 15. dated 26/03/2024 and received on 02/04/2024, I note that the letter was filed after Counsel Magellan had requested court for a short adjournment on 19/03/2024. By that time, Counsel for the Plaintiff and Defendant had already raised the objection to have the suit abated. In that letter, Counsel Magellan writes briefly as follows:

REQUEST TO THE TRIAL JUDGE TO ACCEPT THE PLAINTIFFS' REJOINDER TO THE DEFENCE IN HCCS NO. 1201 OF 2023.

Page 4 of 6

...on 14/11/2023 our clerk filed in time the plaintiffs' rejoinder in the registry but brought all the copies back to our chamber and forgot inadvertently to serve the same on the Defendants' counsel/...

16, Consequently, from the above letter, Counsel requested court to accept the Plaintiffs' rejoinder to the 1st and 2nd Defendants written statement of defence. However, Counsel did not mention the alleged summons for directions yet he had earlier submitted that there was a letter requesting for summons for directions which was received on 14/12/2023. The rejoinder was filed on 14/11/2023 and was endorsed on 26/03/2024 by the Registrar, Counsel for the Plaintiffs invited court to look at the receiving stamp as proof that the rejoinder was filed within time.

o

o

- 17. Order B rule 18 (1) of the Civil Procedure Rules allows a Plaintiff to filing a reply to a written statement of defence within 15 days after the defence has been delivered to him. Further, under Order B rule 19, it is provided that, "subject to rule B of this Order, a defendant shall file his or her defence and either party shall file any pleading subsequent to the other for filing on the record and deliver a duplicate of the defence or other at the address of service of the opposite party".
- 18. In my view, the filing of pleadings is complete when delivered to court, endorsed, where required, and subsequently served on the opposite party. Under the rules, a sealed copy of a pleading is a certificate that a pleading was filed on the day indicated.
- 19. It suffices to note that the rejoinder in question was signed by the Plaintiffs' Counsel on 14/11/2023. Interestingly, the rejoinder also shows that it was signed and sealed by the Registrar of this court on 26/03/2023. The month of March is definitely earlier than November. Despite that

Page 5 of 6 f-s l>-r>+)-D

inconsistency. no explanation was given by the Plaintiffs Counsel about the noted anomaly which cannot be taken lightly by this Court. In the circumstances, I am unable to find that the date of filing of the rejoinder was 14/11/2023. Going by the law as stated above, I am also unable to consider that the complete filing happened on the 26/03/2023 when the rejoinder was finally signed and sealed by this court.

- 20. In view of the above observations, the Plaintiffs Counsel's allegation in their letter that their clerk inadvertently forgot to serve the Defendants is inconceivable, as already noted above the date of sealing the Rejoinder is much earlier than the date counsel signed this same Rejoinder.

o

o

- 27. Consequently, since the last reply on record was received on 25/11/2023 (1st and 2nd Defendants' defence) and served on the Plaintiffs' Counsel on 04/12/2023, then the plaintiffs were supposed to take out summons for direction by 14th December, 2023 which was not done. Consequently, I find that the suit had abated under Order XI A Rule ¹ (2) and (6) of the Civil Procedure (Amendment) Rules, 2019, long before the 1st and 2nd Defendant's Counsel prayed to court to have it dismissed.
- 22. In conclusion, I find no justifiable reason as to why Civil Suit No 120U 2023 should not abate. The preliminary objection is sustained therefore. Accordingly, the suit is dismissed with costs

1st Signed, dated and delivered at Kampala this day of .. h, 1st ^{>2024}

Nabakoo Judg

Page 6 of 6

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2024/1205/eng@2024-01-01>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/katusiime-and-another-v-mugabo-and-another-civil-suit-no-120-of-2023-2024-ughc-1205-1-january-2024-unknown-topic-unknown-court-2024>

Prepared on 13 October 2026 · Esheria