

UGANDA / JUDGMENT

Tweheyo v Kamwenge District Local Government (Civil Suit 25 of 2023)

[2024] UGHC 367 (24 May 2024)

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COURT
High Court of Uganda

BEFORE
Mugabo, J

CASE / FILE NUMBER
Civil Suit 25 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01-LD-CS-025-2023

HON. ANNAH TWEHEYO ::::::::::: PLAINTIFF VERSUS KAMWENG
DISTRICT LOCAL GOVERNMENT ::::::::::: DEFENDANT BEFORE HON. MR. JUSTICE
VINCENT EMMY MUGABO RULING ON PRELIMINARY OBJECTION

Introduction

This ruling arises from a preliminary objection raised by Mr. Isingoma Alex, counsel for the defendant, that the instant suit should abate under Order 11A Rules 1(2) and 6 of the Civil Procedure Rules, as amended.

Background

The plaintiff filed Civil Suit No. 025 of 2023 on the 20th of April 2023 and then served the defendant with a summons to file a defence on the 24th of April 2023. Upon receipt of the summons, the defendant duly filed her written statement of defence on 8th May 2023 and the same was served on the plaintiff advocates on the 9th of May 2023. However, the plaintiff did not extract a summons.

When the matter came for mention on the 3rd of October 2023, this court directed the plaintiff to extract a summons for direction. When the matter came up again for mention on the 20th of March 2024, the plaintiff had not yet taken out a summons for direction. This prompted counsel for the defendant to raise a preliminary point of law that the suit should abate under Order 11(A) Rule 1(2) and 6 of the Civil Procedure Rules, as amended.

Representation and hearing

The hearing proceeded by way of written submissions. Mr. Timothy Atuhaire represented the plaintiff while Mr. Alex Isingoma represented the defendant. Both counsel made written submissions which I have considered in this ruling.

Issues

The issue for this court's determination is whether the instant suit should abate in line with Order 11A Rule 1(2) Order 6 Rule 7 of the Civil Procedure Rules.

Submissions by counsel

Counsel for the defendant submitted that where a suit has been instituted by way of a plaint, the plaintiff shall take out a summons for direction within 28 days from the date of the last reply as per Order 11A Rule 1(2) of the Civil Procedure Rules. Counsel further submitted that if the plaintiff does not take out a summons for directions the suit abates as per Order 11A Rule 6 of the Civil Procedure Rules, as amended.

Counsel referred this court to the case of *Augustine Simba Vs Akuku Richard Misc. Application No. 017 of 2021* where Civil Suit No. 007 of 2019 was deemed to have abated since the plaintiff had taken over 30 days without taking out summons for directions.

Counsel argued that over 9 months had elapsed without the plaintiff taking out a summons for directions and therefore the suit should abate in accordance with Order 11A Rule 1(2) and 6 of the Civil Procedure Rules, as amended.

On the other hand, counsel for the plaintiff submitted that the instant suit had been fast-tracked and moved to the judge's chambers and given a hearing date before the judge for subsequent proceedings. Counsel for the plaintiff argued that the previous practice of exercising mandatory mediation and summons for direction was not applicable since the file had been forwarded to the judge after filing the defence and therefore the plaintiff should not be penalized.

Counsel argued that on the 12th of January 2024, the plaintiff notified this court that the defendant's agents had vandalized the suit property following which the defendant's counsel proposed a possible settlement. Counsel also argued that on the 20th of March 2024, the plaintiff further informed this court that parties herein were considering a possible settlement and asked for 6 weeks for the parties to explore more avenues of the settlement.

Counsel for the plaintiff argued that this court has inherent powers to make any orders as it deems fit to meet the ends of substantive justice. Counsel referred this court to the case of *Moses Kagimu & 7 others Vs. Muhammad Sekatawa & 11 Others* where the court held that omission of extract of summons for direction was not fatal to the existence of a suit.

Counsel for the plaintiff submitted that Order 11A was not couched in mandatory terms and therefore does not exclude the court from exercising its inherent powers to make an order that it deems fit in the interest of justice.

Counsel cited the case of *Gama Distillers Ltd Vs. Ezra Bikanza HCCS No. 06 of 2021* argued that order 11A of the Civil Procedure Rules was intended to speed up trials by curtailing unnecessary delays but it was not intended to be used as a sword against the parties' live claims by strangling all under the guide that the summons for direction procedure was not strictly adhered to and that each case should be considered on its own merit.

Counsel argued that since the file had been placed before the judge, then the mandatory procedure of mediation and summons for direction should be dispensed with in the interest of justice and that the plaintiff had taken reasonable steps to prosecute her case such as filing her conferencing notes and witness statements on record.

Consideration by Court

Order 11A Rule 1(2) of the Civil Procedure Rules, as amended, provides that:

> *"Where a suit has been instituted by way of a plaint, the plaintiff shall take out a summons for direction within 28 days from the date of the last reply or rejoinder referred to in Rule 18(5) of Order 8 of these Rules."*

Order 11A Rule 1(6) of the Civil Procedure Rules as amended provides that:

> *"If the plaintiff does not take a summons for directions in accordance with sub-rules (2) or (6), the suit shall abate."*

In the case of *Kampala Associated Advocates Vs Katamba Ssemakula Misc. Application No. 873 Of 2019* court held that summons for directions typically pertain to the mediation of the suit, necessary discovery orders, and the filing and exchange of trial bundles and witness statements within a set period. It is also at this stage that court decides the number of witnesses required and the number of trial days. The court may order further particulars if a plaintiff or defendant fails to provide sufficient details of their claim, defence, or counterclaim. Interlocutory applications can also be addressed at this stage. Compliance with all court directions during the summons for directions prepares the case for trial.

In the case of *Gama Distillers Ltd Vs Bikanza Ezra (supra)*, Hon Justice Vincent Wagona stated thus:

> *"From the reading of the entire order 11A of the Civil Procedure (Amendment) Rules 2019, what comes to my mind is that the order was intended to speed up trials by curtailing unnecessary delays. It is not intended to be used as a sword against parties' live claims by strangling all under the guise that the summons for directions procedure was not strictly adhered to. Each case should be considered on its own merits and peculiarities."*

In *Kampala Associated Advocates Vs Katamba Ssemakula (supra)* Hon. Justice Stephen Mubiru held that:

> *The abatement of suits under Order 11A rule 6 when invoked and applied automatically will be counterproductive in light of the fact that under Order 11A rule (7), where a suit has abated the plaintiff may, subject to the law of limitation, file a fresh suit. The court will*

then be inundated with repeat suits over the same subject matter. Consequently, the suit should be abated by court under Order 11A rule 6 only when it is satisfied that such an order is necessary to save the time and expense of a trial when the plaintiff's suit cannot progress with the dispatch which the circumstances of the suit and the available court resources require.

Quoting with approval the case *Phelps v. Button [2016] EWHC 3185* Hon. Justice Stephen Mubiru in the case of *Kampala Associated Advocates Vs Katamba Ssemakula (Supra)* in determining whether the suit should abate, the court has to consider the following parameters: the length of the delay; any excuses put forward for the delay; the degree to which the claimant has failed to observe the rules of court or any court order; the prejudice caused to the defendant by the delay; the effect of the delay on trial; sixthly, the effect of the delay on other litigants and other proceedings; the extent, if any, to which the defendant can be said to have contributed to the delay; the conduct of the claimant and the defendant in relation to the action; other special factors of relevance in the particular case.

While giving due regard to the foregoing parameters, the court should scrutinize the reasons given by the person accused of undue delay and closely examine the facts, including any reasons provided for adopting a specific course of action. The court has also to determine whether the alleged misuse of the court's process is severe enough to justify dismissing the case, thus preventing an exploration of its actual merits.

In the instant case, the defendant filed her written statement of defence on the 8th of May 2023 and served the plaintiff on the 9th of May 2023. Under Order 11A Rule 1(2), the plaintiff was expected to take out a summons for directions 28 days after filing the written statement of defence. When the matter came up for mention on the 3rd of October 2023, the court directed the parties to extract summons for directions. When the matter came up again for mention on the 20th of March 2024, 6 months later, the plaintiff had not taken out summons or directions.

The reasons advanced by the plaintiff are that the defendant and the parties were in discussion for a possible settlement. The plaintiff also states that he had made the essential steps to prosecute the case such as filing witness statements. There is a letter, on record, from the plaintiff's lawyers, *M/S Atuhaire & Co. Advocates*, stating that the parties are exploring a

possible settlement of the matter. In the same letter, the lawyers noted that the defendant had taken rehabilitation works in favour of the plaintiff and prayed for 6 weeks to be allowed to structure and complete a settlement between the parties.

I take note of the fact that the plaintiff has taken over 6 months without taking out a summons for directions, even after the order of this court. Since the order for extracting summons for directions was given, the matter came up twice for mention, but the court could not proceed due to the conduct of either the plaintiff or her lawyers. It is insufficient for the plaintiff to claim that she is exploring ways of settling the matter or that he has filed witness statements to justify her delay. Lawyers should follow procedural rules to avoid unnecessary delays in litigation which can lead to a waste of judicial resources and potentially prejudice the other party.

The conduct of the plaintiff and her lawyers has delayed court proceedings which defeats the very essence of provisions for summons for directions and this constitutes a serious departure from the Civil Procedure Rules.

For the reasons given above, the preliminary objection raised by counsel is upheld. The instant suit abated and is accordingly dismissed with costs to the defendant.

It is so ordered.

Dated at Fort Portal this 24th day of May 2024.

Vincent Emmy Mugabo Judge

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