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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 429 OF 2018

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1. NALUNGUJU WINNIE MUWANGA
2. MARVIRI VINCENT
3. MUWANGALO MUWANGA
4. KATIMBO FRANK (suing as administrators to
The Estate of the Late Angero Kyabalongo and
Namugwanya Tereza Maria) ::::::::::::::::::::::::::::::::::: PLAINTIFFS
VERSUS

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1. THE REGISTERED TRUSTEES OF
BANNABIKIRA (Daughters of Mary)
2. THE CHIEF REGISTRAR OF TITLES ::::::::::::::::::::::::::: DEFENDANTS

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BEFORE: HON. LADY JUSTICE IMMACULATE BUSINGYE
BYARUHANGA
RULING

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This case was the only cause-listed case for today as a backlog case for hearing. There was no other case cause-listed before this court. The case last came up on 14th February 2024 in the presence of Aturinda Majda for the plaintiffs, Ssozi Sharif for 1st defendant and Arinaitwe Sharon for the 2nd defendant. The 2nd, 3rd and 4th plaintiffs were present in court.

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On 14th February 2024, court marked exhibits (documents) after adjourning the matter for seven times i.e. 7th September 2020, 9th November 2020, 6th April 2021, 23rd August 2021, 21st June 2023, 24th June 2023 and 23rd October 2023. The advocates in this matter were not ready for scheduling until court set the 14th day of February 2024 as the last day for handling the scheduling conference.

On 14th February 2024, scheduling was finally conducted and documents were marked. The matter was adjourned to 9th April 2024 for hearing at 9:30am. No other

5 matter was fixed. Still on 14th February 2024 at 2:32pm, court directed the advocates in the matter to file witness statements by 19th March 2024 such that 9th April 2024 would be purely for hearing. As of today it is the 1st defendant's witness statements which are on record.

10 The plaintiffs' counsel instead of appearing in person, opted to write a letter received by court today (9th April 2024) indicating that Kabega Musa who is in personal conduct of the case is sick and prayed for an adjournment to 8th or 13th of May 2024. It should be noted that at the time of scheduling, it is not Kabega Musa who was in personal conduct. It is Counsel Aturinda Majda who conducted the conferencing proceedings on behalf of the plaintiffs.

15 It should equally be noted that with the coming into force of the **Constitution (Adjournment for Courts of Judicature) (Practice) Directions, 2019 (Legal Notice No. 5 of 2019) under rule 5**, adjournments have to be sought orally by any of the parties to the suit or at the insistence of court. Adjournments cannot be sought by letter. (See **Equator Touring Services Ltd versus Kampala City Council**
20 **HCCS No. 763 of 2007, Commercial Court**).

Counsel for the 1st defendant have submitted that the case should be dismissed since the plaintiffs are not in court and counsel for the plaintiffs did not file witness statements as directed by court on 14th February 2024. The witness statements were to be filed under **Order 5A of the Civil Procedure Amendment Rules of 2019**.
25 Counsel for the 1st defendant equally cited **Section 17 (2) (a) of the Judicature Act** where such matters should be dismissed to curtail delays. **Order 17 rule 4 of the Civil Procedure Rules** was referred to in relation to non-compliance with court orders. Counsel for the 1st defendant prayed that the matter be dismissed with costs.

5 In reply, counsel Swabura who held brief for Kabega Musa prayed that the matter should be given another adjournment since Counsel in personal conduct got an accident and the plaintiffs were ready to proceed with the case. It should be noted that on 14th February 2024, this court directed all advocates to file their witness statements by 19th March 2024. Counsel for the plaintiffs who had the right to begin
10 did not file any. **Order 18 of the principal Civil Procedure Rules** was amended by Statutory Instrument 33 of 2019 whereby **rule 5A** was inserted after **rule 5 of Order 18** and the said **rule 5A(1)** provides as follows:-

15 *“The evidence of a witness shall consist of a witness statement which shall be filed after the scheduling conference on the direction of the trial judge and served upon the opposite party.”*

Counsel Swabura has told court that counsel for the plaintiffs intended to proceed orally indicating that he was not ready to comply with **Order 18 rule 5A sub rule 1 of Statutory Instrument 33 of 2019**. In addition to the above, on 14th February 2024, the 2nd, 3rd and 4th plaintiffs were present in court and the matter was adjourned
20 to today for hearing their case.

Today they are not present which shows that they are not interested in their case at all. Counsel Swabura has intimated that she is holding brief for Counsel Kabega Musa who is in personal conduct. It should be noted that under the **Constitution (Adjournment for Courts of Judicature) (Practice) Directions, Legal Notice No.**
25 **5 of 2019 rule 8** thereof provides that an advocate holding brief for another advocate shall ordinarily be expected to have instructions to proceed in the matter.

Counsel Swabura is instead seeking an adjournment. The above scenario indicates that the plaintiffs and their counsel are not ready to proceed with the case. Given the

5 number of adjournments already granted, there is no indication that the plaintiffs are interested in prosecuting this case.

Counsel for the 1st defendant filed witness statements on 21st March 2024. Though they did not comply with the directive of 19th March 2024, the witness statements of Sister Mary Teopista Tinkamanyire, Sister Lucy Tereza and Gemma Nantezza are
10 on court record.

Given the above reasons, the plaintiffs 'suit is hereby dismissed under **Section 17 (2) (a) of the Judicature Act** due to unnecessary delays caused by the plaintiffs and their Counsel. There is no single reason on record as to why the plaintiffs are absent when the case was adjourned in their presence for hearing on 14th February 2024.
15 The plaintiffs shall bear the costs of the suit **Section 27 (1) of the Civil Procedure Act.**

The following orders are hereby made:-

- a) The plaintiffs suit is dismissed under section 17 (2) (a) of the Judicature Act.
- b) The plaintiffs shall bear the costs of the suit.

20 I so order.

Ruling delivered at High Court, Land Division this 9th day of April 2024.

Immaculate Busingye Byaruhanga

25 **Judge**

