

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
MISCELLANEOUS APPLICATION NO 96 OF 2006
(ARISING FROM CIVIL SUIT NO. 146 OF 2003)

MILDRED KAMAU..... APPLICANT

VERSUS

1. UGANDA ELECTRICITY BOARD
2. UGANDA ELECTRICITY DISTRIBUTION CO. LTD....RESPONDE

RULING

This was an application by notice of motion for an order, inter alia, that:

“The order dismissing HCCS No. 146/03 be set aside and the suit be reinstated and be duly fixed for hearing.”

All the parties filed affidavits in support and reply. I do not need to go into their details.

My main concern is the document dated 07/11/2005. It reads:

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(Formerly Hunter & Greig)

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Notaries Public and

Commissioners for Oaths

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7th November, 2005

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reference

Your Ref:

Our Ref: JFK/EA/56546

Please quote our

CONSULTANT

Ruth Masika, L.L.B (HONS) Dar es Salaam

The Registrar,
High Court of Uganda,
NAKAWA.

Your Worship,

**Re: Application for Dismissal of Suit under O.15 r.6 CPR
Nakawa H.C.C.S No. 146 of 2003
Mildred Kamau
Vs.
Uganda Electricity Board and Another**

The above matter refers.

We act for Uganda Electricity Board the Defendant in the above suit.

The said suit was filed in May 2003 against the Defendants for damages resulting from alleged negligence of the defendants causing injury to the Plaintiff. The plaintiff has, however, not taken any more steps with a view to proceeding with it since then.

In the circumstances, **we hereby apply under O.15 r.6 of the Civil Procedure Rules that the above suit be dismissed for want of Prosecution with costs to the Defendant.**

Yours faithfully,

KATEERA & KAGUMIRE

c.c. The Board Secretary,
Uganda Electricity Board,
KAMPALA.

On this document is an endorsement reading:

“Dismissed with costs”

It was signed by the Nakawa High Court Registrar and dated 21/11/2005.

Long ago, in PIRBHAI LALJI & SONS LTD VS. HADSANALI DEVJI: HCCS NO. 269/62,

Russell, J. stated: -

“I am not satisfied a defendant is entitled to move the court under O48.r1 to dismiss a suit for want of prosecution pursuant to O15.r6.

“It appears to me that the present application was misconceived as under O15.r6 the court may on its own initiative order a suit to be dismissed for want of prosecution provided a defendant is not entitled to make such application under some other provision in the Civil Procedure Code or Rules”.

I have not come across any decision overruling the above decision. I am persuaded by Russell, J’s ruling. In which vein I find that the advocates for the Respondents moved the Registrar under a wrong rule and the Registrar ended up making a wrong decision. I declare it a nullity. I also repeat my ruling in ROSE KENO & 5 OTHERS VS. NOORDIN WALJI: HCCS NO. 869/85. I allow the application. I deny the Applicant the costs of this application because she and especially her Counsel were not diligent enough to cause the suit to be heard. The suit is hereby reinstated.

Sgd: Gideon Tinyinondi

JUDGE

07/07/2006.