

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT -01-LD-CS-0031 OF 2014**

FORT PORTAL MUNICIPAL COUNCIL:.....: PLAINTIFF

VERSUS

1. UGANDA LAND COMMISSION

2. BALINDA JOHN BRIAN

3. ALINDA PETER :.....: DEFENDANTS

BEFORE: HON JUSTICE VINCENT EMMY MUGABO

JUDGMENT

This suit was filed in December 2014. Between then and October 2019, the suit was adjourned several times. On 4/10/2019, the presiding trial judge directed the plaintiff to file his witness statements by 4/11/2019 and the defendants to file their witness statements by 4/12/2019. This direction was not heeded to. It then came up on various dates of 1/9/2020, 6/11/2020, 5/3/2021, and 30/3/2021 and on all of these occasions, the parties requested for time within which to settle and the same was granted by court.

Court granted the parties the last adjournment on 17/1/2022 and another last adjournment on 31/3/2022. When it came up again on 26/8/2022, the plaintiff and counsel for the plaintiff were absent. Counsel for the 2nd & 3rd defendants prayed that the suit be dismissed for want of prosecution.

Representation and hearing

The plaintiff and the 1st defendant are represented by Attorney General's Chambers while the 2nd & 3rd defendants by Mr. Musinguzi Joshua.

Consideration by court

Prior to the 2019 amendment to the Civil Procedure Rules, the provision applicable to dismissal of suits for want of prosecution was **Order 17 Rules 5 & 6 Civil Procedure Rules SI 71-1**. They provided as thus;

If the plaintiff does not within eight weeks from the delivery of any defence, or where a counterclaim is pleaded, then within ten weeks from the delivery of the counterclaim, set down the suit for hearing, then the defendant may either set down the suit for hearing or apply to the court to dismiss the suit for want of prosecution, and on the hearing of the application the court may order the suit to be dismissed accordingly, or may make such other order, and on such terms as the court may deem just.

Rule 6. Suit may be dismissed if no step taken for two years.

- I. In any case, not otherwise provided for, in which no application is made or step taken for a period of two years by either party with a view to proceeding with the suit, the court may order the suit to be dismissed.*
- II. In such case the plaintiff may, subject to the law of limitation, bring a fresh suit.”*

Presently with the 2019 amendment to the Civil Procedure Rules, **Order 17 rule 5** requires that a suit is dismissed for want of prosecution when no step is taken with the view of proceeding with the matter after six months after the mandatory scheduling conference.

It has been stated in ***Akampumuza & Anor v Makerere University Business School & 2 Ors HCMA No. 514 of 2012*** that

“Order 17 r 6 of the Civil Procedure Rule..... enable the courts to

manage their work load by eliminating all cases which appear rather redundant from its system. This is part of court case management tools applied by the Judiciary. This order can be invoked by either party or by the court on its own motion”.

In ***Nilani Vs Patel and others (1969) EA 340*** Dickson J held that:

“...a plaintiff who is in pursuit of a remedy, should take all necessary step at his disposal to achieve an expeditious determination of his claim. He should not be guilty of laches.

Lord Denning once noted in ***Allen Vs Sir Alfred Mc Alpine & Sons Ltd (1968), All ER 543*** at PP 546 & 547 that;

“The delay of Justice is a denial of Justice..... to no one will we deny or delay the right or justice...it is impossible to have a fair trial after a long time. The delay is far beyond anything which we can excuse. This action has gone to sleep for nearly two years. It should be dismissed for want of prosecution”.

The three part test for dismissal of a suit for want of prosecution were set out in ***Allen Vs. Sir Alfred*** (supra) as follows:

- i. That there has been inordinate delay to prosecute a suit;
- ii. That this inordinate delay is inexcusable; and as a rule, until credible excuse is made out, the natural inference would be that it is inexcusable, and
- iii. The defendant is likely to be seriously prejudiced by the delay.

In the present case, the suit was filed in 2014. Up to date, the plaintiff merely indicate that it was in the process of filing a scheduling memorandum. It was directed to file its witness statements in 2019. The same directive has not been heeded to up to date. Instead the parties have

resorted to seeking for endless adjournments to the suit. The inordinate delay to take the necessary steps has not been explained by the parties. The suit has been in the system for over seven years without progress. This inordinate delay is inexcusable and likely to prejudice the defendants who are being held in unproductive litigation.

Much as the circumstances of this suit do not fall squarely within the provisions of **Order 17 rule 5 of the Civil Procedure Rules** as amended, this court is also empowered by among others **Section 17(2) of the Judicature Act** to exercise its inherent powers to prevent the abuse of its process. As a result, this court is entitled to determine this suit by way of dismissing it and it is accordingly dismissed for want of prosecution.

Costs are awarded to the 2nd and 3rd defendants.

I so order

Dated at Fort Portal this 26th day of August 2022.



Vincent Emmy Mugabo

Judge

The Assistant Registrar will deliver the ruling to the parties



Vincent Emmy Mugabo

Judge

26th August, 2022

