

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MBARARA**  
**HCT-05-CV-MA-0163-2022**  
(Arising from HCT-05-CV-CS-0076-2013)  
**KABANGIZI ENOCK ::::::::::::::::::::::::::::::::::: APPLICANT**  
**VERSUS**

**1. JOHN KATANISA**  
**2. JORELINE KORUKANGA**  
**3. TAREMWA DAVID**  
**4. SCOVIA TUMUSHABE ::::::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: HON LADY JUSTICE JOYCE KAVUMA**

**RULING**

**Introduction.**

[1] This application was brought by Notice of Motion under **Section 98 of the Civil Procedure Act and Order 52 rules 1 and 2 of the Civil Procedure Rules** seeking for orders that:

(a) The dismissal of Civil Suit No. 076 of 2013 be set aside  
and the same be reinstated and heard on its merits.

(b) The costs of this application be in the cause.

The grounds upon which this application was based were briefly laid out in the motion as follows;

1. That the Applicant has at all times attended court in pursuit of this suit.

2. That the Applicant had already filed and served his witness statement in this matter on the 2<sup>nd</sup> day of September 2021.
3. That on several occasions the Applicant came to court but this honorable court was indisposed and the matter could not take off.
4. That the Applicant being of advanced age was sickly and at his son-in-law's place in Kampala undergoing treatment for the ulcers and abdominal pain he was having for several days.
5. That it was his medical condition that precluded him from attending court as well as facilitating his lawyers to attend on the 24<sup>th</sup> day of March 2022.
6. That the Respondents will unjustly benefit from the dismissal if the same not set aside.
7. That the Applicant is and has always been interested in pursuing this matter to its logical conclusion.
8. That it is in the interest of justice and equity to set aside the dismissal of the Applicant's suit and have the same reinstated and heard on its merits.

### **Background.**

[2] The Applicant herein filed **HCT-05-CV-CS-0076-2013** against the Respondents on **28<sup>th</sup> November 2013** seeking for inter alia a declaration that he was the owner of land comprised in **Plot 25 Nyabushozi, Block 105, LRV 3278, Folio 25, land at Rwitsiru, Kiruhura District**, that the

Respondents had trespassed thereon, a permanent injunction, general damages and costs of the suit.

According to the court record the matter came up for hearing on **24<sup>th</sup> March 2022** and on that date only counsel for the Respondents was in court. She informed court that on the last adjournment, the Applicant was in court. It is indeed true, on **24<sup>th</sup> November 2021**, the date of the last adjournment, the Applicant was in court when the matter was adjourned to **24<sup>th</sup> March 2022**. Counsel for the Respondents on this date prayed that the matter be dismissed under **Section 17 (2)** of the **Judicature Act** and **Order 17 rule 6** of the **Civil Procedure Rules**. This court stood over the matter so that the Applicant is given a chance to be in court. When court resumed, the Applicant and neither his lawyer was in court. This court went ahead and dismissed **HCT-05-CV-CS-0076-2013** with costs under **Section 17(2)** of the **Judicature Act** for want of prosecution.

It is this decision that the Applicant seeks to set aside.

### **Representation.**

[3] The Applicant was represented by M/s Bukenya, Lumu & Co. Advocates while the Respondents were represented by M/s Kemigisha Maclean & Co. Advocates. Both Counsel filed submissions in the matter which I have considered.

### **Analysis and decision.**

[4] It is now trite that a suit dismissed by court under **Section 17(2)** of the Judicature Act is a decision on merit which gives rise to a decree. (See Arvind Patel vs NRM Misc. Appn. No. 151 of 2018).

Under that provision the High Court has unlimited jurisdiction regarding its own procedures and will take pro-active steps to curtail delays and prevent abuse of substantive justice.

This court has in numerous decisions maintained that suits dismissed under **Section 17 (2)** of the Judicature Act cannot be reinstated since they constitute a final decree and the only remedy available to the Plaintiff/Applicant is to appeal the order should they wish to. (See Richard Lumu Njalebuza vs The society of Catholic Medical Missionaries Ltd Misc. Application No. 1944 of 2018; Kibugumu Patrick vs Aisha Mulungi & anor HCMA No. 445 of 2014; Lukwago Erias vs Jennifer Musis HCMA No. 626 of 2018 and Ntambala Faustine Kitimbo vs AG and others HCMA No. 898 of 2019).

[5] In Kibugumu Patrick vs Aisha Mulungi and another (supra), it was observed by this court that;

*“It is further my view that section 17(2) of Judicature Act was intended by the Legislature to operate as a statutory tool in the hands of court to prevent abuse of its process by curtailing delays in trials... in that case, no amount of subsequent action would revive the suit and an order on those grounds is a final decree that is only appealable.” Per Bashaija J.*

The foregoing authorities are to the effect therefore that the dismissal of the Applicant's case for want of prosecution under **Section 17 (2)** of the Judicature Act operated as an adjudication of the matter on the merits and therefore barred him from applying to have it reinstated.

In light of the above, this application to set aside the dismissal is misplaced as the remedy available to the Applicant is that of appeal should he wish to pursue it. This being the case, this application is dismissed with costs.

I so order.

Dated, delivered and signed at Mbarara this 31<sup>st</sup> August 2023

**Joyce Kavuma**  
**Judge**