

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

MISC. APPLICATION NO.443 OF 2013

OTTO MATHEW:.....:APPLICANT

VERSUS

MAKERERE UNIVERSITY:.....:RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

This is an application brought by Notice Of Motion under O. 47 rr (1)(b) of the Civil Procedure Rules and Ss. 82 (b) and 98 of the Civil Procedure Act for orders that:

1. The court order that was made on 20th February 2013 dismissing High Court Civil Suit 68 of 2008 be reviewed and set aside and the suit be reinstated heard and disposed of on the merits.
2. Costs of the application be provided.

The grounds of application are that the applicant is aggrieved by the order of this court made on 20th February 2013 dismissing **High court Civil Suit 68 of 2008** yet it is not appealable as of right. The dismissal was made on account of some mistake and error which are apparent on record. That there is sufficient reason for which a review is sought as the suit had already been scheduled. Further that the applicant has always been and he

is still interested in pursuing **High Court Civil Suit 68 of 2008**. That he has high chances of success.

That the applicant cannot file a fresh suit as the same would be time barred. The applicant got to learn about the dismissal when he was going to get a hearing date having tried to secure one earlier but unsuccessfully. That it is just, fair and equitable that the dismissal order of 20th February 2013 be set aside.

At the hearing of the application, Mr. Tugume represented the applicant. The respondents were absent yet they were served.

The law under which the original suit was dismissed is O. 17 r. 6 1) of the Civil Procedure Rules. This application is brought under O. 46 rr 1 (1)(b) of the Civil Procedure Rules which provides for applications for review of judgment.

When I perused this application and the record and considered the submission by learned counsel for the applicant I noted that the original suit was not heard at all and there was no judgment made by court. Therefore in my view, this is not a proper case for review. Order 46 of the Civil Procedure Rules is not applicable in the circumstances.

Secondly, cases dismissed under O. 17 r. 6 of the Civil Procedure Rules when no step is taken or application is made for a period of two years by either party with a view to proceeding with the suit have to be proceeded with thereafter under O. 17 r. 6(2) of the Civil Procedure Rules which provides as follows:-

“In such a case, the plaintiff may subject the law of limitation bring a fresh suit.”

Therefore this application has no legal basis. It will be dismissed with no order as to costs since the respondent chose not to appear in court.

Stephen Musota

J U D G E

23.06.2014