

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**HCT – 01 – CV – MA – 0096 OF 2013**

**(Arising from HCT – 01 – CV – MA – 091 of 2009)**

**DR. EPHRIAM BASALIZA.....APPLICANT**

**VERSUS**

**KAMBARAGE KAKONGE } .....1<sup>st</sup> RESPONDENT**

**ATTORNEY GENERAL } .....2<sup>nd</sup> RESPONDENT**

**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE**

**Ruling**

This is an Application by Notice of Motion under **Order 52 Rule 1-3** of the Civil Procedure Rules, **Section 98** of the Civil Procedure Act, **Section 33** of the Judicature Act, and **Article 126(2) (e)** of the Constitution of the Republic of Uganda, 1995. The Application is for the following orders;

1. That the order of the Court dismissing HCT – 01 – CV – MA – 091 of 2009 made on the 23<sup>rd</sup> day of October 2013, be set aside and the main Application be reinstated.
2. Costs of the Application.

**Background**

The Applicant filed the main Application seeking to enforce his rights and freedoms against the Respondents. The Applicant was made to kneel down for over 10 minutes and humiliated before several people by the 1<sup>st</sup> Respondent who was RDC Kabarole and he filed the Application seeking for compensation as a remedy among others. When the Application came for hearing on 7/4/2010 the Respondent’s Counsel raised preliminary objections and a ruling was delivered dismissing the objections.

Court on 23/10/2013 dismissed the main Application under **Order 17 Rule 6** of the Civil Procedure Rules.

The Applicant being dissatisfied with this decision lodged the instant Application which is supported by the affidavit of Dr. Ephriam Basaliza and the grounds briefly are;

1. That the Application was wrongly dismissed under **Order 17 Rule 6** of the Civil Procedure Rules.
2. That the Court made a ruling on preliminary objections raised by the Respondents on 7/3/2012 and my Counsel did not fix the Application thereafter for hearing.
3. That the Applicant is still interested in the matter and desires that the same be heard and determined on its merits.
4. That it is just and equitable that the Court grants the orders herein sought.

The 2<sup>nd</sup> Respondent in his Affidavit in reply as sworn by Singura Karekona Isaac averred that the Application is baseless, without any merit but a waste of Court's time. That the conduct of the Applicant and his Counsel in prosecuting the matter was not only wanting but highly negligent which clearly manifested lack of interest in the matter and the judge exercised his discretion rightly and judiciously, in dismissing the Application. That the Applicant filed the Application herein on or around 06<sup>th</sup> December 2013, he only managed to serve the Respondent at Fort Portal High Court on the 20<sup>th</sup> April 2015, approximately 2 years later, which is another manifestation of disinterest and negligence in prosecuting the matter. That in the circumstances the instant Application is an abuse of Court process and should therefore be dismissed.

Counsel Bwiruka Richard appeared for the Applicant and the A.G for the Respondents.

Counsel for the Applicant submitted that the dismissal of the main application under **Order 17 Rule 6** of the Civil Procedure Rules was improper as 2 years had not lapsed from the date of the ruling on 7/3/2012 to 23/10/2013 when the dismissal order was made. That the Application had even been cause listed for hearing on 18/11/2013 whereof the Application was No. 36 on the cause list and there is no reason why the Court dismissed it on 23/10/2013 on its own motion.

**Order 17 Rule 6** of the Civil Procedure Rules provides that a suit may be dismissed if no step taken for two years and states;

*“(1) 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.*

*(2) In such case the plaintiff may, subject to the law of limitation, bring a fresh suit.”*

Setting aside the dismissal of a suit dismissed under **Order 17 rule 6** of the Civil Procedure Rules and the powers of the court to reinstate a suit under its inherent powers was considered in the case of **SOBETRA (U) Ltd versus West Nile Electrification Company Limited HCMA No 616 of 2014 arising from HCCS No 90 of 2010**. In that decision the Applicant relied on the case of **Rawal versus The Mombasa Hardware Ltd [1968] EA 392** decided by the East African Court of Appeal. The Appellant sued the Respondent in 1962 but no step was taken in the suit for over three years and the court on its own motion and without notice to the parties dismissed the suit under the Kenyan **Order 16 rule 6** of the Civil Procedure (Revised) Rules 1948. This is the equivalent of **Order 17 rule 6 (1)** of the Civil Procedure Rules. The Appellant applied to have the order of dismissal set aside and the suit reinstated under the inherent powers of the court provided for by the equivalent of **section 98** of the Civil Procedure Act (**section 97** of the Kenyan Civil Procedure Act). The High Court dismissed the application on the ground that under **section 97** of the Kenyan Civil Procedure Act, inherent jurisdiction had been excluded by **Order 16 rule 6 (2)** which provides that the Plaintiff may file a fresh suit after its suit is dismissed under **Order 16 rule 6 (1)** subject to the law of limitation. The Appellant appealed to the East African Court of Appeal. Law JA held that the inherent jurisdiction of the High Court was not excluded in the circumstances of the case and allowed the appeal and remitted application for reinstatement of the suit for hearing on the merits by the High Court.

The decision was quoted with approval by the East African Court of Appeal sitting in Kampala in **Adonia versus Mutekanga [1970] 1 EA 429** where Spry VP held at page 432:

*“... There is no rule of law, as Mr. Kazzora implied, that inherent powers cannot be invoked where another remedy is available. The position, as I understand it, is that the courts will not normally exercise their inherent powers where a specific remedy is available and will rarely if ever do so where a specific remedy existed but, for some reason, such as limitation, is no longer available. The matter is, however, not one of jurisdiction. The High Court is a court of unlimited jurisdiction, except so far as it is limited by statute, and the fact that a specific*

*procedure is provided by rule cannot operate to restrict the court's jurisdiction, Rawal v. Mombasa Hardware Ltd [1968] E.A. 392.”*

Thus, the High Court has jurisdiction to hear the instant matter and set aside the dismissal of the main Application by invoking its inherent jurisdiction.

It is my considered opinion that the main application was erroneously dismissed since the 2 years as provided for under **Order 17 Rule 6** of the Civil Procedure Rules had not yet lapsed.

In the interest of justice this application is granted and the dismissal set aside so that the Applicant can have his main Application heard and determined on its merits. Costs of this application abide the outcome of the main application.

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**OYUKO. ANTHONY OJOK**

**JUDGE**

**27/10/2016**