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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISC. APPLICATION NO. 389 OF 2019

ARISING FROM MISC. APPLICATION NO. 323 OF 2018 & CIVIL

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SUIT NO. 221 OF 2018

KWESIGA RONALD:.....:APPLICANT

VERSUS

1. GOLDEN TRIPOD T/A GOLDEN TRIPOD CASINO

2. STAR CASINO LTD T/A

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CASINO:.....:RESPONDENTS

BEFORE: HON. DR. JUSTICE BASHAIJA K. ANDREW

RULING

Kwesiga Ronald (*hereinafter referred to as the “Applicant”*) brought this application against Golden Tripod T/a Golden Tripod Casino and Star Casino Ltd T/A Casino (*hereinafter referred to as the 1st and 2nd Respondent respectively*) under the provisions of **Section 98 of the Civil Procedure Act Cap 71**; and **Order 52 rule 1 and**

5 **2 of the Civil Procedure Rules SI71-1**; for Orders that **H.C.M.A No.323 of 2018** be reinstated and heard on its own merits. The application is supported by an affidavit sworn by the Applicant.

The 1st Respondent opposed the instant Application and filed an affidavit in reply sworn by Ms. Bridget Tumwebaze Adyeri. The 2nd Respondent never filed a reply to this application.

Background:

The Applicant is the plaintiff/Applicant in **H.C.C.S No. 221 of 2018** and **H.C.M.A No. 323 of 2018: Kwesiga Ronald vs. Golden Tripod Casino and Star Casino**, respectively. He applied for a temporary injunction against the Respondents restraining them from carrying on activities of casino until the determination of the main suit. The application was, however, dismissed for want of prosecution because the Applicant and his counsel were absent when the matter was called for hearing on the date which they were all aware of.

In the instant application, the Applicant avers that he is the plaintiff and Applicant in the said suit and application respectively, and that he instituted the suits out of civil duty to uphold and

5 defend the other laws deriving their authority from it. That he applied for a temporary injunction against the Respondents restraining them from carrying on activities of casino until the determination of the main suit. That at that time he was being represented by *M/s. Muganwa, Nanteza & Co. Advocates* whom he
10 instructed to appear but that they failed to do so and **H.C.M.A No. 323 of 2018** was dismissed. That the he tried to seek an explanation from his former lawyer as to why they did not appear for the hearing of the application, but all efforts were unsuccessful. That due to the aforementioned circumstances he had to change
15 lawyers and that he instructed another firm of *M/s. Tropical Law Advocates* to take over the proceedings.

That his application was dismissed for want of prosecution because the him and his counsel were absent as they never received hearing notices for the application. That the mistake of his former lawyers
20 should not be visited on him the client and that this application should, therefore, be allowed.

The 1st Respondent in the affidavit in reply opposes the application and avers that there is no pending suit between the Applicant and

5 the 1st Respondent hence this application lacks merit. That the Applicant has no *locus standi* to bring any claim against the 1st Respondent in respect to the regulation of the latter's business operations. That the application for a temporary injunction vide **H.C.M.A No.323 of 2018** was dismissed on 10th September 2018
10 and the Applicant filed this application on 18th June 2019 and hence there has been unreasonable delay on the part of the Applicant in respect to filing this application.

That the Applicant has not raised any reasonable or justifiable cause to warrant the granting of this application hence the same
15 should be dismissed with costs to the 1st Respondent. That the Applicant's lawyers have at all material times attended the taxation of the bill of costs for the dismissed application for a temporary injunction since the 1st Respondent filed a bill of costs in court on 10th September 2018 and served the same unto the Applicant.

20 In rejoinder the Applicant maintained that the Respondents had at the time of institution of **H.C.C.S No.221 of 2018** no license to engage in the business of forex trading and forex exchange. That the application and suit were dismissed due to non-attendance of

5 lawyers. That a notice of change of Advocates clearly indicates that
the Applicant gave instructions to his new lawyers on 6th February
2019. That it is in the interest of justice that the suit and the main
application are reinstated as the Respondents are carrying out
unregulated forex exchange business and the application for
10 taxation was served onto his former lawyers *M/s.Mugwanya,
Nanteza & Co. Advocates* and not his current lawyers *M/s. Tropical
Law Advocates* who made an application to reinstate the matter and
also prayed that taxation of **H.C.M.A No. 323 of 2018** be stayed.
That it is in the interest of justice that this application is allowed
15 and **H.C.M.A No. 323** and **H.C.C.S No 221of 2018** are reinstated
and heard on merits.

Opinion:

It is observed at the outset that this application was brought under
Section 98CPA as the enabling provision and Order 52 rule 1 and 2
20 CPR as the procedure. Both are general provisions and Section
98(supra) provides for the inherent powers of court. It is settled law
that provisions as to the inherent powers of court can only be
invoked where there is no specific provision of the law under which

5 an application should be brought. See: ***Adonia vs. Mutekanga [1970] EA 618***; and ***Ryan International Ltd & Others vs. United States of America [1970] EA 675***.

In the instant case, ***H.C.M.A No. 323 of 2018*** arising from ***H.C.C.S No. 221 of 2018*** was dismissed due to non-appearance of the Applicant herein and his counsel and in the presence of counsel for the 1st and 2nd Respondents, when the suit came up for hearing. The Applicant could have opted to bring this application under ***Order 9 rule 23 CPR***, but he did not. Be that as it may, upon perusal of the record, it is observed that ***H.C.C.S No. 221 of 2018***, from which ***H.C.M.A No. 323 of 2018*** arises, is nonexistent having been dismissed on 6th February 2019 and since then it has never been reinstated. ***Oder 41rule 2(1) CPR*** provides that;

20 ***“In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the court for a temporary injunction...”***

5 In the case of ***E. L. T Kiyimba Kaggwa vs. Haji Abdu Nasser
Katende Civil Suit No. 2109 of 1984***, it was held, inter alia, that
the granting of a temporary injunction is an exercise of judicial
discretion and the purpose of granting it is to preserve matters in
the *status quo* until the question to be investigated in the suit can
10 be finally disposed of. The above provisions connote the existence of
a pending suit before one can apply for a temporary injunction.

In the instant case, ***H.C.C.S No. 221 of 2018*** was dismissed and
has never been reinstated and ***H.C.M.A No. 323 of 2018*** which the
Applicant now seeks to reinstate by this application was dismissed
15 on 10th September 2018 long after the main suit out of which it
arose. Therefore, reinstating ***H.C.M.A No. 323 of 2018*** would mean
that the application for a temporary injunction is arising out of a
nonexistent main suit hence a stand-alone application, which is
legally untenable. For those reasons, the instant application for
20 reinstatement is overtaken by events and it is dismissed with costs
to the 1st Respondent.

**BASHAIJA K. ANDREW
JUDGE
14/02/2020**

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14/02/2020:-

Parties and their counsel absent.

Ms. Jolly Kauma Court Clerk present.

15 Ruling read in Court.

**BASHAIJA K. ANDREW
JUDGE
14/03/2020**

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