

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
CIVIL SUIT NO. 98 OF 2017

SURYAKANT MANIBHAI PATEL:::
PLAINTIFF

VERSUS

1. GUME FRED NGOBI}
2. YEKO CHARLES } :::
DEFENDANTS

BEFORE HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA

RULING

Brief facts

The Plaintiff instituted this suit on 1st August 2017 against Kulsum Mohammed Shasha, Gume Fred Ngobi and Charles Yeko. On 12th October 2017, the Plaintiff amended the Plaint to add Commissioner Land Registration as the 4th Defendant. On the 5/3/2019, on application by Counsel for the Plaintiff, Court allowed the Plaintiff to withdraw the claim against the 1st and 4th Defendants that is Kulsum Mohammed Shasha and the Commissioner Land Registration. Parties were directed to file a Joint Scheduling Memorandum, and witness statements which they did and the matter was fixed for hearing.

From the record, several adjournments were made until 24/03/2020. The hearing of the case never materialised as the Plaintiff’s only witness was not ready. On 10/12/2021, the Defendant’s Counsel wrote to the Deputy Registrar praying for an Order that the suit had automatically abated pursuant to Order 17 Rule 5 of the Civil Procedure Amendment Rules of 2019 which provides that;

“5. 1) In any case, not otherwise provided for, in which no application is made or step taken for a period of six months by either party with a view to proceeding with the suit after the mandatory scheduling conference, the suit shall automatically abate; and

2) Where a suit abates under subrule (1) of this rule, the plaintiff may subject to the law of limitation bring a fresh suit.”

On 13/12/2021, the Deputy Registrar noted that the matter abated as prayed for. On 28/3/2022, Counsel for the Plaintiff wrote a letter to the Registrar of the Jinja High Court which was filed in Court on the 14/04/2022 praying for the matter to

be reinstated administratively since Order 17 Rule 5 of the Civil Procedure Rules of 2019 did not apply to the suit which was filed in 2017 and that therefore the rules cannot operate retrospectively. The Deputy Registrar reinstated the matter as prayed for by Counsel for the Plaintiff. On 25/04/2022, Counsel for the Defendant wrote a letter requesting for the file to be placed before the trial judge for appropriate orders and directions which was adhered to and whereof the trial judge requested for the progressive status of the file which confirmed all the above. The matter was fixed for the 06/10/22.

Orders sought

In this suit, the Plaintiff sought for an order that the land comprised in Leasehold Register Volume 668 Folio 13 situate at Plot 16 Clive Road West Jinja Municipality (suit property) belongs to the Plaintiff, a declaration that the 1st, 2nd and 3rd defendants unlawfully and fraudulently acquired and got registered on the Plaintiff's land comprised in the suit property, an order that the Plaintiff is entitled to compensation at current market value for his developments which were demolished without compensation and for the period he was deprived of his land till payment in full among others.

Representation.

The Plaintiff was represented by Counsel Omongole Richard of Omongole & Co. Advocates while the Defendants were represented by Counsel Habakurama Elias of Habakurama & Company Advocates.

Submissions.

When the matter came up for hearing on the 06/10/2022, Counsel for the Plaintiff prayed for an adjournment for the matter to be heard at the end of March 2023 since the Plaintiff who was his only witness was not available on that day. Counsel for the Defendants raised an objection to the adjournment on grounds that since the matter had automatically abated on 13/12/2021, there was no case to adjourn and that the reinstatement of the suit was erroneously done by the Deputy Registrar. Counsel for the Defendants further contended that since the last date for hearing which was 24/03/2020, a date which fell during the covid lockdown, Counsel for the Plaintiff had not taken any step to prosecute the matter to its logical conclusion.

Court ordered the parties to file written submissions on the objection whereof schedules were given. Counsel for the Defendants was to file his submissions by 14/10/2022, Counsel for the Plaintiff was to reply by 27/10/2022 and Counsel for the Defendants was to re-join by 1st November 2022. Counsel for the Defendants complied with the directives and filed his submissions on 14/10/2022. As of 04/11/2022, Counsel for the Plaintiff had not filed his

submissions in violation of the Court directives. Nevertheless, Court will determine the objection without the Plaintiff's submissions.

Counsel for the Defendants relied on Order 17 Rule 5 of the Civil Procedure Rules as amended for the notion that Civil Suit No. 98 of 2017 abated and that the Deputy Registrar was right to make an order dated the 13/12/2021 closing the file which had automatically abated. Counsel further submitted that upon making that order, the Deputy Registrar became *functus officio* and his jurisdiction ceased. He could not turn around to order reinstatement of the same since he was not clothed with jurisdiction. Counsel cited the case of **Goodman Agencies Ltd Vs Attorney General & Anor Constitutional Petition No. 03 of 2008 and Rwabuganda Godfrey Vs Bitamiss, Namudu CCA No. 87 of 2010**. Counsel further contended that the mode by which Counsel for the Plaintiff moved Court (by way of a letter) to reinstate the matter was in contravention of O. 52 Rule 1 of the Civil Procedure Rules which provide that;

“ All applications to the Court, except where otherwise expressly provided for under these Rules shall be by motion and shall be heard in open Court.”

Issue

Whether the reinstatement of the suit that had abated was illegally done.

Decision.

The Law.

O.17 rules 5(1) and (2) of the Civil Procedure (Amendment) Rules, 2019 provides that, (emphasis mine)

5. Dismissal of Suit for want of prosecution.

(1) In any case, not otherwise provided for, in which no application is made or step taken for a period of six months by either party with a view to proceeding with the suit after the mandatory scheduling conference, the suit shall automatically abate; and

(2) Where a suit abates under sub rule (1) of this rule, the Plaintiff may, subject to the law of limitation bring a fresh suit.

Resolution.

It is not in contention that Civil Suit No. 98 of 2017 automatically abated. The parties last appeared in Court on 19/11/2019 and the matter was adjourned to the 24/3/2020. On 10/12/2021 Counsel for the Defendants moved Court by letter dated to close the file as the suit had automatically abated which was done on the 13/12/2021.

By letter dated the 28/03/2022, Counsel for the Plaintiff moved Court to reinstate the abated suit without due regard to the Civil Procedure (Amendment) Rules, 2019 which provides that once a suit abates, the only remedy available to the Plaintiff was to institute a fresh suit.

In Abdul Ddamulira Vs Mss Xsabo Power Limited HCMA No. 046 of 2021, Hon. Justice Oyuko Anthony Ojok in rejection of a preliminary objection held that, “The remedy once a suit abates under O. XIA Rule 7 of the Civil Procedure Rules as amended is to file a fresh suit subject to the law of limitation. Thus, the application for reinstatement of the suit is not tenable.

Though in the above cited case, the suit had abated under O. XIA Rule 7, the effect is the same as in the current case. I find the same is persuasive on the principle that reinstatement of the suit that abated where the law provides for bringing a fresh suit is not tenable.

The order for reinstatement of the abated suit is contrary to the law and as such an illegality. It is trite law that an illegality once brought to the attention of the Court overrides all considerations including pleadings and cannot be left to stand. This principle was upheld in the case of **Makula International Ltd Vs Cardinal Nsubuga SCCA No. 4 of 1981 [1982] UGSC 2**.

I thus hold that the reinstatement of the abated suit was illegal and cannot be left to stand and for which reason I herein expunge it from the Court record. I uphold the preliminary objection raised by Counsel for the Defendants. The Plaintiff can institute a fresh suit if he so desires.

There is no order as to costs.

I so order.

JUSTICE FARIDAH SHAMILAH BUKIRWA

16/11/2022

Ruling delivered by email.