

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

MISCELLANEOUS APPLICATION (REVISION) No. 22 OF 2023

(ARISING FROM CIVIL SUIT No. 010/2009:

5 THE CHIEF MAGISTRATE'S COURT HOLDEN AT KITGUM).

1. OYET SISTO OCEN

2. OKONGO GEOFFREY

3. LUKOYA ALEX

APPLICANTS

Versus

10 LODIK DANIEL WARREN

RESPONDENT

BEFORE HON. MR. JUSTICE PHILIP W. MWAKA.

RULING.

This Ruling arises from an oral Application to the Court by the Applicants, through their Counsel, praying for grant of leave to withdraw Miscellaneous Application No. 15 22/2023 which seeks Orders of Revision and other Orders under **Section 83 and 98 of the Civil Procedure Act, Cap. 71** in respect of the decision of the Chief Magistrate, Kitgum His Worship Nashiero Mwandha Robert Ekirita in **Civil Suit No. 010/2009: Lodik Daniel Warren Vs. Oroma Samuel and Madi Kiloc Primary School** dated the 31<sup>st</sup> day of August, 2023 committing the Applicants to 20 Civil Prison for Thirty (30) days for Contempt of Court Orders. The Applicants further prayed that the Court make no order as to costs.

The Application was in Court for the first time having been filed on the 4<sup>th</sup> September, 2023 - being the day before today's appearances. There was no indication on the file that service of the Application had been effected on the Respondent. 25 Neither were there any responsive pleadings on the file. The Main File of Civil Suit No. 010/2009 was obtained from the Chief Magistrate's Court, Kitgum.

P.W.M.

The Applicants were in attendance and represented by their Counsel, Mr. Brian Watmon holding brief for Mr. Okidi Ladwar. The Respondent was absent as was his Attorney.

30 At the commencement of the proceedings before the Court, Counsel for the Applicants informed the Court that the Applicants had had discussions with the Respondent prior to appearing before the Court and had agreed that Miscellaneous Application No. 22/2023 be withdrawn. Counsel for the Applicants promptly applied for leave to withdraw the Application with no order as to costs, though he  
35 was unable to cite the provision under which he sought the withdrawal. Suffice it to say that leave of Court to withdraw a suit is provided for by **Order 25 Rule 1(2) of the Civil Procedure Rules SI 71-1.**

**Decision of the Court.**

Having considered the Applicants' Application for leave of the Court to withdraw  
40 Miscellaneous Application No. 22/2023 and in the circumstances of the case, the Court is inclined to grant leave to withdraw Miscellaneous Application No. 22/2023 under the appropriate provision which is **Order 25 Rule 1(2) of the Civil Procedure Rules SI 71-1** since the matter had come formally before the Court and therefore **Order 25 Rule 1(1) of the Civil Procedure Rules SI 71-1** which applies  
45 in circumstances "*... before taking any other proceedings in the suit ...*" is consequently inapplicable.

**Order 25 Rule 1(2) of the Civil Procedure Rules SI 71-1** provides:

*"Except as in this Rule otherwise provided, it shall not be competent for the Plaintiff to withdraw or discontinue a suit without leave of the Court, but the  
50 Court may, before or at, or after hearing upon such terms as to costs, and as to any other suit, and otherwise as may be just, order the action to be discontinued or any part of the alleged cause of complaint to be struck out."*

See:

- 55 1. High Court Civil Suit No. 345/2015: Irene Namubiru Vs. Derrick Katongole & Catherine Kusasira. (Ruling of the Hon. Mr. Justice Christopher Madrama Izama).
2. Miscellaneous Application No. 01/2016 arising from High Court Civil Suit No. 018/2015: Enoth Mugabi Vs. Palm Developments (U) Ltd.
- 60 (Ruling of the Hon. Lady Justice Flavia Senoga Anglin).

Notwithstanding the shortcomings in service and other required procedures and processes in respect of Miscellaneous Application No. 22/2023, the Court is of the considered view that no prejudice is occasioned on the Respondent by the withdrawal of Miscellaneous Application No. 22/2023, more so in view of the

65 prompt withdrawal of the Application. On the contrary, the Respondent who was neither present in Court nor represented by an Attorney at the brief proceedings is spared the onerous burden of protracted litigation noting that the Main Suit was instituted in 2009. Each party shall therefore bear its own costs.

**Orders of the Court.**

70 Accordingly, the Court makes the following Orders: -

1. The Application for grant of leave to withdraw Miscellaneous Application No. 22/2023 is hereby granted and the Application stands withdrawn.
  2. Each party shall bear its own costs.
  3. The Main File Civil Suit No. 010/2009 shall be returned to the Chief
- 75 Magistrate's Court, Kitgum for any further action involving the Applicants and, or Parties.

It is so Ordered.

80 Signed, Dated and Delivered at the High Court, Gulu on the 5<sup>th</sup> day of  
September, 2023.



Philip W. Mwaka

Acting Judge of the High Court.

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**In Attendance.**

Ruling delivered on the 5<sup>th</sup> day of September, 2023 at 3:30 pm in the presence of: -

1. Mr. Brian Watmon, Counsel for the Applicants.
2. All Three (3) Applicants present in Court.
3. Ms. Florence Lokwi, Court Clerk.

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Philip W. Mwaka

Acting Judge of the High Court.

5<sup>th</sup> day of September, 2023.

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