

**THE REPUBLIC OF UGANDA**

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

**CIVIL SUIT NO. 36 OF 2021**

**(ARISING FROM ADM CAUSE NO. MFP 24/86)**

- 5
- 1. KATUNTU PATRICK BINTA**
  - 2. DAISY BINTA KABAYANJA**
  - 3. JULIET BINTA KABATUNGI ::::::::::::::::::::::::::::::: PLAINTIFFS**

**VERSUS**

- 1. WENCELAS KANKYA BINTASON**
- 10 (Admin. of the Estate of the late Paul Byairungu Bintabara)
- 2. UGANDA LAND COMMISSION**
  - 3. KAGORO ALLAN B**
  - 4. BASINGO KENNETH BINTA**
  - 5. THE ESTATE OF THE LATE BULANDINA BINTA KABOONESA**
- 15
- 6. BINTA ROSAIRE KASOJO**
  - 7. KYOGI ZACHARIA BINTA**
  - 8. BINTASON FAITH KABAJWISA**
  - 9. DESTINATION JUNGLE LIMITED**
  - 10. SANDE GLUEPOT PEKASA**
- 20
- 11. KAJALIGA ::::::::::::::::::::::::::::::: DEFENDANTS**
  - 12. RWAKABALE BINTASON BENEDICTO**
  - 13. KIFUMBA BINTASON MATHEW**
  - 14. RWAMUHOKYA ROBERT**
  - 15. BASINGO GODRIC**

**16.SANYU JAMADA**

**17.THE ESTATE OF THE LATE KABAGAMBE CHARLES**

**18.NYAKOOJO FRANCIS**

**19.MUGISA PETER**

5 **20.MAGEZI BINTASON**

**21.BALINDA CHRISTOPHER**

**22.MUGARRA JOSEPH**

**23.MUGAIGA LUUKA**

**BEFORE:HON. JUSTICE VINCENT WAGONA**

10 **RULING**

This ruling follows an oral application by Counsel Bwiruka Richard for the 3<sup>rd</sup>, 10<sup>th</sup> and 11<sup>th</sup> defendants and Counsel Muhumza Samuel for the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup> and 24<sup>th</sup> defendant to have the case dismissed on ground that the same had abated under Order 11A rule 1, 2 and 6 of  
15 the Civil Procedure Rules as amended.

Learned Counsel Mr. Bwiruka Richard submitted that the plaintiffs had not taken any steps as required under Order 11A rules 1, 2 and 6 of the Civil Procedure Rules as Amended by way of taking out summons for directions within 28 days from the date of the last pleadings. That Court should thus find that the suit abated.  
20 That in the alternative court should invoke Order 9 rule 22 of the Civil Procedure Rules to have the case dismissed for want of prosecution since the plaintiffs had not taken steps to have the case heard. He prayed that the case be dismissed with costs.

Mr. Muhumuza Samuel agreed with the prayer by counsel Bwiruka and also  
25 argued that in the event court declines to grant the prayer by Counsel Bwiruka to

have the case dismissed under Order 11A and 9 rule 22, then he prayed that the same should be dismissed under Order 17 rule 4 of the Civil Procedure Rules as amended since scheduling was supposed to be conducted within 6 months. That the last action on the file was in December 2021 and since then, the plaintiffs have not  
5 taken any step to prosecute the matter by way of taking out summons for directions or moving court to have the matter fixed for hearing. He thus prayed that the suit be dismissed with costs.

**Decision:**

Order 11 rule 1 provides that: *The court shall, for purposes of preparing for every  
10 action to which this rule applies, provide an occasion for consideration of a suit for a scheduling conference and trial of the suit so that— (a) any matter which should have been dealt with by an interlocutory application and has not been dealt with may, so far as possible be dealt with; and (b) directions may be given for the future course of action as appears best to be adapted to secure the just, expeditious  
15 and economical disposal of the matter.*

Rule 2 adds that: *Where a suit has been instituted by way of a plaint, the plaintiff shall take out summons for direction within 28 days from the date of the last reply or rejoinder referred to in rule 18(5) of Order VIII of these Rules.*

Rule 3 provides that *summons in sub-rule (2) shall be returned within fourteen  
20 days from the date they are taken out and 4 is to the effect that this rule applies to all actions instituted by way of a plaint, except— (a) an action in which the plaintiff or counterclaimant has applied for a default judgment under Order IX rules 6 and 7, summary judgment under Order XXXVI or where application for leave to file a defence under Order XXXVI is refused; (b) an action in which the  
25 plaintiff or defendant has applied under Order VI rules 29 or 30 or Order XV rule*

2 for determination of the suit on a point or points of law; (c) an action in which  
an order for the taking of an account has been made under Order XX; 1043 (d) an  
action in which an application for transfer to another division, court or tribunal  
has been made; or (e) an action in which a matter has been referred for trial to an  
5 official referee or arbitrator.

Rule 5 adds that: *in a case where discovery of documents is required to be made by  
any of the parties, the period of 28 days referred to in paragraph (2) may be  
extended either by order of court or on application of either party to the suit and  
rule 6 adds that if the plaintiff does not take out a summons for directions in  
10 accordance with sub-rules (2) or (6), the suit shall abate. Rule 7 provides that  
where a suit has abated under sub-rule (7), the plaintiff may, subject to the law of  
limitation, file a fresh suit.*

Rule 2 of the said order has been a point of debate in the legal circles specifically  
as to whether it is a mandatory requirement to take out summons for directions  
15 within 28 days from the date of the last reply or rejoinder and the effect of non-  
compliance.

In *Abdul Ddamulira Vs. MSS Xsabo Power Ltd, Misc. Application No. 46 of  
2021* arising from **Civil Suit No. 21 of 2020**, the Hon. Justice Oyuko Anthony  
Ojok gave the verb “shall” in the said order a strict meaning where in his view he  
20 stated that the said order imposes a mandatory obligation and that if no summons  
for directions are taken out after 28 days from the date of the last reply or  
rejoinder, the suit abates automatically.

The Hon. Lady Justice Florence Nakachwa in *Geofrey Waswa Vs. Amy for Africa  
Ltd & 2others, Civil Suit No. 127 of 2020*, on the other hand in her ruling on a  
25 preliminary point of law that the suit had abated under order 11A R 2 & 6 of the

Civil Procedure Rules as Amended attempted to give the contextual application of the verb “shall” in legislative sentences and she stated thus:

5           *‘Consideration of the principles governing shall in a legislative sentence in its ordinary significance, shall is a word of command. It is a word which should normally be given compulsory meaning because it is intended to denote an obligation. The auxiliary verb shall should be used only where a person is commanded to do something. However, shall is sometimes intended to be directory only. In that case, it is equivalent to May and would be construed as merely permissive to carry out the legislative intention. This usually applies in cases where no right or benefit accrues to any one where no public or private right is merely impaired by its interpretation as directory’*

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The Hon. Lady Justice Olive Kazaarwa Mukwaya in *Kagimu Moses Gava & 7 other Vs. Sekatawa Muhammad and 11 others, Civil Appeal No. 25 of 2020* arising from **Civil Suit No. 145 of 2020** while interpreting the implications of Order X1A Rules 2 and 6 she stated at page 8 thus:

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20           *“It is this court’s opinion that the intention of the framers of Order XIA rule 1 of the Civil Procedure Amendment Rules 2019 was to mitigate the delays and inefficiencies brought on by the actions of officers of court and the parties in civil proceedings. In order that these rules achieve the desired objective, a holistic and judicious approach to their application should be adopted by the courts”.*

In *Gama Distillers Ltd Vs. Bikanza Ezra, Civil Suit No. 60 of 2021*, this court observed thus:

*“From the reading of the entire Order XIA of the Civil Procedure (Amendment) Rules 2019, what comes to my mind is that the order was intended to speed up trial by curtailing unnecessary delays. It was not intended to be used as a sword against parties’ live claims by strangling all under the guise that summons for directions procedure was not strictly adhered to. Each case should be considered on its own merits and peculiarities. It is my humble view that the application of the said order should not be a universal one but should be applied on a case by case basis.”*

10 In this case I have perused the record of court in Civil Suit No. 36 of 2021 and found that the plaintiff filed the suit on 17<sup>th</sup> September 2021 and summons were issued by court on 22<sup>nd</sup> September 2021. The last defense was filed on 21<sup>st</sup> October 2021. The plaintiff filed Misc. Application No. 78 of 2021 for a temporary injunction on 20<sup>th</sup> September 2021 and the same was determined on 8<sup>th</sup> December 15 2021. Since the last written statement of defense on 21<sup>st</sup> October 2021, and the determination of Misc. Application No. 78 of 2021, the plaintiffs and their Counsel did not take any step to have the case heard or even take out summons for directions as required under the Civil Procedure Rules as amended.

Further, even after Counsel for the plaintiffs having acknowledged that the case 20 was fixed by court for mention neither the plaintiffs nor their lawyer appeared. To add to the aforementioned, even after the plaintiffs’ Counsel being in full cognizance that the point of law at hand was raised, no effort was made to file a reply or make efforts out of time to take out summons for directions. In my view the plaintiffs and their Counsel have demonstrated a remarkable level of 25 negligence and lack of interest in having the case heard.

In the premises, I am inclined to invoke the provisions of Order XIA rules 2 and 6 of the Civil Procedure (Amendment) Rules 2019 to find that this suit abated and the same is hereby dismissed with costs to the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> defendants.

5 It is so ordered.

Vincent Wagona

**High Court Judge**

10 **FORT-PORTAL**

**17.02.2023**