

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA SITTING AT ARUA  
CIVIL APPEAL NO. 0016 OF 2021

1. MATIA ODEBA
2. WOKORACH ALDO
3. OKWONG IJINO
4. WATHUM ONGIER ..... APPELLANTS
5. OVON OWACHI. W
6. WATHUM OWACHI ALFRED  
*(Suing on their own behalf and  
on behalf of 327 others*

VERSUS

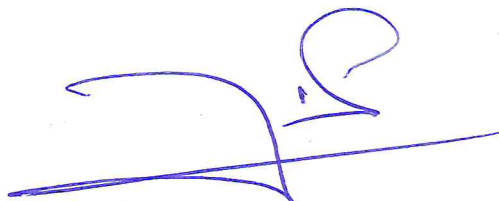
1. BARBARA AMONY ORYEMA
2. SANDRA ORYEMA
3. ROSA ORYEM ..... RESPONDENTS  
*(Administrators of the Estate of the late Peter Oryema Gwokto)*

BEFORE: Hon. Justice Isah Serunkuma

RULING

The plaintiffs brought this suit in their own capacity and on behalf of 327 others against the defendants, as administrators of the estate of the late Peter Oryema Gwokto and in their own capacity for declarations that;

- a) A declaration that the late Peter Oryema Gwokto fraudulently acquired a leasehold certificate of title over the plaintiffs' land (now the suit land).
- b) A declaration that the plaintiffs are the lawful owners of the disputed land.
- c) An order for cancellation of the leasehold certificate of title issued to the late Peter Oryema Gwokto.
- d) General damages.



## **Background**

The plaintiff's case is that the disputed land has at all times belonged to Lwalo clan, the family of the late Sambu Dominico Ongwech and their fore fathers who have occupied the land customarily for over 3 to 4 generations. The Lwalo clan migrated from Ramogi Acholi and acquired the disputed land from the late Rwot Lei of Ragem Koch kingdom and have since been in occupation of the same since 18<sup>th</sup> century. Around 2017, the defendants claimed approximately 186 hectares of the disputed land which covers 3 villages falsely alleging that the same belonged to their late father Peter Oryema Gwokto.

The defendants embarked on selective evictions of some of the community members by instituting civil and criminal cases in Nebbi and Pakwach courts. The plaintiffs discovered that the defendants had fraudulently acquired a leasehold certificate of title comprised in LRV1980, Folio 25, Block 4, Jonam County, Nebbi District affecting over 333 villagers.

## **Representation.**

Counsel Paul Abiti of M/S Mugeru, Kusasira & Co. Advocates represented the appellants; while Counsel Jude Ogik of M/S Ogik & Co. Advocates represented the respondents.

## **Preliminary objection**

Before the commencement of the hearing, the defendants raised a preliminary objection through a letter dated 26<sup>th</sup> November 2021 and argued that the plaintiffs took out the summons for directions on 10<sup>th</sup> November 2021 and served the defendants on 26<sup>th</sup> November 2021 contrary to Order 11 A rule 1(3) of the Civil Procedure (amendment) Rules, 2019, which requires the same to be returned to court within 14 days of taking summons out.

The respondent filed written submissions in reply to the preliminary objection on the invalidity of the summons for directions. In their submissions, the defendants argue that Order XI A r. 1(3) of the said rule has no penalty for failure to return the summons to court within 14 days. That the rule was meant to aid court in case management and to ensure expeditious hearing of cases and not to act as a weapon to an adverse party. Counsel relied on the decision in **Geoffrey Wasswa Vs Army for Africa Ltd; Civil Suit No. 0127 of 2020** in which it was held that the intention of the framers of Order XI A 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.



I have carefully considered the submissions of the parties and the authorities relied on.

According to **Order 6 rule 28** of the Civil Procedure Rules, a point of law that is pleaded which when so raised is capable of disposing of the suit, may then by consent of the parties, or by order of the court on the application of either party, be set down for hearing and disposed of at any time before the hearing. (See also: **Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd [1969] EA 696**).

It is trite law that points of law can be raised at any stage of the proceedings as per the holding of *Hon. Mr. Justice Bashaija K. Andrew* in the case of **Mathias Lwanga Kaganda v. UEB; HCCS No. 0124 of 2003**.

The defendant's preliminary objection is premised on the summons for directions that were not returned within 14 days as stipulated under Order XI A rule 1 (3) of the Civil Procedure Amendment Rules, 2019.

Order XIA rule 1(3) of the Civil Procedure Amendment Rules 2019 provides for the return of Summons for Directions as follows;

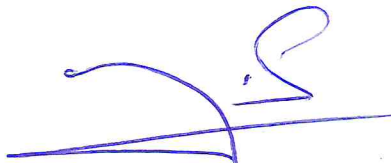
*“ORDER XIA— SUMMONS FOR DIRECTIONS*

*1. Summons for directions.*

*(3) The summons in sub rule (2) shall be returned within fourteen days from the date they are taken out”.*

This court has extensively discussed the wording of this rule with the use of the word ‘shall’ in the case of **Geoffrey Wasswa Vs Army for Africa (Supra)**. In that case, it was held that ‘shall’ is sometime 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. Likewise, in **Kagimu Moses Ggava and Others Vs Sekatawa Muhammad and Others; HC Misc. Appeal No. 0025 of 2020**, Lady Justice Olive Kazaarwe Mukwaaya held that;

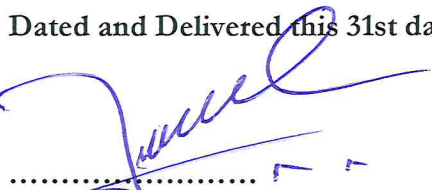
*“The intention of Order XIA rule 1(3) of the Civil Procedure Amendment Rules 2019 was to mitigate delays and inefficiencies brought on by the actions of officers of court and parties to civil proceedings. In order that these rules achieve the desired objective, a holistic and judicious approach to their applications should be adopted by the courts”.*



I find no reason to depart from the above decisions on the subject before me. Failure to return the summons within 14 days does not render the summons invalid. The preliminary objection is thus overruled. This application is accordingly dismissed. Costs shall abide the main cause.

**I so order**

**Dated and Delivered this 31st day of March 2023.**



.....  
**Isah Serunkuma**

**JUDGE**