

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

**MISC. APPLICATION NO. 775 OF 2014
(ARISING FROM CIVIL SUIT NO. 127 OF 2007)**

ETIMA IDDI RAMADAN VEVE & ANOR APPLICANT

VERSUS

**THE BOARD OF TRUSTEES OF KAMPALA
CATHOLIC ARCHDIOCESE & 12 ORS..... RESPONDENTS**

RULING

BEFORE LADY JUSTICE EVA K. LUSWATA

This is an application presented by motion under S.98 CPA, order 24R. 3(1) & (12) and order 52 R. (1) & (3) CPR by which the applicants seek for an order to reinstate Civil Suit No. 127/07 (hereinafter called the main suit), the substitution of the applicants for the plaintiffs in the main suit, stay of execution of the decree in the main suit against the 4th, 8th& 10th respondents and costs of the application. The grounds of the application were contained in the motion and arguments in the affidavit of Maka Madinah, the 2nd applicant and are briefly as follows;

That the applicants are beneficiaries of the estate of Lukiya Rajab the plaintiff in the main suit who died on 10/12/13 and the applicants were in the process of obtaining Letters of Administration in respect of her estate. It was for that reason that the plaintiff could not in her natural capacity attend hearing of the suit, a fact well known to the respondents' lawyers but who still went ahead with the matter. That the 2nd applicant was absent in court when the case was called up for hearing because he had travelled to Arua and the 2nd applicant was unable to attend because she fell sick as a result of an early pregnancy and was unable to avail to court a copy of the death certificate as previously directed court. That her illness persisted which resulted into her absence in court as the only party present in Kampala. In addition, she was not able to get in touch with her lawyers in order to represent her on the day the suit was dismissed. She argued further that the dismissed suit had high chances of success.

Ms Maka further stated that the 4th, 8th & 10th respondents had extracted a decree in the main suit and filed their bill of costs for taxation an indication of their intention to execute the decree

against the applicants as the representatives of the plaintiff's estate which would render the main suit nugatory.

Only the 4th respondent filed an affidavit in reply through Mary Katusiime her Ag. General Manager. She stated that although the 1st applicant was ordered by court to file certain documents and amend their pleadings, they failed to do so and without lawful excuse or explanation, did not attend court on 31/3/14 when the matter was called for hearing. She contended that the applicants were served with the decree and bill of costs on 12/6/14 and filed this application in July 2014. That there has been inordinate delay to attempt a re-instatement of the main suit and the applicants have not shown that their suit has a likelihood of success. In his affidavit in rejoinder, the 2nd applicant generally supported the evidence of the 1st applicant.

When this application came up for hearing on 12/12/14, counsel for the applicants furnished proof of service upon all the respondents. I was satisfied with the affidavit of service of Owora Stephen indicating such service and thereby set down the matter for hearing *ex parte* against the respondents under O.11 R.1 & 2 CPR. Counsel for the applicant then prayed and I agreed to make a ruling basing myself upon the pleadings filed.

In order to make a fair judgment in this matter, I have found it necessary to refresh my mind of previous orders preceeding dismissal of the main suit. On 17/12/13, it was reported by the plaintiffs' counsel that the plaintiff had passed on, on 10/12/14 but there was at that time, no proof of death. Counsel applied for an order to permit them amend the plaint to substitute the plaintiff with the administrators of the plaintiff 'estate after a death certificate had been procured and Letters of Administration obtained. I did order then that, proof of death should be filed in court by 15/1/14 and that an amendment of the plaint would be allowed only on condition that proof of death was filed with court not later than 31/1/14 and the matter was then adjourned to 31/3/14. On 31/3/14, neither the plaintiffs nor their counsel appeared in court and upon prompting from counsel for the respondents, I confirmed that none of my previous orders had by then been satisfied and thereby at that point, court still lacked the necessary information to prove the plaintiff's demise. I then dismissed the suit for lack of prosecution under 0.9R.22 CPR.

Before I embark on considering the evidence presented, I need to point out that this application was presented under the wrong law. A party seeking to reinstate a suit dismissed under 0.9 R.22,

would seek not merely for reinstatement but for setting aside the dismissal under 0.9 R.23 CPR. If successful, this would automatically mean reinstatement of the suit. However, judging from their affidavit evidence, the intentions of the applicants are clear, and I choose to treat that as a mere technicality. Therefore, basing myself on the provisions of Article 126(e) of the constitution consider the application as one for setting aside a dismissed suit.

It is trite that a court will readily reinstate a dismissed suit where the applicant has furnished sufficient evidence explaining their absence and such evidence should entail facts indicating that the applicant had a serious intention of attending court to prosecute their claim but were for sufficient reasons prevented from doing so. See for example **Motor Mart (a) Ltd Vs Yona Kanyomozi SCA No.6/99 and NIC LVs Mugenyi &Co. Advocates (1987) HCB 28.**

According to Ms Maka, her brother entrusted her with the plaintiff's death certificate and other documents for presentation to the Court because he was travelling to Arua. She was therefore the only family member present in Kampala to prosecute the main suit but was unable to appear in court because of illness precipitated by an early pregnancy which resulted into persistent bed rests and therefore failure to communicate with her lawyers to avail them with the required documents. Conversely, the 4th respondent argued that the applicants failed to carry out any of the previous orders of the court, failed to appear in court, and had not been diligent in their attempts to reinstate the main suit.

In an affidavit in rejoinder, Veve the 1st applicant argued that the application has been filed less than four months since the dismissal which is not inordinate delay. He supported the evidence of the 2nd applicant regarding her illness and further stated that he only became aware of the dismissal in June 2014 when his lawyers were served with the application for taxation and thereby immediately instructed his lawyers to request for the record of the proceedings. He argued further that the applicants could not take a vital step in the suit before obtaining Letters of Administration which was the only document that could give them locus in that regard.

Attached to the 2nd applicant's affidavit were a host of documents including medical forms one which was issued by the Ministry of Health on 5/1/14 indicating her ailing from malaria in pregnancy with symptoms of vomiting and loss of appetite with directions that she takes "a lot of bed rest." I notice that there was no serious challenge from the respondent with respect to the

evidence adduced to explain the plaintiff's absence. The thrust of the respondent being that the applicant neglected to carry out my previous orders and also that there was inordinate delay to file this application.

I am unable to tell from the medial reports attached of the gravity of Ms Maka's illness but it is clear that she was being treated as an outpatient an indication that she was able to travel to and from the medical facility for some time. She appeared to have received her first treatment on 5/1/14 yet this matter came up for hearing and was dismissed on 31/3/14 nearly three months after. It is inconceivable that during that period she was unable to contact either the 1st applicant or her lawyers of her condition and required them to appear in court to prosecute the case. It was also negligent of the 1st applicant not to follow up on the case for such a considerable period of time until notification that it had been dismissed and the decree fixed for taxation.

The above notwithstanding, in my view the presence or absence of the applicants on 31/3/14 would not have done much to take this case forward because by then, they still had not yet obtained Letters of Administration and could not have any impact on the suit. Even then, their conduct after learning about the dismissal of the main suit cannot be deemed negligent for within a period of three months, they had filed the application for reinstatement. In their communication on 6/1/15, counsel for the applicants informed court that Letters of Administration in respect of the deceased's estate were on 8/8/14 granted to the applicants. A certified copy was attached to that communication. The applicants now are here and therefore in good stead to take up the position of the plaintiff in the main suit. They have showed willingness to prosecute the plaintiff's claim, and should be allowed to do so.

The right to be heard is a cardinal principle in our law which this court will not ignore and the court thus allows the application, sets aside dismissal of Civil Suit No.127 of 2007 and its reinstatement on the records.

Since there is sufficient evidence that the applicants are now the official administrators of the deceased's estate, I also allow the second prayer and order that the applicants be substituted for the plaintiff in the main suit.

No sufficient evidence was put before me to show that there was an application for execution of the decree in the main suit or even imminent execution. I therefore decline to make an order for

stay of execution. In any case, setting aside of the decree in the main suit should take care of that imagined danger.

Following my orders above, and in order to expedite hearing of this case, the applicants are allowed 14 days from the date of this order to file and serve an amended plaint upon the defendants.

This being a reinstatement, no order is made with regard to costs of this application.

I so order.

EVA K. LUSWATA
JUDGE
17/03/15