

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISC. APPEAL NO. 25 of 2020
(ARISING FROM CIVIL SUIT NO. 145 of 2020)

- 1. KAGIMU MOSES GAVA**
- 2. BUWEMBO FAROUK**
- 3. KALUNGI ABDUL**
- 4. NAMUGGA MANIHURAH GAVA**
- 5. NAKAWOOYA NUSFA**
- 6. NAKAYIZA AISHA**
- 7. NALUKENGA REHEMA**
- 8. NAJJINGO MADINA----- APPELLANTS**

V

- 1. SEKATAWA MUHAMMED**
- 2. MUKUBIRA FRED**
- 3. ERIC BYARIZIMANA**
- 4. AZAM BAKABULINDI**
- 5. ISAAC KABUYE**
- 6. MAGEZI ELIAS**
- 7. NAMUYANJA GORRETI**
- 8. NAMBERERE CATHY**

9. NAMBIRIGE RUKIA

10. AMINA NASSOLO

11. JOHN MUKALERA

12. NAKALULE UMAIMA

13. KASULE RAMADHAN GAVA----- RESPONDENTS

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

This appeal was brought under 0.50 r 8, 52 r 1 and 3 of the CPR, S.98 Civil Procedure Act Cap 71 seeking orders that;

1. The ruling and orders of the Deputy Registrar granted on the 23rd day of September, 2020 vide High Court Civil Suit No.145 of 2020 be set aside.
2. Costs of the application be provided for.

Background to the Appeal

The Appellants filed High Court Civil Suit No. 145 of 2020 against the Respondents for recovery of land comprised in Kyadondo Block 273 Plots 7011, 7012, 672 and 6724 land at Katuso/ Buziga. On the 19th day of March, 2020, the Appellants filed Miscellaneous

Application No. 411 of 2020 arising out of High Court Civil Suit No. 145 of 2020 seeking 15 for discovery of documents from the Commissioner Land Registration.

On the 7th August 2020, the learned Deputy Registrar, endorsed the summons for the hearing of Miscellaneous Application No. 411 of 2020 which was heard and granted on the 25th September 2020 before this court.

In a letter dated 28th August 2020, Counsel for the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, and 13th Defendants, had written a letter to the Registrar of the court seeking abatement of Civil Suit No. 145 of 2020 under Order XIA of the Civil Procedure Amendment rules 2019, on grounds that the Plaintiff/ Appellant had failed to take out summons for directions 25 in accordance with Order XIA of the Civil Procedure Amendment rules, 2019.

In an order dated the 23rd day of September, 2020, the learned Deputy Registrar ruled that High Court Civil Suit No. 145 of 2020 had abated, hence this appeal.

Also noteworthy is that on the 24th September 2020, court received an application for default judgment from the Plaintiffs as against the 1st and 3rd Defendants/ Respondents. The Appellants' appeal is based on the following grounds as set out in an affidavit in support sworn by the 5th Appellant, Ms. Nakawooya Nusifa which are briefly that;

- a) The learned Deputy Registrar misdirected herself in finding that High Court Civil Suit No. 145 of 2020 had abated while there was a pending application for recovery of documents.
- b) The learned Deputy Registrar did not properly evaluate the evidence on Court file before she ordered the suit to be abated.
- c) The learned Deputy Registrar did not exercise her discretion judiciously in view of Order XI (A) r 1(5) of the Civil Procedure Rules as amended.
- d) That it is in the interests of justice that the appeal be allowed and the learned Deputy Registrar's Orders are set aside.

Respondent's Reply

The 2nd respondent, Mr. Mukubira Fred opposed the appeal. He laid out the reasons for his objection in his affidavit in reply as follows;

- a. The application is frivolous, bad in law and should be dismissed because the appellants do not have the locus standi to bring this application since the original suit abated and all they ought to do is file a fresh suit.
- b. The Applicants filed the main suit No. 145 of 2020 against him and the rest of the

Respondents on 21st February 2020 and summons were extracted on the 25th of February, 2020.

- c. The 4th to 13th Respondents filed their Written Statement of Defence on the 11th day of March 2020 and thereafter no rejoinder nor further step was ever taken by the said Applicants/Plaintiffs.
- d. The Applicants did not take out Summons for Directions from that time up to date as required by the law.
- e. The Applicants were not party to Miscellaneous Application, No.411 of 2020 filed by the Respondents on the 19th March 2020 and neither were they served with the same. In any case, the 2nd Respondent averred that he had been informed by his advocates that discovery of documents is not an exception to the rule that requires Summons for Directions.
- f. He was further informed by his lawyers that once a suit abates the Applicants' only remedy is to file a fresh suit but not reinstatement of the abated suit.
- g. Further it is the mandate of the Applicants/Plaintiffs to take out Summons for Directions and not court and it is false to allege that courts were in operational due to the COVID 19 lockdown.

Mr. Matovu Isaac, a legal Assistant working in the office of Counsel for the 4th to the 13th Respondents; i.e. M/S Kirumira & Co. Advocates also filed an affidavit in reply reiterating the objections of the 2nd Respondent.

Only Counsel for the Appellants filed written submissions in this matter which I have taken into account. He suggested one issue for the resolution of the court which I shall resolve.

Issue

Whether the learned Deputy Registrar misdirected herself in finding that High Court

Civil Suit No. 145 of 2020 had abated under Order XI(A) rr1(5) of the Civil Procedure Amendment Rules 2019?

RESOLUTION

Order XIA rule 1(2) of the Civil Procedure Amendment Rules 2019 provides for the taking out of Summons for Directions where a suit has been instituted by way of a plaint as follows;

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

Order XIA rule 1(4) provides for five exceptions to rule on taking out Summons for Directions as follows;

4 a. 'an action in which the plaintiff or counterclaimant has applied for default judgment Order under 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 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 of law or points of law;*

c. *an action in which an order for the taking out of an account has been made under Order XX;*

5 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 official referee or arbitrator.*

Order XIA rule 1(5) goes on to provide as follows;

“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”.

Counsel for the Appellants submitted that there were two exceptions demonstrated by the

facts in the appeal before this court The first relating to an application for default judgment and the second to a pending application for discovery. As far as this court could ascertain, none of the five exceptions under Order XIA rule 1 (4) existed in the instant case. The application for default judgment against the 1st and 3rd Defendants filed by the Appellants was received by the court on the 24th September 2020, a day after the order for abatement of the suit was issued by the learned Deputy Registrar, she therefore was not privy to it on the date the order for abatement of the main suit was made.

It is a fact however that the application for discovery was filed on the 19th March 2020.

The learned Deputy Registrar of the court was aware of the application because she issued notice of this application on the 7th August 2020 for its hearing on the 25th September 2020. The 2nd Respondent rightly averred that none of the Respondents were party to that application and therefore could not be aware of it.

When the letter dated 23rd August 2020 was written to the court seeking abatement of the suit in grounds of failure by the Appellants to take out Summons for Directions, it was the duty of the learned Deputy Registrar to study the file and establish whether there existed any exceptions to the filing of Summons for Directions under Order XIA rule 1(4). In this case there were none. Having done that, the next step was to establish whether there existed any further impediment to the filing of the Summons for Directions. It was at this point, that the existence of Miscellaneous Application 411 of 2020 arising out of the suit

sought to be abated became relevant. The application was pending hearing before the trial judge, in fact, the hearing date was only two days away.

In this court's view Order XIA rule (1) (5) ought to have been given due consideration by the learned Deputy Registrar. The sub rule empowers the court to extend the 28day period on its own motion in a case where discovery of documents is required to made by any of the parties. It was not relevant that the Respondents were not party to the application for discovery. The duty lay upon the court to consider the Respondents' prayer for abatement of Civil Suit 145 of 2020 in light of the pending application for discovery with a view to extend time and allow for the disposal of the application. The failure by the learned Deputy Registrar to take into account the Appellants' pending MA 411 of 2020, for discovery, and allow for extension of time within which to file the summons for directions, rendered the order for abatement of the main suit premature, irregular and improper.

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 conclusion, I find that the learned Deputy Registrar misdirected herself on the finding that High Court Civil Suit No. 145 of 2020 had abated under Order XI(A) rule1(5) of the Civil Procedure Amendment Rules 2019. Appeal is allowed and I order as follows;

- 1. Appeal is allowed.**

2. The order for abatement of HCCS No. 145 of 2020 dated 23rd September 2020 is null and void and set aside accordingly.
3. Costs shall be in the cause.

.....

Olive Kazaarwe Mukwaya

JUDGE

11th January 2021

Delivered by email to Counsel for the parties.