

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 192 OF 2019
(ARISING FROM CIVIL SUIT NO.285 OF 2018)

MUHAMMED NJAGALA-----APPLICANTS

VS

1.MUTUMBA ANDREW

10 2.JOHN KAYONDO

3.NAKAMATE OLIVE-----RESPONDENTS

**(Administrators of the Estate of the
Late Eria Mukasa Busulwa)**

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

15 RULING

This motion is brought by Mr. Muhammed Njagala, the Applicant under Section 98 of the Civil Procedure Act Cap 71, Order 52 Rule 1, (2), 3, Order 17 Rule 5 of the Civil Procedure Rules SI 71-1 seeking an order that Civil Suit No. 285 of 2018 be dismissed for want of prosecution and that costs be provided for.

20 According to Mr. Njagala's affidavit in support of the application, the Respondents have taken no further step toward the prosecution of this application for 6 months since the Respondents were served with his defence on the 29th May 2018.

The Respondents filed an affidavit in reply sworn by the 1st Respondent, Mr. Mutumba Andrew. He averred that the Respondents were interested in the prosecution of Civil Suit No. 285 of 2018. They filed a notice of change of Advocates on the 2nd October 2020, an application for a temporary injunction in MA 1259 of 2020 on the 15th September 2020 and an application for the interim injunction under MA 1260 of 2020 on the 15th/9/2020. Mr. Mutumba argued that their plaint discloses a cause of action and substantive justice would demand that the main suit is set for hearing and determined on its merits.

In rejoinder, the Applicant averred that this application has merit and it will dispose of the main suit. He pointed out that Civil Suit No.285 of 2020, referred to by the Respondents is not in issue before this Court and prayed that this application be granted and Civil Suit No. 285 of 2018 be dismissed for want of prosecution.

Counsel for the parties filed written submissions and I have considered them.

Issue

Whether the Civil Suit No. 285 of 2018 ought to be dismissed for want of prosecution?

RESOLUTION

Order 17 rule 5 of the Civil Procedure Amendment Rules 2019 provides as follows;

5. *Dismissal of suit for want of prosecution.*

(1) In any case, not otherwise provided for, in which no application is made or step taken for a period of six months by either party with a view to proceeding with the suit after the mandatory scheduling conference, (emphasis mine), the suit shall automatically abate; and

(2) Where a suit abates under sub rule (1) of this rule, the plaintiff may, subject to the law of limitation bring a fresh suit.

It is my understanding that under Order 17 rule 5 of the Civil Procedure Amendment Rules 2019, the six- month period only begins to run after the mandatory scheduling conference has been held between the parties and not before. It is a fact that no further
5 step was taken by the Respondents after they were served with the Applicants' Written Statement of Defence on the 29th May 2018. However, the provisions of Order 17 rule 5 only come into operation after the parties have concluded their mandatory scheduling conference.

This provision is intended, in my opinion, to require that the parties commence the
10 hearing of the suit within a six months' period after the mandatory scheduling conference is held. The exception to this six- month deadline is the existence of a pretrial application or other pretrial step taken by either party. Since no mandatory scheduling conference has been held by the parties in this suit, it is my view that there is no merit in this application.

15 **In conclusion, I find that the circumstances of this application do not warrant its dismissal for want of prosecution under Order 17 rule 5 of the CPRs as amended. This application is accordingly dismissed with costs in the cause.**

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Olive Kazaarwe Mukwaya

JUDGE

9th April 2021

Delivered by email to Counsel for the parties.