

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

MISC. APPLICATION NO 1495 OF 2020

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(ARISING OUT OF CIVIL SUIT NO.231 OF 2013)

1.ONESMUS BAKANGA

2.SECASIE BAKANGA -----APPLICANT

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V

UGANDA ELECTRICITY DISTRIBUTION CO.LTD-----RESPONDENTS

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

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RULING

The Applicants' suit, Civil Suit 231 of 2013 was dismissed for want of prosecution by this Court on the 28th August 2020. This is an application to set aside the dismissal brought under section 98 of the Civil Procedure Act, section 33 of the Judicature Act, Rule 4 of the Civil Procedure Rules Amendment Rules 2019 and Order 52 Rule 1 of the Civil Procedure Rules S.I- 71-1.

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Background

This suit has a short and uncomplicated history. Mr. Onesmus Bakanga and Ms. Secasie Bakanga; the Plaintiffs/ Applicants, sued the Uganda Electricity Distribution Company Limited, the Defendant/ Respondent on the 21st May 2013. Pleadings were closed on the 23rd October 2013, when the Plaintiffs filed their Reply to the Written Statement of

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Defence. The Court record indicates that on the 18th March 2014, Counsel for the Plaintiffs M/s Blaze Babigumira Solicitors & Advocates wrote a letter to the court requesting a hearing date for the suit. Several years later, at court's instance, hearing notices were issued for the parties to appear on the 28th August 2020. Only Counsel for the Respondent appeared. When she made a prayer for dismissal of the suit for want of prosecution, this court, upon perusal of the record, granted that prayer. The Applicants seek to have the suit reinstated.

Applicants' Claim

The Plaintiffs' explained that the gaps/lapse in the prosecution of their suit arose following the illness and subsequent death of their advocate, the late Blaze Babigumira. They presented several letters to prove that they were interested in the prosecution of their suit. 'C2' is a letter dated 16th May 2014, authored by Counsel for the Plaintiffs to Counsel for the Defendant seeking to have the matter settled by arbitration. 'C3' is a letter dated 24th February 2014. It is a reminder to the Registrar of the Court for re-fixing of the case (for hearing). According to the letter, the initial request was made on the 27th November 2013. "C4" is another letter to the Registrar dated 16th October 2015 requesting for a hearing date and proposing the 16th or 17th December 2015 as available dates.

According to the Plaintiffs, the late Blaze Babigumira informed them that he was in negotiation with the Defendant, which was a big institution and therefore, the process took time. Following the death of their advocate, his chambers were closed. When this court issued hearing notices, the Plaintiffs could not be reached as a result. But they have at all times been interested in the prosecution of their suit.

Respondent's Reply

The Respondent in reply averred that no sufficient reasons have been given by the Plaintiffs to explain why they failed to prosecute their suit between October 2015 and 28th August 2020, when it was dismissed. Ms. Esther Mulyagonja, Company Secretary to the Respondent, in her affidavit in reply denied the ongoing negotiations between the parties toward an out of court settlement. She added that even if such negotiations were taking place, they could not have prevented the prosecution of the suit. Ms. Mulyagonja further averred that the late Blaze Babigumira was personally known to her and she was aware that he passed on sometime in March 2020. Between the time of his passing and the last action on the file was a period of 5 years. And this was inexcusable and a demonstration of inordinate delay therefore the court was right and justified in dismissing the suit.

Applicants' Rejoinder

The Applicants' reiterated their prayers and added that they are lay persons, not accustomed to court processes, who totally relied on the advice of their legal Counsel to guide them on the developments in the matter including how and when to have the same fixed for hearing. They added that they had sufficiently explained the grounds for failure to prosecute the suit and urged this court to grant the prayers sought in the application.

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Both parties' Counsel filed submissions in this matter which I have appraised myself of.

Issue

25 **Whether Civil Suit 231 of 2013 ought to be reinstated by this court?**

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, the suit shall automatically abate; and*

5 (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.*

I am satisfied that the Applicants have demonstrated that they had every intention to prosecute this suit up until 2015, as indicated by documentary evidence contained in,
10 Annexures; ‘C2’, ‘C3’ and ‘C4’ to the application. ‘C2’ is a letter proposing arbitration. If arbitration was agreed to, commenced and concluded there ought to have been evidence of those proceedings. Mr. Onesmus Bakanga averred that he retrieved his file from his deceased advocate’s widow and this information should have been present on it. Since it was not, court could safely conclude that it never took place. And this would
15 explain the subsequent requests to fix a hearing date in ‘C3’ and ‘C4’.

It is gravely unfortunate that Mr. Blaze Babigumira died but his death occurred in March 2020. There was no explanation for the Applicants failure to prosecute this suit for 5 years, prior to their advocate’s death. At the very least, the mandatory scheduling
20 conference should have been conducted between the parties. The averment that the Applicants were lay people who totally relied on their advocate does not explain the 5-year period of taking no court action. This would imply that they continued to pay legal fees for an intangible and immeasurable service, for 5 whole years, a situation this court finds implausible.

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In my view, at all times, this suit remained the responsibility of the Applicants to sustain and prosecute to its logical conclusion. Instead, the suit remained stagnant for five years and was rightfully dismissed following its abatement.

In conclusion I find no sufficient grounds to grant a reinstatement of this suit. This application is dismissed with costs to the Respondent.

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Olive Kazaarwe Mukwaya

Judge

10 **9th April 2021**

Delivered by email to Counsel for the Applicants and the Respondent.