

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMAPLA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 497 OF 2022
(ARISING FROM CIVIL SUIT NO. 685 OF 2017

IRAN-UGANDA TRADE AND INVESTMENT
PROMOTIONAL SERVICES LTD ::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS
UGANDA INVESTMENT AUTHORITY::::::::::::::::::::::::::::::::: RESPONDENT
BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

RULING:


This is an application brought under **Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, Order 9 rule 18 and Order 52 of the Civil Procedure Rules.**

The applicant is seeking for orders that:-

- (i) The order dismissing **H.C.C.S No. 685 of 2017** be set aside and the suit be set down for hearing on its merits.
- (ii) The costs of the application be provided for.

The application is supported by the affidavits of Wycliff Mulindwa and Joan Namanya who depose inter alia:-

- (i) That the applicant filed **H.C.C.S No. 685 of 2017** seeking for declarations and orders on land comprised in **Kyadondo Block 234 Plot 5020 land at Namanve.**


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(ii) That the applicant is in possession of the suit land and has invested immensely in developing it.

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(iii) That the suit came up for hearing on the 10th January, 2022 and the same was dismissed in the absence of all the parties.

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(iv) That the applicant and their legal representatives were not served and/or aware of the hearing date of 10th January, 2022.

(v) That the applicant will suffer gross injustice, loss and will be denied the right to be heard if the application is not granted.

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(vi) That the respondent will not be prejudiced in anyway whatsoever if this application is granted and the suit is heard on its merits.

(vii) That it is in the interest of justice that this application is granted.


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In their affidavit in reply affirmed by Hamza Galiwango the Director Land Development Division of the respondent, he affirms inter alia:-

(i) That he is advised by the respondent's lawyers that the application lacks merit and is frivolous, vexatious and an abuse of court and ought to be dismissed because of the following:-

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(a) That the dismissed suit was filed in April, 2017 and has been in court for close to five years during which the applicant did not demonstrate the required diligence in either prosecuting it or


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having it resolved as exemplified by sporadic attendance of the court sessions.

55 (b) That on 19th January, 2018, the applicant obtained a temporary injunction and thereafter for two years from January, 2018 to 7th July, 2020, the applicant did not take any step to prosecute the suit or have it mediated as had been directed by the court.


60 (c) That on the 7th July, 2020 when the suit was called for hearing, it was referred to mediation whereupon it was adjourned to 10th September, 2020 for mention.

(d) That two mediation session were held on the 18th August, 2020 and on 7th September, 2020.

65 (e) That the applicant only appeared for one session where it was agreed that it applies for a lease for another piece of land which the respondent could consider allocating it.

70 (f) That on 10th September, 2020 when the suit was called for mention, the applicant prayed to court for time to make a fresh application to the respondent for land. That the suit was fixed for mention on 12th November, 2020 but the applicant did not appear in court on that day.

75 (g) That on the 24th November, 2020 the mediator fixed the suit for mediation and summoned all the parties but the applicant did not appear on that day.


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(h) That for close to a year the applicant did not take any step to prosecute the matter.

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(i) That on 15th September 2021, the court summoned both parties for mention of the suit but the applicant did not show up. That the court on that occasion directed the parties to file a trial bundle and witness statements by 15th October, 2021 and thereafter appear in court for hearing on 10th January 2022 at 9:00a.m.

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(j) That the applicant never filed the trial documents nor appeared in court.

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(k) That all hearing dates for both the main suit and mediation were communicated to the parties through the hearing notices and publicly communicated court cause lists.

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(l) That it was the responsibility of the plaintiff/ applicant to prosecute the suit and take all the necessary steps to have it resolved but they dismally failed to do so.

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(m) That the respondent had both physical and legal possession of the suit land and was thus entitled to hand it over to the investor to whom it had been allocated before the temporary injunction was granted.


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(n) That having re-allocated the suit land, there is nothing to try in the suit.

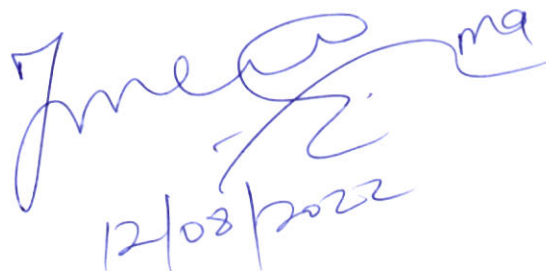
110 (o) That the applicant has neither a title nor a lease which is the lawful basis for claiming an interest in land and also owes money to the respondent which it has never paid.

115 Counsel for the applicant and Counsel for the respondent filed written submissions the details of which are on record and which I have considered in determining this applications.

120 **The issue to determine now is whether the order dismissing H.C.C.S No. 685 of 2017 should be set aside and the suit set down for hearing on its merits.**

125 **Order 9 rule 18 of the Civil Procedure Rules provides that "*where a suit is dismissed under rule 16 or 17 of this order, the plaintiff may, subject to the law of limitation, bring a fresh suit or he or she may apply for an order to set the dismissal aside; and if he or she satisfies the court that there was sufficient cause for his or her not paying the court fee and charges, if any required within the time fixed before the issue of summons or for his or her nonappearance, as the case may be, the court shall make an order setting aside the dismissal and shall appoint a day for proceedings with the suit*".**

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The applicant's main reason for not appearing in court was that they were never served with a hearing notice.

135 The applicant also submitted that the respondent's affidavit in reply was filed out of time. That the respondent was served with the application on the **26th day of April, 2022** and filed an affidavit in reply on the **18th May, 2022** which was about 23 days later and contrary to the law. The applicant cited the cases of ***Uganda Development Bank Limited versus Ringa Enterprises Co. Ltd & Others H.C.M.A No. 188 of 2017*** arising out of **OS No. 12 of 2015 (Commercial Division)** and ***Stop and See (U) Limited versus Tropical Bank Limited H.C.M.A 33 of 2010 (Commercial Division)*** where it was held that an affidavit in reply just like a written statement of defence should be filed within 15 days.

145 The applicant prayed that the respondent's affidavit in reply should be struck out for late filing.

The respondent concedes that the affidavit in reply was filed after 23 days. An affidavit in reply just like a written statement of defence should be filed within 15 days; see ***Uganda Development Co. Ltd & another – H.C.M.A No. 188 of 2017 (Commercial Division)*** and ***stop and see (U) Ltd versus Tropical Bank Limited H.C.M.A No. 333 of 2020 (Commercial Division)***. It was also held in the case of ***Mulindwa George William versus Kisubika Joseph – S.C.C.A No. 12 of 2014*** that once a delay is not accounted for, it does not matter the length of delay. There must always be an explanation for the period of delay.


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160 There was no explanation given by the respondent for filing their affidavit in reply belatedly. The affidavit in reply will therefore be struck out for late filing.

165 This therefore leaves the application unchallenged. It was held in the case of ***Prof. Oloka Onyango and others versus Attorney General – Constitutional Petition No. 6 of 2014*** where considering **Order 8 rule 3 of the CPR** where it was held that every allegation in a plaint (read affidavit) if not specifically or by necessary implication denied by the opposite party shall be taken to be admitted.

170 The affidavit in reply having been struck off leaves this application unchallenged.

175 The above notwithstanding, there was no evidence adduced to show that the applicant was served with the hearing date on the day the suit was dismissed.

180 Incidentally the suit was dismissed in the absence of all the parties and the reinstatement of the case will not prejudice the respondent in any way but instead gives the parties an opportunity to prove their rights in the suit land so that the case is substantially determined.

James M. Ma
12/08/2022

The application will therefore be granted. The order dismissing **H.C.C.S No. 685 of 2017** will be set aside and the suit will be set down for hearing on its merits.

185 The costs of this application will be in the cause.



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HON. JUSTICE JOHN EUDES KEITIRIMA

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