

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

**MISC. APPLICATION NO. 702 OF 2022  
(Arising from Civil Suit No. 148 Of 2013, Civil Suit No. 46 Of 2015  
and Civil Suit No. 544 of 2015 (As Consolidated))**

1. NSUBUGA EDWARD SENVEWO
2. JANAT ZANSANZE
3. ERIAS NYIKA SSALONGO
4. KIGGWE SENDEGE HENRY
5. KIZITO KHALID
6. SEGUYA MICHEAL
7. GWAYAKA AHMED
8. KIWALA MUSA
9. GWANYANGO MUSA
10. KISEKA JONATHAN :::::::::::::::::::::::::::APPLICANTS/PLAINTIFFS

**VERSUS**

1. NGAMBWA RUTA
2. HENRY KALULE
3. NADDULI AHMED MUSISI
4. DR. EMMANUEL MUGISHA
5. DIANA BONABANA
6. JUSTINE NAMUYANJA
7. LUBULWA YUSUF
8. REGISTRAR OF TITLES ::::::::::::::: RESPONDENTS/DEFENDANTS

**BEFORE: HON. JUSTICE NAMANYA BERNARD**

**RULING**

1. This Ruling is in respect of an application brought under **Order 52 rules 1,2, & 3** and **Order 7 rule 23** of the **Civil Procedure Rules, S.I 71-1 ("CPR")** and **Section 98** of the **Civil Procedure Act (Cap 71) ("CPA")**.



2. The applicants are seeking for orders that:
  - i) The order dismissing Civil Suit No. 148 of 2013, Civil Suit No. 46 of 2015 and Civil Suit No. 544 of 2015 (as consolidated) (hereinafter "the suit") be set aside.
  - ii) The suit be reinstated.
  - iii) Costs of this application be provided for.
3. The background is that on the 4<sup>th</sup> May 2022 at 11:00am when the suit came up for hearing, the applicants/plaintiffs and their lawyers were absent, whereupon Court dismissed the suit for want of prosecution.
4. The application is supported by the affidavit of Advocate *Namiro Hanisha*, practicing with *Hilal & Co Advocates*, the law firm handling the application on behalf of the applicants/plaintiffs, and she deponed, *inter alia*:
  - i) That the non- appearance of the applicants/plaintiffs and their counsel, when suit came up for hearing, was due to the fact that a hearing notice indicated that the suit was scheduled for hearing on the 4<sup>th</sup> May 2022 at 12:00 pm.
  - ii) That the applicants/plaintiffs have been vigilant in prosecuting the suit, and have a good case against the respondents/defendants, involving fraud, and over 600 acres of land.

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- iii) That on the 1<sup>st</sup> April 2022, the applicants filed an application vide M.A No. 497 of 2022, to amend pleadings and furnish evidence of the respondents' fraud.
5. In his affidavit in reply sworn by *Ngambwa Ruta*, the 1<sup>st</sup> respondent deposed *inter alia*:
- i) That the application is misconceived as the dismissal of the plaintiffs' suit for want of prosecution calls for either an appeal, or a fresh suit, but not an application of this nature.
  - ii) That the affidavit in support of the application is incompetent having been affirmed by an Advocate, and not the applicants themselves.
  - iii) That the applicants have failed to take the necessary steps to prosecute the suit.
6. Counsel for both parties filed written submissions which I have considered in determining this application.

***Preliminary objections:***

7. Counsel for the 1<sup>st</sup> respondent raised two preliminary points of law, which I have to address first:
- i) That a dismissal of the plaintiffs' suit for want of prosecution calls for an appeal, or a fresh suit, and not an application of this nature.



- ii) That the affidavit in support of the application is incompetent as it was affirmed by an Advocate, and not the applicants themselves.

***1<sup>st</sup> preliminary objection:***

8. Counsel for the 1<sup>st</sup> respondent submitted that once a suit is dismissed for want of prosecution, the plaintiff's remedy is either an appeal against the order of dismissal, or filing of a fresh suit subject to the law of limitation. Counsel relied on the case of ***Gold Beverages (U) Ltd v. Muhangura Kenneth and Anor, M.A No 674 of 2019.***
9. On the other hand, counsel for the applicants submitted that the dismissal ought to have been for non-appearance of the plaintiffs and their counsel, as provided for under ***Order 9 rule 22*** of the ***CPR***, and not for want of prosecution.
10. Counsel for the applicants further submitted that Court has inherent power to reinstate a suit dismissed for want of prosecution. He relied on the cases of ***Meera Investments Ltd v. Uganda Investment Authority M.A No. 114 of 2015*** and ***Rawal v. The Mombasa Hardware Ltd [1968] EA 392.***
11. In the case of ***Gold Beverages (U) Ltd (supra)***, it was held that:

*“The dismissal for want of prosecution seals the matter for the plaintiff in the same court which issued the dismissal order, and recourse can only be had by the plaintiff to an appeal or commencement of a fresh action subject to the limitation period imposed by law.”*

12. In the case of **Rawal (supra)**, it was held that Court has inherent power under **Section 98** of the **CPA** to make such orders as may be necessary for the ends of justice to be met.
13. **Section 33** of the **Judicature Act (Cap 13)** provides that:  
*“The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.”* (underlining is mine for emphasis).
14. The position of the law in as far as the facts of this case are concerned, is that once a suit is dismissed for want of prosecution, the remedy available to the aggrieved party is to either appeal against the order, or file a fresh suit subject to the

law of limitation (***Gold Beverages (U) Ltd (supra)***). However, in some special circumstances, Court can exercise its inherent power under **Section 98** of the **CPA**, and **Section 33** of the **Judicature Act (Cap 13)** to reinstate a suit dismissed for want of prosecution (see the case of ***Rawal (supra)***).

15. The facts of the instant case are that on the 4<sup>th</sup> May 2022, Court dismissed the suit for want of prosecution in accordance with **Order 17 rule 5(1) and (2)** of the **CPR (as amended)**. I have perused the Court file, and this is how the day's proceedings were recorded:

*"4/05/2022 11:00am*

*Simon Kiiza for the 1<sup>st</sup> defendant.*

*Plaintiffs and their lawyers absent.*

*Clerk: Esther Nasaazi*

*Kiiza: This is a matter of 2013 and the plaintiffs and their Counsel are not in court. Given the age of the suit and the absence of the plaintiffs and their lawyers, we pray the suit be dismissed for want of prosecution.*

*Court: The case will be dismissed for want of prosecution and with costs to the 1<sup>st</sup> defendant."*

16. **Order 17 rule 5(1) and (2)** of the **CPR (as amended)** provides that:

*"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*

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

17. The applicants/plaintiffs brought this application under **Order 9 rule 23** of the **CPR**, which is inapplicable to the matter beforehand. The said rule governs situations where the matter is dismissed for non-appearance of the plaintiff as opposed to the present case where the matter was dismissed for want of prosecution.
18. The question that I have to consider now, is whether the applicants/plaintiffs can get some other remedy from the Court, other than exercising the option to either appealing against the order of dismissal of the suit, or filing a fresh suit subject to the law of limitation.
19. I have perused the Court record, and noted the following recent steps taken by counsel for the applicants/plaintiffs to prosecute the suit:

- i) On the 1<sup>st</sup> April 2022, the applicants filed DRF-MA-0497-2022 seeking orders *inter alia*, for leave to amend the plaint in the suit and annex evidence of fraud.
  - ii) Letter addressed to the Registrar of the Court filed on the 20<sup>th</sup> April 2022 by the applicants' lawyers (Majoli, Bogere & Mutakirwa Advocates) requesting for a hearing date.
  - iii) Letter addressed to the Head, Land Division filed on the 8<sup>th</sup> February 2022 by the applicants' lawyers (Majoli, Bogere & Mutakirwa Advocates) requesting for allocation of a Trial Judge.
20. It is therefore my decision, that the instant application although brought under the wrong provisions of the law, and improperly before Court, is one where special circumstances exist for Court to exercise its inherent power, for the ends of justice to be met, and to prevent multiplicity of legal proceedings (see **Section 98** of the **CPA**; **Section 33** of the **Judicature Act (Cap 13)**; and the case of **Rawal (supra)**).
21. Accordingly, the 1<sup>st</sup> preliminary objection is overruled.

**2<sup>nd</sup> preliminary objection:**

22. In paragraph 4 of his affidavit in reply, the 1<sup>st</sup> respondent states that the application is incompetent, because it is supported by

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an affidavit sworn by an Advocate, and not the applicants themselves.

23. In his response, counsel for the applicants submitted that Advocate Namiro Hanisha deponed the affidavit basing on her knowledge of the circumstances under which the suit was dismissed, and that the said Advocate has never been on court record as counsel in the suit.
24. I have read the affidavit sworn by Advocate Namiro Hanisha, and I am satisfied that the facts contained in her affidavit are matters within her knowledge, or based on information whose sources she has disclosed. The affidavit is relevant to the determination of the instant application.
25. Accordingly, the 2<sup>nd</sup> preliminary objection is also overruled.
26. I now turn to the merits of the application.

***Consideration and determination of the application:***

27. The main issue for determination is whether the order dismissing the suit should be set aside.
28. I have explained above, that special circumstances exist for Court to exercise its inherent power to grant a remedy to the applicants, and I will now proceed to do so.

29. I have reviewed a copy of the hearing notice attached to the affidavit in support of the application as **annexure "A"** which shows that the matter was fixed for hearing on the **4<sup>th</sup> May 2022 at 12:00 pm**. I have also perused the Court record which clearly shows that the matter was called hearing on the **4<sup>th</sup> May 2022 at 11:00am**.
30. Furthermore, as noted above, the applicants have been vigilant in having the suit heard.
31. Pursuant to the inherent power vested in this Court by **Section 98** of the **CPA**; and **Section 33** of the **Judicature Act (Cap 13)**, I allow this application, and make the following orders:
- i) The order dismissing the suit for want of prosecution is hereby set aside;
  - ii) The suit will be set down for hearing on its merits;
  - iii) The costs of this application shall abide the outcome of the suit.

**I SO ORDER.**

  
**NAMANYA BERNARD**  
**Ag. JUDGE**  
**16<sup>th</sup> September 2022**