

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**  
**CIVIL SUIT NO. 0314 OF 2018**  
**SPRINGS INTERNATIONAL HOTEL LTD:::::::::::::PLAINTIFF**  
**VERSUS**  
**1. ANGELLA KATATUMBA**  
**2. RUGIIRWA KATATUMBA**  
**3. CHARLES ODERE**  
**4. BENSON TUSASIRWE**  
**5. JULIUS TURINAWA:::::::::::::DEFENDANTS**

**BEFORE: HON MR. JUSTICE HENRY 1. KAWESA**

**RULING**

This is a ruling in respect of two preliminary objections raised by the 4<sup>th</sup> Defendant against the suit.

**First Preliminary Objection**

The first preliminary objection was raised under O.26 of the Civil Procedure Rules SI 71-1 (*hereinafter the Civil Procedure Rules*); and is to the effect that the Plaintiff failed to furnish security for costs following an order vide Misc. Appln. No. 2018 of 2018 and so the suit ought to be dismissed under O.26 r2 of the Civil Procedure Rules.

Counsel for the Plaintiff responded to this preliminary objection and argued that the preliminary objection cannot be sustained in the absence of a formal application.

He further argued that the Plaintiff filed a notice of appeal against the order in Misc. Appln. No.2018 of 2018 and that this was served on the then Counsel for the Defendants; and that there was an appeal and so this preliminary objection cannot arise.

In rejoinder Counsel for the 4<sup>th</sup> Defendant submitted that O.26 r3 of the Civil Procedure Rules only provides that orders under Rule I shall be by chamber summons. That under Rule 2 of the same order, the Court can move itself since it states that "shall" act on its own orders, and so does not require a formal application.

On the existence of an appeal, he argued that he and other Defendants have never been served with any notice of appeal, and that it is not there even on file. He challenged Counsel for the Plaintiff to show a notice of appeal. Further, he argued that a notice of appeal is not a stay of a Court order, but an application for stay of execution. That in the absence of such application, the Plaintiff was under duty to furnish security for costs.

## **Resolution**

I have looked at the record of Misc. Appln. No.2018 of 2018 and confirmed that the Plaintiff was ordered to pay Ugshs.30,000,000/- (*thirty million shillings*) within 45 days from the 14<sup>th</sup> day of May 2019. This time expired long ago.

It is provided for under O.26 r2(1) of the Civil Procedure Rules that:

### **2. Effect of failure to furnish security**

(1) If the security is not furnished within the time fixed, the Court shall make an order dismissing the suit unless the Plaintiff or Plaintiff s are permitted to withdraw from the suit.

The above provision is clear and needs no further explanation. The consequence of failure to furnish security for costs within a stipulated time, is that the suit is subject to a dismissal order.

The Plaintiff's Counsel argued that a preliminary objection of this kind needs a formal application to be sustained. But I think otherwise.

Under the above provisions, it is only necessary to bring the said fact to the Court's attention, whether by a formal or oral application, the Plaintiff's failure to comply by its order for it to act. This is so because at this point, proceeding with the suit would be an illegality in the face of Court; and in such instances, matters of pleadings do not suffice and are thus overridden. See **Makula International versus Cardinal Nsubuga Wamala 119821 HCB 12.**

The Plaintiff's Counsel also argued that there is a pending appeal against the order for security costs. But the file does not contain any indication that any such appeal was lodged. Apparently, Counsel for the Plaintiff was just catching grass, which obviously can't hold him given its weakness and the weight of the pull on him. He therefore has to fail.

It has once been said that;

*'A Court order is not a mere technical rule of procedure that can be simply ignored. Court orders must be respected and complied with. A Court order must be obeyed as ordered unless set aside or varied. Those who choose to ignore them do so at their own peril. See Mangeni versus Ouma Adea George and Anor versus HC Election Petition No. 0015 of 2011'.*

The Plaintiff did not furnish security for costs within the time stipulated in the Court order. This was at his own peril. As such, the preliminary objection succeeds.

## **Second Preliminary Objection**

The second preliminary objection was to the effect that the Plaintiff amended her plaint without leave of Court. The 4<sup>th</sup> Defendant argued that the amended plaint be struck off the record and costs awarded. On the other hand, Counsel for the Plaintiff argued that this objection was also improperly raised. It was his submission that it ought to have been raised by way of a formal application.

## **Resolution.**

0.6 r. 20 of the Civil Procedure Rules permits a Plaintiff to amend his or her plaint without leave any at time within 21 days from the date of issuance of summons to the Defendant. This position is supported by the case of *Warid Telecom versus Robert Byaruhanga HCCS No.64 of 2021.*

The record indicates that the original plaint was filed on the 7<sup>th</sup> of May 2018 and summons issued on the 14<sup>th</sup> of September 2018. Two Defendants filed their defence on the 29<sup>th</sup> of September 2018, and the amended plaint was filed on the 7<sup>th</sup> of May 2019. As such, the amended plaint was filed seven months after the written statement of defence had been filed, and without leave.

Going by similar cases, such as *Ariho Emmanuel and Anor versus Centenary Rural Development Bank Ltd & Others I-CCS No. 14 of 2016*, I find that the amended plaint was improperly filed. For that reason, the same is struck off the record.

### **Final Result as regards the Suit in the Original Plaint**

It is trite that a preliminary objection raises a pure point of law, which if argued successfully disposes of the whole matter (See. *Mukisa Biscuit Manufacturing Co. Ltd versus West End Distributors Ltd [1969] EA 696*). The first preliminary objection having succeeded, I find that the whole suit is disposed of.

In the result, the main suit is hereby dismissed under O.26 r2(1) of the Civil

Procedure Rules SI 71-1.

Costs are awarded to all the costs as prayed.

I so order.

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Henry I. Kawesa

**JUDGE**

1/4/2022

1/4/2022:

Orikiriza Fiona holding brief for Counsel Benson Tumasirwe for the Defendant.

Mulondo Abdu (from springs).

Court:

Ruling delivered to the parties above.

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Henry I. Kawesa

**JUDGE**

1/4/2022.