

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO.776 OF 2022**

***(Arising out of Civil Suit No.719 of 2021)***

**KYEGOMBE ENOCK:.....APPLICANT**

## VERSUS

**MACAIL HOLDINGS LIMITED:RESPONDENT**

**Before : Lady Justice Alexandra Nkonge Rugadya**

### ***Ruling***

The applicant brought this application by way of notice of motion seeking orders that **High Court Civil Suit No.719 of 2021** be struck out for being incompetent, an abuse of court process, and for failure to disclose an action.

The applicant further sought that costs be provided for.

**Grounds of the application**

The grounds upon which the application is premised are contained in the affidavit in support of the applicant, **Mr. Kyegombe Enock**, the applicant who deponed that the respondent instituted ***Civil Suit No.719 of 2021*** against him, Kasujja Vincent, Nanfuka Bernadette, and Kasule Edward in their capacity as the administrators of the estate of the late Kasule Emmanuel Salongo, and that the respondent sued them on the basis of a grant of a power of attorney which had long expired after the death of the late Kasule Emmanuel Salongo.

That **Civil Suit No.719 of 2021** is not only incompetent, but is also an abuse of court process since the respondent has not come with clean hands and that because the orders sought therein are not tenable in law against the estate of the late Kasule Emmanuel Salongo, **Civil Suit No.719 of 2021** does not

disclose a cause of action against the estate of the late Kasule Emmanuel Salongo.

That **Civil Suit No.719 of 2021** has since abated for failure to comply with the timelines of exchange of pleadings and failure to take out summons for directions within the statutorily mandated 28 days thus it is in the interest of justice that the same be dismissed with costs.

**Respondent's reply.**

The respondent opposed the application through the affidavit in reply deposed by one of its directors, Mr. Sebunya Mark. He stated *inter alia* that the affidavit in support of the application is full of falsehoods and that the applicant shall move court to dismiss the same.

The deponent further averred that the summons for directions in the main suit were duly taken out in time but when the deponent and his lawyers appeared to receive the same, they were informed by the clerk that the same could not take off as there was an application pending before this court and that because the respondent has at all times been interested in prosecuting this suit against the defendants, she would wish to receive the directions of court on the same rather than be condemned unheard.

In reply to the respondent's averments that the applicant instituted this application with unclean hands, the applicant in his rejoinder averred that it is the respondent who instituted **High Court Civil Suit No.719 of 2022** with unclean hands by seeking to enforce an illegality in a flagrant abuse of court process as seen in the doctored commission agreement and that the respondent's claims as set out in paragraphs 25, 26, 27, 28, 29, 30 & 32 are not only unsubstantiated, but also afterthoughts.

That while **Civil Suit No.719 of 2020** abated, the notice therein was never served on any of the defendants' advocates as the respondent has never availed any proof of service of the same.



**Representation:**

The applicant was represented by **M/s Simon Tendo Kabenge Advocates** while the respondent was represented by **M/s Nabakiibi Kanyango & Co. Advocates**. Both counsel filed submissions in support of their respective clients' cases as directed by this court.

**Consideration of the application.**

I have carefully read the application, evidence and submissions of both counsel, the details of which are on the court record, and which I have taken into consideration in determining the issues raised herein.

Counsel for the applicant in his submissions raised the following two issues for determination by this court;

**1. Whether High Court Civil Suit No.719 of 2021 discloses a cause of action against the estate of the late Emmanuel Kasule Salongo;**

**2. Whether High Court Civil Suit No.719 of 2021 abated.**

**Resolution:**

**1. Whether High Court Civil Suit No.719 of 2021 abated.**

Counsel for the plaintiffs in his submissions rightly cited the provisions of **Order XIA rules 1 & 6 of the Civil Procedure Rules SI 71-1 (as amended)** which require a plaintiff to take out summons for directions within 28 days of filing the last reply and that where summons of direction is not taken out within that time, the suit abates.

Counsel for the respondent on the other hand argued that this suit falls under the exceptions to the rule specifically **Order XIA 4 (b)** which provides that the requirement for summons for directions applies to all suits instituted by way of plaint except in an action in which either the plaintiff or the defendant has applied under **order 6 rules 29 or 30** and **Order 15 rule 2** for determination of the suit on a point or points of law.

Counsel further argued that **Civil Suit No.719 of 2021** is not only incompetent, but is also an abuse of court process since the respondent has not come to court with clean hands.

That because the orders sought therein are not tenable in law, no disclose a  
5 cause of action has been disclosed against the estate of the late Kasule Emmanuel Salongo.

That **Civil Suit No.719 of 2021** has since abated for failure to comply with the timelines of exchange of pleadings and failure to take out summons for directions within the statutorily mandated 28 days thus it is in the interest of  
10 justice that the same be dismissed with costs.

The applicant by filing the instant application automatically puts **Civil Suit No. 719 of 2021** out of the scope of **Order XIA rules 1 & 6 (supra)**, the summons for direction were filed in time and that it is not true that summons for direction were taken out in April, and fixed for hearing.

15 From the record, the respondent filed this suit on 20<sup>th</sup> August 2021. The 1<sup>st</sup>, 2<sup>nd</sup>, & 3<sup>rd</sup> defendants then filed their joint written statement of defence on 14<sup>th</sup> September 2021 and on 11<sup>th</sup> October 2021, the plaintiff/respondent herein filed a reply thereto.

The 4<sup>th</sup> defendant who is the applicant in this application filed his written  
20 statement of defence on 15<sup>th</sup> September, 2021 while the respondent herein filed a reply thereto on 28<sup>th</sup> September 2021. Summons for direction were filed on 16<sup>th</sup> November, 2021 and the same fixed for hearing on 10<sup>th</sup> February, 2022.

The last reply being the reply to the 1<sup>st</sup>, 2<sup>nd</sup>, & 3<sup>rd</sup> defendant's joint written  
25 statement was filed on 11<sup>th</sup> October 2021. The respondent then filed/took out the summons for directions on 16<sup>th</sup> November 2021 which was out of the time as stipulated by law.

It follows therefore that contrary to counsel for the respondent's submissions that the summons for directions were filed/taken out in time, it is evident



from the record that summons for directions was filed thirty-six days after the last reply was filed.

In regard to whether the application falls under the exceptions of the requirement to file summons for directions under **Order XIA 4 (b)**, the record indicates that the applicant submitted this application via the Electronic Court Case Management Information System (ECCMIS) on 26<sup>th</sup> May, 2022 and the same was validated on 28<sup>th</sup> May 2022. This was over 6 months after the respondent had filed the summons for direction, out of the imposed timeframe.

Accordingly, the suit had already abated and does not fall within the exceptions pleaded by counsel for the respondent. In the circumstances, it is the finding of this court that **Civil Suit No. 719 of 2021** abated, and is hereby dismissed, with costs.

That means that any application arising from this suit and the ensuing orders are of no legal effect, having been made under a non-existent suit. The issue of whether or not the suit discloses a cause of action does not therefore arise.

No orders made to costs.


**I so order.**

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**Alexandra Nkonge Rugadya**

**Judge**

**12<sup>th</sup> April, 2023.**

Delivered by e-mail  


J. 14/4/2023