

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
LAND CIVIL SUIT NO. 497 OF 2018**

1. MAYANJA JOSHUA
2. NALUKWAGO DEBORAH
3. TAMALE CHARLES
4. NKOMA MICHAEL
5. BAMUSANYUKIRA ESTHER
6. NAJJUKA ESTHER
7. SEGAWA HUDSON
8. NAGAWA SARAH PLAINTIFFS

VERSUS

1. WANTANTE SAMUEL
2. BALABUSE DAVID
3. NAKABUGO PROSSY
4. NAKKONDE BETTY
5. NAMPEERA MARIAM
6. COMMISSIONER LAND REGISTRATION DEFENDANTS

BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA

RULING

1. This is a ruling on a preliminary objection raised by the 2nd – 5th Defendants' counsel to the effect that this suit abated for the Plaintiffs' failure to take out summons for direction as required under



Order XIA rule 1(2) of the Civil Procedure (Amendment) Rules, 2019. On 5th October, 2021 the 2nd – 5th Defendant's counsel wrote to this court praying for this court to find that the suit abated.

Background

2. The plaintiffs filed Civil Suit No. 497 of 2018 on 25th October, 2018 seeking for orders of revocation of letters of administration granted in respect of the estate of the late Erinesiti Sekitoleko and cancellation of a freehold certificate of title for land comprised in Block 454 Plot 4, Kyaggwe land at Nsanja. The Plaintiffs filed 3 applications namely:

(a) Miscellaneous Application No. 4 of 2019 which was filed on 6th November, 2019;

(b) Miscellaneous Application No. 409 of 2018 filed on 22nd day of November, 2018 and disposed of on 30th October, 2019; and

(c) Miscellaneous Application No. 401 of 2019 which was filed on 13th December, 2019.

All the above applications were arising from Civil Suit No. 497 of 2018, which is the subject of the preliminary objection.

3. When the case came up for hearing on 19th September, 2022, the Plaintiffs were represented by Counsel Kintu George from M/s George Kintu & Co. Advocates. Counsel Baale Musa from M/s Baale, Lubega & Co. Advocates represented the 1st Defendant and Counsel Bukuwa Charles from M/s STABIT Advocates appeared for



the 2nd - 5th Defendants. The parties were directed to file their written submissions for and against the preliminary objection and they complied.

4. Counsel for the 2nd - 5th Defendants submitted that Order 11A rule 1 (2) of the Civil Procedure Rules (as amended in 2019) requires a Plaintiff to file summons for direction within 28 days from the date of the last reply or rejoinder. In this case it was not done. That the consequence of this is contained in Order 11A r 1 (6) of the Rules as amended which provides that non-compliance shall cause the suit to abate. That this was emphasized and held by this very court in the cases of **Namwanje Patricia & Others v. Tembo Steels (U) Ltd Civil Suit No. 53 of 2020** and **Geofrey Wasswa v. Amy for Africa Ltd & 2 Others, Civil Suit No. 127 of 2020**.
5. Counsel argued that the period of 2 years or there about of failure to extract summons or make any formal communication by the Plaintiffs amount to dormancy. He defined dormant to mean literally sleeping, hence inactive, in abeyance, silent.
6. Further, that the remedy available for the Plaintiffs is contained under sub-rule (7) of the Rules and they are free to visit that option should they decide to. Learned counsel prayed that court finds that the suit abated and that the above rules of procedure were never intended to be treated as technicalities and are not curable under Article 126(2) (e) of the Constitution as held in the case of **Utex Industries Ltd v. Attorney General, SCCA No. 52 of 1995**.



7. Counsel added that under Article 28 (1) of the Constitution of the Republic of Uganda, 1995 as amended, all parties especially the Defendants in this case are entitled to a fair and speedy trial which has not been afforded because of the dormancy of the Plaintiffs. He prayed that this honourable court be pleased to have Civil Suit No. 497 of 2018 abate with costs to the Defendants.
8. For the Plaintiffs, it was argued that the contention by the Defendants' counsel that Civil Suit No. 497 of 2018 abated pursuant to Order 11A (1) (6) of the Civil Procedure (Amendment) Rules, 2019 is misconceived and untenable in law. That the applicability of Civil Procedure (Amendment) Rules, 2019 does not extend to suits filed before 2019. That the instant suit was filed on 25th October, 2018 and that it is trite law that laws do not have retrospective application and enforcement. Counsel cited the case of **Wambewo v. Mazelele (HCT-04-CV-MA128 of 2013) [2015] UGHCCD**, where Justice Henry Kawesa stated that the laws that govern legislation and statutory interpretation are to the effect that laws should never have retrospective application and enforcement.
9. That the case cited by learned counsel for the Defendants to wit **Namwanje Patricia & Others v. Tembo Steels (U) LTD and Godfrey Wasswa v. Amy for Africa Limited and 2 Others** (supra) are distinguishable in the sense that they were filed after the enactment of the Civil Procedure (Amendment) Rules, 2019.



10. The Plaintiffs' Counsel further argued that the Plaintiffs have at no time exhibited dormancy in pursuing for justice and they have shown interest in ensuring that the suit is heard and determined. That as per the record, on the 9th day of March, 2022, the Plaintiffs by way of a formal letter re-applied to court to fix the main suit for hearing and that on the 30th day of June, 2022, the Plaintiffs wrote another notice moving court to fix the main suit for hearing.

11. The plaintiffs' counsel further argued that the Covid-19 pandemic and measures set to curb it paralyzed court processes and the Plaintiffs cannot be accused of any default during the years of 2020 and 2021. That if there was any delay, the above justifies it and curable under Article 126 (2) (e) of the Constitution of the Republic of Uganda, 1995 which enjoins courts of law to administer substantive justice without undue regard to technicalities. Counsel cited the case of **Utex Industries Limited v. Attorney General** (supra). He prayed for the objection to be overruled with costs.

12. The 2nd - 5th Defendants' counsel re-joined that the last reply was on the 30th October, 2019 when Miscellaneous Application No. 409 of 2019 was concluded and that at this period, the Civil Procedure Rules were already amended and operational as at 31st May, 2019, which makes this suit subject to the provisions of the rules of procedure as amended under the law and does not act retrospective as submitted by the Plaintiffs' counsel.



13. The Plaintiffs' counsel further argued that the law under Order 11A rule 1 (2) of the Civil Procedure Rules as amended in 2019 cannot be treated by this court as technicalities nor does it have anything to do with the inherent powers of court which is not to do away with the rules of procedure and that as such, this matter abates.

Issue

Whether Civil Suit No 497 of 2018 abated.

14. Order XIA Rule 1 (2), (3) and (6) of the Civil Procedure (Amendment) Rules, S.I 13 of 2019 provides as hereunder:

"(2) Where a suit has been instituted by way of a plaint, the Plaintiff shall take out summons for direction within 28 days from the date of the last reply or rejoinder referred to in rule 18 (5) of Order VIII of these Rules;

(3) The summons in sub-rule (2) shall be returned within fourteen days from the date they are taken out;

(6) If the Plaintiff does not take out summons for directions in accordance with sub-rules (2) or (6), the suit shall abate."

The phrase 'or (6)' however appears to be an error. It should have been 'or (5)' because sub-rule 6 provides for abatement of a suit.

15. The importance of a commencement date is that it gives the date when a law becomes operative. Therefore laws must relate to a future matter. It is not appropriate for a law to relate backwards, that is, to the past.



16. In the case of **Phillis v. Eyre (1870) LR 6 QB 1** the legislature of Jamaica had passed an Indemnity Act following the suppression of a rebellion in the colony. If the Act was valid it would prevent the Plaintiff suing for assault and false imprisonment.

On that issue Justice Willes said:

"... Retrospective laws are, no doubt, prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law. Accordingly, the Court will not ascribe retrospective force to new laws affecting rights, unless by express words or necessary implication it appears that such was the intention of the legislature."

17. In my judgment, where a statute is amended while a matter is pending, the rights of the parties to the action, in the absence of a contrary intention, must be decided in accordance with the statutory provisions in force at the time of the institution of the action. Where the legislature intends that a provision should have retrospective effect it has to state so in clear and unequivocal terms.

18. The Civil Procedure (Amendment) Rules, S.I 13 of 2019 came into force on 31st May, 2019 which is the date of publication in the



Uganda Gazette. This is in line with section 17(1) (a) of the Interpretation Act, Cap 3 which provides thus:

“Subject to this section –

(a) *The commencement of a statutory instrument shall be such date as is provided in or under the instrument or, where no date is so provided, the date of its publication as notified in the Gazette;*

(b)

19. Section 17 (2) of the Interpretation Act states that
“A statutory instrument may be made to operate retrospectively to any date which is not earlier than the commencement date of the Act under which the instrument is made.”

The Civil Procedure Act, Cap 71 came into force on 1st January 1929. That is the parent Act or primary legislation under which the Civil Procedure Rules, S.I 71 -1 fall. Section 41 (1) of the Judicature Act, Cap. 13 provides that the Rules Committee, may, by statutory instrument, make rules for regulating the practice and procedure of the Supreme Court, the Court of Appeal and the High Court of Uganda and for all other courts in Uganda subordinate to the High Court. It was under this statutory enactment that the Civil Procedure (Amendment) Rules, 2019 were made. There is nothing in the Civil Procedure (Amendment) Rules, 2019 which stipulates that the Rules were to apply retrospectively.

20. The High Court Civil Suit No 497 of 2018 was filed on 25th October, 2018. There is nothing express or implied in Order 11A of



the Civil Procedure (Amendment) Rules, S.I 13 of 2019 that shows an intention to apply the said law retrospectively. Given its plain meaning, the Order does not apply to suits instituted prior to the commencement of the amendment and that includes the instant case. This court cannot interpret the above provision retrospectively basing on the authorities cited in this ruling. The cases of **Namwanje Patricia & Others v. Tembo Steels (U) Ltd, Civil Suit No. 53 of 2020** and **Geofrey Wasswa v. Amy for Africa Ltd & 2 Others, Civil Suit No. 127 of 2020** cited by the defence counsel were filed in 2020 when the Civil Procedure (Amendment) Rules, 2019 were already in force. These cases do not apply to the instant case.

21. Suffice to mention that, in respect to the instant suit, the relevant law (which was existing at the time of filing the suit) would be Order XVII rule 6 which states thus:

"(1) In any case, not otherwise provided for, in which no application is made or step taken for a period of two years by either party with a view to proceed with the suit, the court may order the suit to be dismissed.

(2) In such case the plaintiff may, subject to the law of limitation, bring a fresh suit."

22. In the instant case, there are two applications pending disposal by this court. These are Miscellaneous Applications No. 4 of 2019 which was filed on 6th November, 2019 and Miscellaneous Application No.



401 of 2019 which was filed on 13th December, 2019. Although there is a letter dated 15/Sep/2022 on each file by the applicants' lawyers withdrawing the applications, the withdrawals have not been endorsed by court as prescribed under Order XXV rule 1 of the Civil Procedure Rules, S.I 71-1.

22. In summary, the instant suit which was instituted in 2018 before the commencement of the Civil Procedure (Amendment) Rules, S.I 13 of 2019, has not abated. The preliminary objection is hereby overruled. Each party shall bear their own costs.

23. Since the applicants have lost interest in Miscellaneous Application No. 4 of 2019 and Miscellaneous Application No. 401 of 2019, they are hereby withdrawn and discontinued with no order as to costs to the Respondents who were not served with the applications as there is no reply on court record.

I so rule and order accordingly.

This ruling is delivered this 10th day of Feb. 2023 by



FLORENCE NAKACHWA
JUDGE.

In the presence of:

- (1) Counsel Kintu George from M/s George Kintu & Co. Advocates, for the Plaintiffs;
- (2) Counsel Kawino Gloria from M/s Baale, Lubega & Co. Advocates, for the 1st Defendant;
- (3) Counsel Bukuwa Charles from M/s STABIT Advocates, for the 2nd – 5th Defendants;
- (4) Ms. Nalukwago Deborah, the 2nd Plaintiff;
- (5) Mr. Tamale Charles, the 3rd Plaintiff;
- (6) Ms. Bamusanyukira Esther, the 5th Plaintiff;
- (7) Ms. Najjuka Esther, the 6th Plaintiff;
- (8) Mr. Wantante Samuel, the 1st Defendant;
- (9) Ms. Nakabugo Prossy, the 3rd Defendant;
- (10) Ms. Nakkonde Betty, the 4th Defendant;
- (11) Ms. Nampeera Mariam, the 5th Defendant;
- (12) Ms. Pauline Nakavuma, Court Clerk.

