

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVL SUIT NO.0579 OF 2019

AMANYA ONESMUS ::: PLAINTIFF

VERSUS

MAYANJA SAMUEL::: DEFENDANT

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA
RULING ON WHY THE SUIT SHOULD NOT ABATE.

Introduction;

1. This is a ruling in respect of an order by the former trial judge in this suit where he directed the plaintiff to file submissions on why his suit should not abate for failure to extract summons for directions as stated under Order XIA of the Civil Procedure Amendment rules of 2019.

Background;

2. The Plaintiff filed this suit before court on the 28th day of June, 2019 and on the 1st day of July 2019 summons to file a defence were extracted and served on the defendant on the 9th day of July, 2019. Despite being served with summons to file a defence, the defendant never filed a defence to civil suit No. 579 of 2019 and as a result the plaintiff applied for a default judgement in October 2019. The Plaintiff in preparation for his case, albeit on his own motion filed his scheduling memorandum on the 8th of June 2021 together with a Trial Bundle and the Plaintiff's Witness Statement. When the plaintiff appeared in court for hearing on the 6th of June 2022, the trial judge ordered the plaintiff to file submissions to show cause why the suit should not

abate for failure to take out summons for directions as provided for under the Civil Procedure rules as amended

3. The plaintiff in his submissions states that the suit falls under the exceptional circumstances provided for under Order XIA of the Civil Procedure rules as amended since he applied for a default judgement against the defendant and was granted the same.
4. The plaintiff further submits that the suit forms part of the exceptions when the plaintiff may not be required to extract summons for directions as referred under Order XIA Rule 4(e) of the civil procedure rules as amended which states that matters that have been referred to an official referee or arbitrator and this is because the plaintiff filed a mediation case summary to show that the case went for mediation as well which failed.
5. The plaintiff states that he has taken all the necessary steps to save court's time and expense of trial. This is because the plaintiff has done all what would have been done after extracting summons for directions which includes, filing the scheduling memorandum, trial bundle and the witness statements.

Representation;

6. The plaintiff was represented by Eunice Ainembabazi of M/s Reeve Advocates, the defendant was not represented. The plaintiff filed submissions which I have considered in the determination of this matter.

Issues to be determined by court;

7. **The main issue for determination is whether civil suit No. 579 of 2019 should abate for failure to take out summons for directions.**

Resolution of the issue;

8. The Concise Oxford dictionary of current English, 11th Edition (1995) the word “abate” means to become less strong, severe, intense etc. The second definition of abate in law is to quash a writ or action, it also means to put an end to something or nuisance.
9. Abatement of a suit is provided for under the Civil Procedure rules as amended under Order XIA Rule 2 which states that; “*where a suit has been instituted by way of a plaint, the plaintiff shall take out summons for directions within 28 days from the date of the last reply or rejoinder referred to in Rule 18(5) Order VIII of these rules*” Rule 3 of the same order provides that the summons under sub rule 2 shall be returned within fourteen days from the date they are taken out or extracted.
10. However the civil procedure rules as amended provides for exceptional circumstances when summons for directions cannot be extracted by the party to the suit and among the exceptional circumstances is under Rule 4 of Order XIA which states that the rule applies to all actions instituted by way of a plaint except (a) “*an action in which the plaintiff or counter claimant has applied for a default judgement under order IX rules 6 & 7, summary judgement under order XXXVI or where application for leave to file a defence under order XXXVI is refused*”.
11. The plaintiff in his submissions qualifies the situation in the instant suit to be among the exceptional circumstances referred under Order XIA Rule 4(a) since the plaintiff applied for a default judgment on the 18th of October 2019 due to the fact that the defendant never filed any written statement of defense despite being served with summons to file a defense.
12. I concur with the submissions of counsel for the applicant that the circumstances in the instant suit squarely fall under the exceptional circumstance provided for under order XIA rule 4(a) of the civil procedure rules as amended. Therefore, this suit could not abate for failure to extract

summons for directions under Order XIA of the civil procedure rules as amended since the plaintiff applied for a default judgement as stated above.

13. The plaintiff avers that the suit entails a mediation report and it is among the exceptional circumstances provided for under Order XIA Rule 4(e) of the civil procedure rules as amended which provision provides that summons for directions will not apply to situations where a matter has been referred for trial to an official referee or arbitrator.
14. Relying on the definition of a referee in the Black law dictionary 5th Edition Page 1151 and the definition of mediation and mediator under Judicature Mediation Rules No.10 of 2013 and in **Carlton Douglas Kasirye Vs Sheena Ahumuza Bageine, HCMA No.150 of 2020 before Hon.Justice Boniface Wamala** where court held that “ *it is clear that by virtue of the role played by a mediator, he or she performs the functions of an official referee of the court. The court refers a matter to him, hears parties and then report to court depending on whether or not an agreement is reached towards an amicable settlement of the dispute that is before the court, the person exercising judicial powers for a specific purpose. Therefore, a court-based mediator falls under the meaning of the official receiver as stated under order XIA rule 4(e) of the civil procedure rules as amended*”. This follows therefore that where a matter is referred by court for mediation, the plaintiff would not be expected to take out summons for directions with in the 28 days period as stated under order XIA of the civil procedure rules
15. In the instant suit, upon filing the main suit the plaintiff also filed a mediation case summary vide mediation cause No.586 of 2019 but there is no evidence as per record that indicates that the mediation was referred by court or that the mediation was by a court-based mediator. The plaintiff avers that he went for the mediation as a result of the mandatory mediation which had

ceased to be effective as per the 31st of May 2019 when the civil procedure amendment rules were published in the gazette. Therefore, I am of the view that the mediation carried out in this suit does not squarely fall under the exception referred to under order XIA Rule 4(e) of the civil procedure rules as amended.

16. The plaintiff further submits that he has done all the necessary steps to save court's time and expense effectively to prepare for trial and he prays for court to invoke the inherent powers as stated under Section 98 of the civil procedure act and proceed with the hearing of the case.

17. This goes to the intention of the framers of Order XIA of the civil procedure rules as amended, I concur with the decision of my learned sister Hon.Lady Justice Olive Kazaarwe in **Kagimu Moses Gava & Others Vs Sekatawa Muhammed & Others, Misc. Appeal No. 25 of 2020** where she stated that *“the intention of the framers of order XIA Rule 1 of the civil procedure amendment rules 2019 was to mitigate the delays and inefficiencies brought on by the actions of the officers of court and the parties in civil proceedings. in order that these rules achieve the desired objective, a holistic and judicious approach should be adopted by courts”*

18. There is evidence on record that the suit is not dormant, scheduling memorandum, trial bundle and witness statements of the plaintiff are on record that is a further proof that some actions are being under taken in the suit. Therefore, I am of the view that this suit cannot be considered for abatement since there are actions on the file being taken by the plaintiff.

Determination by court;

19. Court has to look at the intention of the legislature and this can be derived from the statute itself. The law on summons for directions was introduced as a case management system which abates the suit in cases when it is not complied with but courts should also take into account

situations where a party to a suit has done all the necessary steps that would have been done had summons for directions been extracted.

20. Be that as it may, I find that the suit does not abate since there is evidence that the suit falls under one of the exceptional circumstances stated under Order XIA rule 4 of the Civil Procedure Rules as amended and that the suit is not dormant.
21. I further direct that the plaintiff effects service of all the documents he is to rely on and these include, scheduling memorandum, trial bundle and witness statements onto the defendant for purposes of achieving the objectives of a fair hearing.
22. Accordingly, it is the findings of court that the suit HCCS No.579/2019 does not abate for failure to extract summons for direction as stated under order XIA of the civil procedure rules as amended.

I SO ORDER.



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NALUZZE AISHA BATALA

JUDGE

31st /10/2023