

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
LAND DIVISION
CIVIL SUIT NO. 1107 OF 2021

- 5
1. MIRIAM SARAH KISUULE
 2. CHRISTINE NANZIRI

(suing as administrators of the estate of the late Kisuule Zerubaberi).....PLAINTIFFS

VERSUS

- 10
1. ABUUSU NANTAAYA JOSEPHINE
 2. THE COMMISSIONER LAND REGISTRATION..... DEFENDANTS

Ruling on the Preliminary Objection:

15 This objection has been raised by counsel Arnold Sekiwano representing the plaintiffs in this suit. The gist of his objection is that an order was made by the Assistant Registrar striking out the 1st defendant's Written Statement of Defence.

20 He thereupon ordered the matter to proceed *ex parte* against her. That in light of the undischarged order, the defendants were improperly before court. The second point of objection is based on the oral submission made in this court by counsel for the defendant by which leave was sought to file a WSD out of time, after the one filed earlier was struck off.

25 A formal application, **MA No. 237 of 2023** according to counsel for the 1st defendant had been filed on ECCMIS awaiting validation and directives of court to effect service to the plaintiffs as respondents in that application.

30 The objections which were the subject of these preliminary proceedings had been raised before the court presided over by the Assistant Registrar, vide: **MA NO. 0869 of 2022**. The prayers sought in that application were that the WSD be struck out and that leave be granted to set down the suit for hearing and for the hearing to proceed *ex parte*.

The court in granting the application on 8th November, 2022 ruled that the WSD had been filed in time but that the defence was evasive and contravened the provisions of **Order 6 rule 10 of the CPR**.

5 **Order 6 rule 30 of the CPR** under which the application was made states that court may strike out any pleading on the ground that it discloses no reasonable cause of action or answer and may order the suit to be stayed or dismissed or judgment to be entered accordingly as may be just. Under **Order 6 rule 31 (2) of the CPR** all such orders are appealable as of right.

10 While I am inclined to agree with the learned counsel that there was an order for the matter to proceed *ex parte* which the 1st defendant did not challenge, the justice of the case however demands that the matter be heard inter party as the omission or errors on the part of counsel should not to be visited on the litigant.

15 The plaintiff shall file a rejoinder the WSD within two weeks from date of delivering this ruling. **MA No. 237 of 2023** is accordingly overtaken by events.

Costs in the cause.

20 
Alexandra Nkonge Rugadya
Judge
27th February, 2023.

Delivered by email
Ankoye
27/2/2023