

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 178 OF 2022
(ARISING FROM CIVIL SUIT NO. 0239 OF 2020)

5 **1. BENON KYEYUNE MUKASA**
2. GUWEDDEEKO FRED-----APPLICANTS

-VERSUS-

MUGODA PATRICK-----RESPONDENT

10 **BEFORE: Hon. Lady Justice Olive Kazaarwe Mukwaya.**

RULING

This is an application seeking the dismissal of Civil Suit No. 239 of 2020 for want of prosecution under Order 17 rule 5 of the Civil Procedure Rules as amended.

15 I have perused the application, the affidavit in support, the affidavit in reply and the affidavit rejoinder and Counsel's submissions.

Additionally, I have studied the court record in the main suit. It indicates the following;

- 1) Pleadings were closed on the 19th June 2020, when the Reply to the Counter claim was filed.
- 2) On the 15th September 2020, the parties appeared before this Court and were given directions to file their Joint Scheduling Memorandum by 15th October 2020, file all pre-trial documents by the 20th December 2020, and hearing was fixed for the 11th February 2021.
- 3) In July 2021, the Court disposed of the Plaintiff's interlocutory application for a Temporary Injunction.

25 Order 17 rule 5 of the Civil Procedure Amendment Rules 2019 provides as follows;

5. *Dismissal of suit for want of prosecution.*

(1) *In any case, not otherwise provided for, in which no application is made or step taken for a period of six months by either party with a view to proceeding with the suit after the mandatory scheduling conference, the suit shall automatically abate; and*

- 5 (2) *Where a suit abates under sub rule (1) of this rule, the plaintiff may, subject to the law of limitation bring a fresh suit.*

See also; **Muhammed Njagala v Mutumba Andrew (HC Miscellaneous Application 192 of 2019) [2021] UGHCLD 51 (09 April 2021)**

10 It is apparent that unlike in the **Mohammed Njagala case**, supra, where there were only pleadings on the court record, the Plaintiff filed his Trial bundle including his scheduling memorandum, witness statements and documents to be relied upon, but no mandatory scheduling conference has been conducted. The guidelines for scheduling conference are provided for under **Order XIA, rule 7(2), Schedule 2 of the Civil Procedure Rules as amended in 2019**. The other name for the mandatory scheduling conference is Pre-
15 trial directions. In brief the directions guide and give a framework for the production of a joint scheduling memorandum and trial bundle by counsel as a prerequisite for holding a scheduling conference.

In the case of **Stanbic Bank (Uganda) Limited v Uganda Cros Limited SCCA 4 of 2004 (UR)** Tsekooko JSC, explained;

20 *‘That a trial court is expected to hold a scheduling conference to sort out points of agreement and disagreement, the possibility of mediation, arbitration and any form of settlement. Because the central issue in this case is reconciliation of figures, I expect that at the scheduling conference stage, parties in this case should have produced properly audited accounts of the respondent as part of the expert evidence and try to narrow down
25 the points of disagreement. That is the stage when the proper issues would emerge.’*

In conclusion, the purpose for the mandatory scheduling conference is crucial to proper case management. It is clear from the court record, that there was no Joint Scheduling Memorandum filed by the parties, although they were directed to do

so. And therefore no mandatory scheduling conference has ever taken place as a basis to calculate the six -month period. I do note that there has been a delay in the prosecution of this matter, but under the law, this delay does not translate into grounds for dismissal of this suit. Relatedly, the suit does not qualify for abatement
5 since summons for directions were taken out by the Plaintiff within the time prescribed under Order XIA of the Civil Procedure Rules.

This application is dismissed with costs in the cause.

10 **Olive Kazaarwe Mukwaya**

Judge

14th March 2023

Delivered by email to Counsel for the parties.