

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISCELLANEOUS APPLICATION NO.3380 OF 2023**  
**CIVIL SUIT NO. 619 OF 2019**

**1. TEDDY NABISAALU**  
**2. TEBANDEKE MUHAMMED MUSANJE**  
**3. KIMERA PAUL::: APPLICANTS**  
**4. NAKIMBUGWE RUTH**  
**(As Administrators of the estate of**  
**Maria Alexandra Nabisaalu/**  
**Maria Yuniya Kamuwanda**

**VERSUS**

**1. MUTUMBA MUHAMMAD**  
**2. KIYIMBA MOSES**  
**3. KIZITO ISSA**  
**4. MBOWA SAMUEL**  
**5. SUZAN KASULE ::::::::::::::::::::::::::::::::::: RESPONDENTS**  
**6. NTUUTI FARMERS LIMITED**  
**7. BUGANDA LAND BOARD LIMITED**  
**8. THE INSTITUTION OF KABAKA OF BUGANDA**  
**9. THE COMMISSIONER FOR LAND REGISTRATION**  
**10 THE ATTORNEY GENERAL**

**BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING ON A PRELIMINARY OBJECTION**

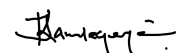
**Introduction:**



1. This application was brought under Sections 98 of the civil procedure Act, Order 6 rule 19,31 of the Civil Procedure Rules for orders of addition of parties, amendment of pleadings in civil suit No.619 of 2019 and costs of the application.

**Background;**

2. The plaintiffs filed HCCS No. 619 of 2019 in July 2019 and further filed Misc. Applications 831 and 2504 all of 2019 and the same were dismissed in April 2022. That later the plaintiffs/applicants filed an application for amendment of pleadings vide Misc. App No.3380 of 2023. When parties appeared before this court regarding proceeding with the said application, Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> respondents/defendants objected to the proceeding of the said application and informed Court that the matter could not proceed as the suit where the said application arose had already abated and prayed for the same to be dismissed for want of prosecution and have the same abated under O.11A of the civil procedure rules as amended.
3. The Court directed parties to file written submissions in respect of the preliminary objection raised by Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> defendants.



**1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> respondents/defendant's submissions;**

4. That since the dismissal of MA No. 2504 and 831 of 2021 on the 07<sup>th</sup> day of March 2022, the plaintiffs did not take any further steps to fix the matter for hearing and hence Counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> defendants wrote a letter dated 10<sup>th</sup> November 2023 and filed the same on 13<sup>th</sup> November 2023 seeking to have the suit dismissed under the provisions of order 15 rule 5 for want of prosecution in the alternative the matter should abate as per the provisions of Order 11A rule 1(2) for failure to take out summons for directions.
5. That on 30<sup>th</sup> November 2023 the plaintiffs filed MA No. 3380 of 2023 for amendment of the plaint. Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> defendants submits that the suit had already abated and that after a period of nineteen months without the plaintiffs taking any action whatsoever, they had lost interest in prosecuting the matter any further and hence the same ought to be dismissed with costs to the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> respondent/ defendants.

**Applicants/Plaintiff's submissions;**



6. Counsel for the plaintiffs submitted that they took out summons for directions and filed the same however they have not received copy and the same are expected to be on Court file. That if Court has not fixed a date for hearing summons for directions, the blame cannot be visited on the plaintiffs.
7. That the respondents/defendants objecting to the application ought to have made a formal application under Order 6 rules 29 & 30 and Order 52 rules 1 & 2 of the Civil Procedure Rules to strike out the suit.
8. That this suit cannot abate for failure to take out summons for directions as it falls under the exceptions under Order 11A rule 4(b) of the Civil Procedure (Amendment) Rules 2019 because the defendants in their Written Statement of defence contend that the suit offends the law and ought to be thrown out for non-disclosure of a cause of action and that the plaintiffs have no locus standi.
9. That furthermore, the suit cannot be dismissed under the provisions of Order 17 rule 5 of the CPR because the mandatory scheduling conference has not been done.

**Representation;**



**10.** The applicants were represented by G.S Lule of M/s Godfrey S Lule Advocates whereas the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> Defendants were represented by Kamoga Joshua of M/s Kintu Nteza & Co. Advocates, Kiwanuka Peter Samuel for the 4<sup>th</sup> and 5<sup>th</sup> respondents and Arinaitwe Sharon for the 9<sup>th</sup> respondent from the Office of The Commissioner Land Registration. Parties filed their submissions which I have considered in the determination of the preliminary objection.

**Issues for determination;**

- i) Whether HCCS No. 619 of 2019 ought to be dismissed for want of prosecution?***
- ii) Whether HCCS No. 619 of 2019 abated for failure to take out summons for directions?***

**Resolution and determination of the issue;**

- i) Whether HCCS No. 619 of 2019 ought to be dismissed for want of prosecution?***

**11.** Order 17 rule 5 of the Civil Procedure Rules as amended provides

“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

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

**12.** The understanding of the application of this particular order is that the same can only apply six months after the mandatory scheduling was done and the party did not make an effort to prosecute his/her case.

**13.** In the instant application, a scheduling conference has never been held since after the dismissal of the applications for an interim and temporary injunction by April 2022, the suit did not proceed any further.

**14.** I am fortified by the decision of my Learned Sister Justice Olive Kazaarwe Mukwaya of **Muhammed Njagala v Mutumba Andrew & 2 other Misc Application No. 192 of 2019**) in which she stressed the fact that the six months' period only begins to run

after the mandatory scheduling conference has been held between the parties and not before.

- 15.** I find the said rule inoperative in the circumstances owing to that fact that a scheduling conference had not been held. However, there is a lacuna in the law and the amendment of the Civil Procedure Rules did not bridge the gap, where the plaintiff has not taken any steps to prosecute the suit but the scheduling conference is yet to be done. Such suit cannot be dismissed under the Civil Procedure Rules as Amended.

None the less, this issue is resolved in the negative.

**ii) Whether HCCS No. 619 of 2019 abated for failure to take out summons for directions?**

- 16.** Order 11A rule 1 (2) of the Civil Procedure Rules provides;  
**(2) 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) of Order 8 of these rules.**

- 17.** It is undisputed that pleadings closed and the 28 days as provided by the rule above have since lapsed.



**18.** Counsel for the applicants submits that civil suit No.619 of 2019 falls under the exceptions provided for under order 11A rule 4 (b) which provides;

**“(b) an action in which the plaintiff or defendant has applied under Order 6 rules 29 and 30 or Order 15 rule 2 for determination of the suit on a point or points of law.”**

**19.** Counsel for the applicants in his submission justifies the same argument with the fact that the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> defendant clearly stated in their written statement of defence that they will raise preliminary points of Law to wit; that the suit discloses no cause of action. That the 1<sup>st</sup>, 2<sup>nd</sup> and 6<sup>th</sup> Defendants ought to have filed a formal application under Order 6 rules 29 & 30 and Order 52 rules 1 & 2 of the Civil Procedure Rules and that its on that basis that the suit falls under the exception under Order 11A rule 4 (b) of the CPR.

**20.** There is no application brought before this Court under Order 6 rules 29 & 30 and Order 52 rules 1 & 2 of the Civil Procedure Rules, an averment in a written statement of defence does not amount to an application before Court but it's just a notice to the



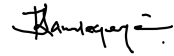


other party which may or may not be raised at the discretion of the party.

- 21.** Regarding the summons for directions, Counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> respondents/defendants maintain that the summons for directions were not extracted out however the applicants/plaintiffs allege to have taken out the same but have no evidence to prove their claim. This Court has perused the record and no summons for directions have been found.
- 22.** This brings this Honorable Court to a conclusion that the summons for directions were never extracted by the applicants/plaintiffs as per the provisions of Order 11A rule 1 (2) of the Civil Procedure (Amendment) Rules, 2019.
- 23.** Therefore, HCCS No. 619 of 2019 hereby abates for failure to comply with Order 11A rule 1 (2) of the Civil Procedure Rules as amended and Miscellaneous Application No.3380 of 2023 which arises from the same suit is hereby overtaken by events.
- 24.** Costs of the application are awarded to the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup> 7<sup>th</sup> and 8<sup>th</sup> respondents/defendants.



**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**22/02/2024**