

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
MISCELLANEOUS APPLICATION NO. 0144 OF 2022
(ARISING FROM CIVIL SUIT NO. 236 OF 2017)

BYAKUMPI JOSEPH SITENDA ::::::::::::::::::::::::::: APPLICANT

VERSUS

BIYINZIKA ENTERPRISES LIMITED :::::::::::::::::::RESPONDENT

BEFORE: HONOURABLE JUSTICE DAVID MATOVU

RULING

Introduction

1. Byakumpi Joseph Sitenda (hereinafter referred to as the “Applicant”) filed Miscellaneous Application No. 144 of 2022 in the High Court of Uganda at Mukono against M/s Biyinzika Enterprises Limited (hereinafter referred to as the “Respondent”) seeking to set aside the order of dismissal of Civil Suit No. 236 of 2017 issued on the 27th April, 2022

Legal representation

2. Mr. Chemisto Swaibu represented the Applicant while Mr. Anthony Bazira represented the Respondent.

Preliminary point of law

3. When Miscellaneous Application No. 144 of 2023 came up for hearing on 17th May, 2023 Counsel for the Respondent raised a Preliminary Point of law to the effect that Civil Suit No. 236 of 2017 was dismissed for want of prosecution on 27th April, 2023 and therefore the instant application is barred in law. Counsel cited the case of **Gold Beverages (U) Ltd Versus Muhangura Kenneth & Another High Court Civil Division Miscellaneous Application No. 674 of 2019.**
4. In his reply, Counsel for the Applicant argued that since the learned trial Judge did not cite the specific section of the law under which he dismissed Civil Suit No. 236 of 2017 the provisions Order 9 Rule 23 of the Civil Procedure Rules are applicable to this case.

Decision of Court

5. Where Court dismisses a matter for want of prosecution but does not cite any specific provision of law under which a dismissal is made then it is important to critically examine the circumstances under which the suit was dismissed.

6. In the instant case, both Counsel now before me appeared before Honourable Justice David Batema on 27th April, 2022 in Miscellaneous Application No. 25 of 2022 which was an application for amendment of the Plaint and after a fierce battle of legal arguments the learned trial Judge partially allowed Miscellaneous Application of 25 of 2022 by ordering the Plaintiff to proceed as the Administrator of the estate of the late Wasswa Tabya Vincent but the Judge declined to add new defendants to Civil Suit No. 236 of 2017.
7. Since the amendment allowed by the Judge did not require a fresh plaint he proceeded to hear the main suit No. 236 of 2017 but at this time Counsel for the Plaintiff had walked out of Court and efforts to get him back to Court were in vain and this is when court dismissed Civil Suit No. 236 of 2017 for want of prosecution.
8. Court finds it important to reproduce the record of proceedings in Civil Suit No. 236 of 2017 for the material date, 27th April, 2022 as follows:-

27th April, 2022

Bazira for Defendant

Chemisto for Plaintiff

Agara Clerk

No parties in Court

Bazira

I do not know what has overcome my learned friend.

Court Ruling

This suit is dismissed for want of prosecution. Counsel Chemisto who has walked out in contempt of court is barred from appearing before me till the end of this year in all matters before me.

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Batema N.D.A

Judge

27/04/22

Orders

Costs are awarded to the Defendant

Batema N.D.A

Judge

27/04/22

9. It is apparent from the perusal of the record of proceedings herein above that Mr. Chemisto walked out on the Judge and therefore left him with no option but to dismiss the suit for want of prosecution and since there is no pending appeal against the orders of the learned Judge this Court is not competent to overturn his findings and orders.

10. I therefore agree with Counsel for the Respondent that the court having dismissed Civil Suit No. 236 of 2017 for want of prosecution on the 27th April, 2022 the matter was sealed and the only recourse was by way of appeal or filing a fresh suit subject to the law of limitation. **See case of Gold Beverages (U) Limited versus Muhangura Kenneth & another** (Supra).

11. The preliminary point of law is sustained and Miscellaneous Application No. 144 of 2023 is hereby dismissed with costs to the Respondent.

Dated this27th.....day ofMay.....2023.


David Matovu
JUDGE