

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
MISCELLANEOUS APPLICATION NO. 0160 OF 2022
ARISING FROM CIVIL APPEAL NO. 0043 OF 2021
ALL ARISING OUT OF MSD-CM-CS- NO. 0027 OF 2018

DOMBO ISSA APPLICANT

VERSUS

1. BEATRICE BIGIRWENKYA

2. BAGONZA CEASER RESPONDENTS

BEFORE: Hon. Justice Isah Serunkuma.

RULING

This ruling is premised on an oral prayer made by counsel Mooli Albert on behalf of the applicant to withdraw the current application under Order 25 rule 1 of the Civil Procedure Rules with no orders as to costs. The prayer was made in absence of both counsel for the respondents and the respondents themselves.

Initially, this application was brought to this court under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 52 rules 1-3 of the Civil Procedure Rules for orders that;

1. That the purported Civil Appeal No. 0043 of 2021 is barred by law, an abuse of court process and be dismissed.
2. That the purported Civil Appeal No. 0043 of 2021 be dismissed for want of prosecution
3. That it is just and equitable that the said appeal is dismissed in the interest of justice.
4. That the costs of this application be provided for by the 1st respondent.

The main ground for the application related to payment/deposit of Ugx. 5,000,000 (Uganda shillings five million) as security for due performance of the decree before 25th March 2022 which obligation had not been honoured yet. The order to deposit security for due performance was made by the chief magistrate on the 12th day of December 2021.



Hearing

When this matter came up for hearing on the 13th March 2023, counsel Mooli for the applicant submitted that when the matter was to be heard on the 18th January 2023, he was served with a reply to this application by the respondents' counsel. Counsel submitted that upon perusing the
5 reply, he noticed that the main issue raised in the application had been responded to; in particular, a deposit of Ugx 5,000,000/= (Uganda shillings five million only) as security for due performance, proof of which was missing on the court file but a copy had been made by the respondent to prove the same.

Counsel further submitted that the current application would then collapse since it had been
10 overtaken by events having provided proof of deposit of security for due performance. In conclusion, counsel prayed to withdraw this application under Order 25 rule 1 of the Civil Procedure Rules with no orders as to costs and applied to have the substantive appeal HCCA No. 0043 of 2021 proceed.

Court Analysis

15 Order 25 rule 1 of the Civil Procedure Rules as relied on by counsel for the applicants relates to withdrawal of a suit by plaintiff or defendant and it provides that;

"1. Withdrawal of suit by plaintiff or defendant.

*(1) The plaintiff may at any time before the delivery of the defendant's defence, or after the receipt of that defence before taking any other proceeding in the suit (except any
20 application in chambers) by notice in writing wholly discontinue his or her suit against all or any of the defendants or withdraw any part or parts of his or her alleged cause of complaint, and thereupon he or she shall pay the defendant's costs of the suit, or if the suit is not wholly discontinued the costs occasioned by the matter so withdrawn. Upon the filing of the notice of discontinuance the costs shall be taxed, but the discontinuance or withdrawal, as the
25 case may be, shall not be a defence to any subsequent action.*

(2) Except as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw or discontinue a suit without leave of the court, but the court may, before or at,



or after hearing upon such terms as to costs, and as to any other suit, and otherwise as may be just, order the action to be discontinued or any part of the alleged cause of complaint to be struck out.

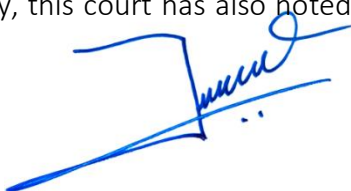
5 *(3) The court may, in like manner, and with the like discretion as to terms, upon the application of a defendant order the whole or any part of his or her alleged grounds of defence or counterclaim to be withdrawn or struck out, but it shall not be competent for a defendant to withdraw his or her defence or any part of it without such leave.”.*

Counsel for the applicant sought for a withdrawal under Order 25 rule 1 of the Civil Procedure Rules. However, the same order requires that applications made under rule 1 should be by
10 chamber summons as per rule 7 which was not followed in this instance. Counsel made an oral application in the absence of the other party after he had been served with the affidavit in reply of the 1st respondent on the 18th January 2023 where the 1st respondent stated under paragraph 4 that;

15 *“4. That in reply to paragraph 4 of the affidavit in support of notice of motion, it is true that the 1st respondent was ordered to pay Ugx. 5,000,000/= (five million shillings) as security for due performance of the said decree before 25th March 2022. And the same was paid. (A copy of the payment receipt from Masindi Chief Magistrates Court and acknowledgement from cashier are hereto marked “B” and “C”).*

An interpretation of rule 1 sets out some exceptions to the formal application and that is; by either
20 writing a notice and effecting service upon the court and the defendant or respondents as in this case and by court’s discretion under sub rule 2. I believe that based on the oral submissions made by counsel for the applicant, he sought to seek for leave from this court to discontinue this current application under Order 25 rule 1 sub rule 2 of the Civil Procedure Rules. The same sub rule provides this court with the discretion to discontinue or withdraw a suit/application before or at
25 or after hearing upon such terms as to costs.

This court has noted a copy of the bank statement from Stanbic bank Masindi branch which indicates an EFT to Registrar High Court of Ugx. 5,000,000/= conducted on the 05th April 2023. Secondly, this court has also noted that the annexures marked “B” & “C” as attached to the 1st



respondent's affidavit in reply; one being a general receipt for judiciary in the names of Bigirwenkya Godfrey and an acknowledgement of receipt of Ugx 5,000,000/= by a one Namata Sarah a cashier of Masindi Chief Magistrates court having received the same from Bigirwenkya Godfrey on behalf of the 1st respondent. Both annexures were executed on the 25th day of March 5 2022.

The above evidence shows that security for due performance, to the tune of 5,000,000/= was paid by the respondents as per annexures "B" & "C" with court on the 25th day of March 2022. This was within the timelines of the court direction. The EFT to the Registrar High Court was a confirmation of the said deposit. In the result, this court is clothed with discretion to discontinue this application 10 under Order 25 rule 1 sub rule 2 of the Civil Procedure Rules. It is therefore dismissed with no orders as to costs.

I so rule.

Dated and delivered on this 27th day of October 2023.

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Isah Serunkuma
JUDGE