

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**MISCELLANEOUS APPLICATION NO. 286 OF 2015
(ARISING FROM HCCS NO. 004 OF 2013)**

PETRONILLA OMAL OKOTH.....APPLICANT

VERSUS

1. GABRIEL OBBO KATANDI

2. GODFREY OBBO ONDHORO.....RESPONDENTS

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA
RULING**

The Respondents raised a preliminary objection that this suit was concluded on 3. November, 2015 under O.17 r. 4 of the Civil Procedure Rules. The rules provides that court goes ahead to decide the matter.

They cited the cases of *SALEM AHMED ZAID V. HUSSEIN HUMEIDAN (1960) 1 EA*, *FRED SEKYAYA SEBUGULU V. DANIEL KATUNDA (1979) HCB 46*, *MUNAKUKAAMA V. AISHA MULUNGI & BASAJJABALABA* (no citation).

Counsel argued that such a dismissal under O.17 r. 4 of the Civil Procedure Rules can only be set aside on appeal by the Court of Appeal. They argued that this court cannot entertain the matter as it formally finally decided it.

In response Respondents' counsel relied on **NAKIRIDDE V. HOTEL INT. LTD (1985) HCB 85** to argue that *Res Jurdicata* cannot arise. They also relied on **HORIZON COACHES V. RWENZORI SCA 2/2003**, that a judge must always state where possible the law under which the suit is dismissed.

They argued that court in this case did not specify the rule so it was not possible the rule to follow in and in any case they have a right to reapply for reinstatement.

I have examined the record. The said case HC CVS 04/2013 was called on 3.11.2015. On that day the record indicates that court gave a ruling following an application by Counsel for defendants that the suit be decided immediately under O.17 r. 4 of the Civil Procedure Rules, by dismissal with costs. Court granted the application after hearing both parties on the said application. Byamugisha for defendants, and counsel Aketch for the plaintiffs on brief. The matter of whether court proceeds under O.17 r. 4 of the Civil Procedure Rules to finally determine the matter was addressed by both counsel.

Court then made a ruling and relied on O.17 r. 4 of the Civil Procedure Rules and section 17 (2) (a) of the Judicature Act and finally determined that:

“As pointed out under O.17 r. 4 of the Civil Procedure Rules and Section 17 (2) (a) of the Judicature Act, the court cannot perpetuate delay, there is no justification for adjournment as there is no certainty of hearing. For all those reasons as prayed by defendants the suit is dismissed with costs to defendants.”

Is it therefore correct to say that the above amounts to no final order of court? I do not agree that the above case scenario fits on all fours to the scenario in *Horizon Coaches Ltd v. Pan African Insurance Co. Ltd Civil Appeal 2/2003*, where the Supreme Court dealt with a scenario where the Judge first adjourned *sine die*, then later entered an *ex parte* judgment against the parties.

In our case court proceeded under o.17 r. 2 of the Civil Procedure Rules and Section 17 (2) (a) of the Judicature Act.

O.17 r.2 of the Civil Procedure Rules requires the court to decide the suit immediately. While Section 17 (2) (a) provides that the High Court will have unlimited jurisdiction regarding its own procedures and will take proactive steps to curtail delay and prevent abuse of substantive justice.

By resorting to Section 17 (2) (a) of the Judicature Act, the court finally determined the matter by dismissing it so as to curtail further delay and abuse of process. Court had noted the fact that the suit was of 1980 and there was no certainty of hearing.

The above are not matters that court can set aside by itself since it has pronounced itself on the matter. I agree with Respondents that this court's hands are tied and it cannot reopen the case, having finally decided it as per O.17 r. 2 of the Civil Procedure Rules.

I am further persuaded in this finding by the decision of the High Court in **OGWANG OLEBE FRANCIS V. STANBIC UGANDA LTD MS CAUSE 548/2012**- HC CD KLA where **J. Musota** held that:

“Dismissal of a suit under O.17 r. 6 (1) of the Civil Procedure Rules cannot be reinstated.”

Technically, this suit similarly in my view cannot be reinstated since there is a final order of court.

It can be set aside only on appeal. I so find. Preliminary objection is sustained. Application is dismissed with costs to the respondents.

Henry I. Kawesa

JUDGE

16.12.2016