

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MA NO. 581 OF 2016**

- 1. NAMIREMBE JUDITH**
- 2. MAGANDA HARISONAPPLICANTS**
- 3. BALIDDAWA NELSON (Suing through
their next friend Teopista Musitwa)**

VERSUS

- 1. KATWALO STEVENSON**
- 2. HOUSING FINANCE BANK LTDRESPONDENTS**

BEFORE: HON. MR. JUSTICE GODFREY NAMUNDI

RULING

This application is brought under the Provisions of **Article 126(2)** of the **Constitution**, **Section 98** of the **Civil Procedure Act**, **Order 9 Rule 18** and **Order 52 Rules 1** and **3** of the **Civil Procedure Rules**. It seeks reinstatement of the head suit No.120/2013 which was dismissed under **Order 17 Rule 6(1)** of the **Civil Procedure Rules**. According to the affidavit in support and the grounds in the Notice of Motion, the suit was first filed on 14/3/2013.

An Interim Order was granted by the Assistant Registrar under Miscellaneous Application 230/2013, while Miscellaneous Application 299/2013 was not heard due to a weeding out session by the court. Attempts to have the suit fixed for hearing was made – vide a letter to the Registrar dated 23/1/2014.

On 31/7/2014, the file was re-allocated to another Judge. On 24/1/2014, the 1st Defendant sought and obtained the consent of the Plaintiffs to file his written statement of Defence out of time. The same was received in court on 3/7/2014 (as per the received stamp) and endorsed by the Registrar on 8th July, 2014.

The suit was then dismissed under **Order 17 Rule 6** of the **Civil Procedure Rules** on 17/9/2015 by the Registrar, on the strength of a letter by counsel for the 2nd Defendants. The Applicants argue that the suit was dismissed prematurely since two years had not elapsed since the last action by either party. That action was by the 1st Defendants action of filing a statement of Defence in 2014.

The 2nd Respondent filed an affidavit in Reply in which it is averred that the matter having been dismissed under **Order 17 Rule 6 (i)** of the **Civil Procedure Rules**, the only remedy was to file a fresh suit as provided by **Order 17 Rule 6(2)** of the **Civil Procedure Rules**. That the Applicants are guilty of inordinate delay in prosecuting their suit. and that they have only filed this application to forestall the action of foreclosure by the 2nd Defendants.

Further that the dismissal should be maintained under the provisions of **Section 17(2)** of the **Judicature Act**. The said Section gives courts mandate to take action that ensures that there is no inordinate delay or abuse of process in prosecution of cases.

Ordinarily, a suit that is dismissed under **Order 17 Rule 6 (1) CPR** is so dismissed when no step has not been taken by either party with a view of having the suit prosecuted/proceed for 2 years. When such action is taken, the remedy for the effected party is provided under **Order 17 Rule 6(2) CPR**. This is by way of filing a fresh Suit. There is no provision for reinstatement provided. **Ref: Miscellaneous Cause 548/2012 - Ogwang Olebe Francis Vs Stanbic Bank (U) Ltd.**

In the above matter an application to reinstate was dismissed. Looking at the chronology of events in the instant head suit and its application, it is quite clear that the last action in the matter was in July 2014 by the 1st defendant. The dismissal in 2015 - July was accordingly premature since two years had not yet expired since the last action by either party.

In **Rawal Vs Mombasa Hardware Ltd (1968)EA 392** the court of appeal for EA held that the court can exercise its inherent powers and reinstate a matter dismissed under **Order 17 Rule 6** of the **CPR**. The court of Appeal for EA in Kampala held the same view in **Adonia Vs Mutekanga (1970) EA 429**. It observed that the High Court is a Court of unlimited Jurisdiction, except so far as it is limited by

statute, and the fact that a specific procedure provided by rule cannot operate to restrict the courts' Jurisdiction.

I am satisfied that this suit was wrongly and prematurely dismissed. The Operation of **Order 17 Rule 6(2) CPR** is accordingly in operable in the circumstances.

I do allow the application under the provisions of **Section 98 CPA** and do order that the head suit 120/2013 be reinstated for trial. I so order.

Regarding costs, the suit was wrongly dismissed at the instance of the 2nd Respondent. The said Respondent must accordingly meet the costs of this Application.

Dated at Kampala this 6th day of December, 2016.

GODFREY NAMUNDI
JUDGE.