

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
MISCELLANEOUS APPLICATION NO. 0156 OF 2023
(ARISING FROM CIVIL SUIT NO. 016 OF 2019)

1. OPIYO NICHOLAS
2. CHARLES BOB ODONG APPLICANTS

VERSUS

1. AYUGI NORAH
2. APIYO MARGARET
3. OKANGA MOSES RESPONDENTS

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

RULING

This is an application to reinstate the dismissed Civil Suit No. 016/2019 for hearing on merit. That suit sought to challenge the sale of a piece of land by the Applicant's mother and sister, who sold to the 3rd Respondent at Ug. Shs. 80,000,000. When the suit was lodged, the 3rd Respondent also sued the vendors, vide Civil Suit No. 53 of 2019. Upon the dismissal of the Applicant's suit in which the 3rd Respondent was joined alongside the Applicant's mother and sister as defendants, the 3rd Respondent withdrew his suit against the land vendors. (The Applicants' mother and sister). The suit by the Applicants came up for hearing on earlier occasions as shown by the hearing notices attached to the opposing affidavit, before the dismissal on 26/1/2023. Those earlier dates are 14th & 15th June,

5 2022; and 7th December 2022. However, neither the Applicants nor their
Attorney or Counsel, appeared. The case was then fixed for hearing on
26/1/2023, and the hearing notice duly served, and received by a one
Akram, an official of the Firm of the then Advocates for the Applicants. I
note that the Firm of KM Advocates & Associates have not denied the fact
10 of due service with the court Process. They have not sworn affidavits in
this matter. When the case came up on 26/1/2023, neither the Applicants
nor their Attorney or their Advocate, appeared. They now contend that
they have been informed by the former Advocate that this court premises
were under renovation, and case file census was ongoing, so they did not
15 find it necessary to appear. That deposition, certainly has not been
supported by their then Advocates for court to confirm if at all that is what
the then Advocates advised the Applicant. If that be the case, then the
recourse against the Advocates is to be dragged to the Law Council, or
Court for professional negligence, because the various hearing notices on
20 court record with which the Advocates had been served, rebut their alleged
claims. Be that as it may be, the question is whether inspite of the alleged
negligence/mistake of the former Counsel, the Applicants were themselves
diligent in prosecuting the head suit. Mr. Doii for the Applicants, rightly
conceded, that the Applicants themselves and their Attorney, did not
25 appear during the hearing of 14th & 15th June, 2022, as well as that of 07th
December 2022. In my view, they have not demonstrated diligence, so
they cannot rely on mistake or negligence of former Counsel. I have thus
come to the conclusion that; sufficient cause has not been shown for
reinstatement of the dismissed Civil Suit No. 16/2019. Although it is
30 alleged that the matter involves a land dispute, which ordinarily ought to
be heard and determined on merit, this case is not purely land but seeks
to purport to challenge a sale by the Applicants mother and sister, to the

5 3rd Respondent. It is more about the propriety of the sale transaction and the power to do so.

All in all, the Applicants have a recourse against their mother exclusively, if at all, and their former Counsel in negligence or professional
10 misconduct.

The Application is devoid of merit and stands dismissed with costs.

Delivered, dated and signed in court this 11th April, 2024.

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George Okello 11/4/2024
George Okello
JUDGE

20 Ruling read in Open Court

11th April, 2024

Attendance

The 3rd Respondent.

25 Mr. Doii Patrick, Counsel for the Applicants.

Mr. Kutosi, Counsel for the 3rd Respondent.

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George Okello 11/4/2024
George Okello
JUDGE