

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 1987 OF 2019

(Arising out of Civil Suit No.459 OF 2011)

AIJUKA HELLEN:..... APPLICANT

VERSUS

1. KATURAMU JULIUS

2. FINA BANK (U) LIMITED ::::::::::::::::::::::::::::::: RESPONDENTS

10 **Before Hon. Lady Justice Alexandra Nkonge.**

Ruling.

This is an application brought by Notice of Motion to reinstate **High Court Civil Suit No.459 of 2011** between the applicant as plaintiff and Katuramu Julius and FINA Bank (U) Ltd as the defendants and an order for costs.

The suit was dismissed on *21st May, 2019* for want of prosecution. The court record indicates that the last action taken before the dismissal was on *5th May, 2015*.

Under **Order 17 rule 6 (1) of the Civil Procedure Rules S.I 71-1**
 20 under which this suit had been dismissed, where no application is made

or step taken for a period of two years by either party with a view to proceeding with the suit, the court may order the suit to be dismissed.

This application is therefore brought under **section 98 of the Civil Procedure Rules Cap. 98, Order 46 Rule 1 (a) & (b) of the Civil**
5 **Procedure Rules S.I 71-1** for orders that the dismissal order of **Civil Suit No.459 of 2011** be set aside, **Civil Suit No. 459 of 2011** be reinstated for hearing and costs be provided for.

The matter having been dismissed under **Order 17 Rule 6 (1) of the Civil Procedure Rules**, the remedy for the plaintiff in such instance lies
10 under **Order 17 rule 6 (2) of the Civil Procedure Rules**, which entitles the applicant to filing a fresh suit.

There is no legal provision which mandates this court to reinstate a suit dismissed under such circumstances. (**Miscellaneous Cause 548/2012 – Ogwang Olebe Francis Vs Stanbic Bank (U) Ltd**).

15 It is also worth noting as correctly noted in the supporting affidavit of Mr. Muhwezi Tharry for the 2nd respondent's bank, that as per the rules of procedure, summons ought to have had been served upon the respondents within 21 days from the date of sealing by this court.

However per the notice of motion availed to court, the application was
20 filed in court on 18th December, 2019 and sealed by this court on 27th October, 2019. It was not however until 2nd November, 2020, a period of about twelve months later that it was served to the 2nd respondent.

There was no application filed in this court seeking leave to extend the period within which the applicant was required to serve, as per **order 5 rule 2 of the Civil Procedure Rules**. The applicant did not file any rejoinder.

- 5 This court also noted that the 1st respondent Mr. Katuramu Julius did not file any reply and that there was no evidence to show that he had been duly served.

Accordingly, this application is improperly before this court and is therefore struck off with costs to the 2nd respondent.

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Alexandra Nkonge Rugadya
Judge.

1st February, 2021.

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