

Baliruno John v Canaansites Ltd
(Miscellaneous Application No. 897 of
2024) [2025] UGHCCD 67 (13 June 2025)
[2025] UGHCCD 67

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- a) There is sufficient cause for this Honorable Court to set aside the order which allowed the matter to proceed ex parte.
- b) During the hearing of the main suit, he instructed his advocate to recall the plaintiff's first witness in court.
- c) Court allowed on condition that he pays UGX 300,000 (Three Hundred Thousand shillings only) for this witness' transportation.
- d) When the matter came up for hearing the applicant was bedridden but sent his lawyer to represent him.
- e) That due to his health condition, he was not able to provide the witness' transportation.
- f) He informed his lawyer who agreed to improvise only to discover that court had ordered that the matter proceeds ex parte.
- g) He was interested in the matter and that it is in the interest of justice that the application be granted.

The Respondent opposed the application by an affidavit in reply deposed by Susan Wabasa which states briefly that;

- a) The applicant was aware of the next hearing and was served but he deliberately chose not to attend the hearing.
- b) That court ordered for costs for witness' transportation but did not mention the amount as UGX 300,000 (Three Hundred Thousand Shillings only).
- c) The applicant's alleged sickness should not have affected the hearing of the suit since he had representation.
- d) The applicant was deliberately trying to frustrate the main suit.

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- e) The application and supporting affidavit has no sufficient cause for setting aside the ex parte order.
- f) The application be dismissed with costs.

REPRESENTATION

The applicant was represented by Masajjage Steven while the respondent was represented by Bukiya Gilbert.

ISSUE FOR DETERMINATION

Whether the applicant is entitled to a grant of the orders and reliefs sought

DETERMINATION

Having read the application, the affidavits attendant there to and the submissions of both parties. I find as herein.

The record shows that this matter was filed in 2016 which makes it one of the oldest matters before me. I take note of the fact that the applicant has severally not attended court when required. I also note that the applicant has been given opportunity to appear and cross-examine the respondent's 1st witness in HCCS No. 305 of 2016 in vain. For this, the applicant was condemned to costs on the 14th of December 2023. These costs were to be paid before the next hearing date. The same have not been paid to date.

I unfortunately could not access part of the record that led to the plaintiff/ respondent being granted an order to proceed ex parte in HCCS No. 305 of 2016. The record of court starts on the 27th day of May 2024.

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On the 27th day of May 2024 the matter came up for hearing in the presence of the plaintiff's lawyer and a director from the plaintiff company. The 2nd defendant was not in court but his lawyer was present.

On the 20th May 2025 the matter came up again. Counsel for the applicant and the respondent were in court. The costs ordered by court had still not been paid.

In this application the applicant alleges that his conduct is as a result of non-service of hearing notices and sickness. Unfortunately, the applicant does not attach any evidence of sickness. The court has not had the opportunity to interact with the applicant as he has never attended court.

I am cognizant of all the authorities cited by the parties. I agree with them and find no reason to depart from them.

Court can set aside an order to proceed ex parte for sufficient cause or under Section 98 of the Civil Procedure Act Cap 282 using its inherent powers. It is vital to note that these powers should be exercised judiciously.

In this application and for the reasons cited above I find that the applicant has given no sufficient reason that would lead to the lifting of the order to proceed ex parte. However, given that court could not access the record that would explain the antecedents that led to the grant of an order to proceed ex parte, it would be unjust to uphold the same. The history of the same is also not clearly alluded to or discussed comprehensively by the parties in this application. I therefore find that it is in the interests of justice to set aside the ex parte order on certain conditions, so that the

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applicant is heard on whatever defense he may have. I therefore order as follows; -

- 1. The hearing of HCCS No. 305 of 2016 shall be on the 21st of August 2025 at 9:00 am

- 2. The applicant shall pay the costs as ordered by court on the 14th December 2023.
- 3. The applicant shall pay additional costs for the day to enable the respondent's witness travel for cross examination.
- 4. The above costs shall be paid before the hearing, which is slated for the 21st of August 2025.
- 5. All parties in HCCS No. 305 of 2016 are required to produce all their witnesses on the 21st of August 2025.
- 6. The order to proceed ex parte shall be lifted subject to fulfilment of the conditions in 2,3 and 4 above.
- 7. Costs of this application shall be in the cause.

I, so order

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SIMON PETER M. KINOBE JUDGE

DATE: 13th June 2025

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