

**Byeshanika and Another v Attorney General
and Others (Miscellaneous Application 76
of 2022) [2025] UGHC 209 (18 April 2025)**
[2025] UGHC 209

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- 2. The grounds of this Application are contained in the affidavit of Byeshanika George the 1st Applicant which are briefly: -That the Applicant filed the main suit in December 2019 and was prevented from prosecuting the case because of the absence of a Judicial Officer to handle cases in Masaka High Court which took almost two years to appoint one; That the same case was affected by the COVID - 19 Worldwide Pandemic which came with lockdowns, transport restrictions and prioritization of essential workers and none essential workers; That soon after the filling COVID - 19 set in and the Country was at different times put under lockdown by His Excellency the President of Uganda from 2020 to January 2022 when the country was finally opened up.
- 3. That the matter was allocated to Hon. Justice Moses Kazibwe Kawuumi who was later transferred from Masaka before hearing the case and no replacement was made by the Judiciary until late 2021 when a new Judge was posted to Masaka High Court; That later the file was placed before His Lordship Hon Justice Lawrence Tweyanze who fixed the same for Notice to show cause on 27th of February 2022 when the matter was dismissed for want of prosecution in the presence of his Lawyer Mr. Patrick Yehangane who had come to show cause; That the Applicants were prevented from prosecuting the case by sufficient reasons of absence of the Trial Judge, the World Wide Pandemic of COVID -19 which paralysed the world and Uganda was not an

exception; That it is in the interest of Justice that this Application be granted and the dismissal Order be set aside; That this Application has been made without delay.

The 1st Respondent's Affidavit in reply.

- 4. The 1st Respondent filed an Affidavit in reply deponed by Oburu Odoi Jimmy who stated that he is a Principal State Attorney in the Attorney General's Chambers and that the record of HCCS NO. 58 OF 2019 indicates that HCCS NO. 58 OF 2019 was dismissed for want of prosecution on 27th February 2022 in the presence of the Applicant's lawyer; That this Application is brought under Order 9 Rule 18 and Order 52 Rule 1 of the Civil Procedure Rules; That Order 9 Rule 16 of the Civil Procedure Rules S. I - 71-1 provides for suit dismissed upon failure to pay fees whereas Order 9 Rule 17 of the Civil Procedure Rules S. I - 71-1 provides for scenarios where neither party appears when the suit is called on for hearing and the same is dismissed for non-appearance.
- 5. That HCCS NO. 58 of 2019 was dismissed for want of prosecution and not for nonappearance nor for failure to pay fees as provided under Order 9 Rules 16 and 17 of the Civil Procedure Rules; That this Application to set aside the dismissal of HCCS No. 58 Of 2019 is misconceived and the Applicants should have appealed against the dismissal by the judge on the 27th February 2022 instead of applying to set it aside because the matter before Court was dismissed for want of prosecution and not for non - appearance nor for failure to pay fees; That the remedy sought and claimed by the Applicants under Order 9 Rule 18 and Order 52 Rule 1 of the Civil Procedure Rules is only available if the dismissal was made under Order 9 Rules 16 and 17 of the Civil Procedure Rules.

- 6. That a matter is dismissed for non-appearance when a party or its Counsel has not appeared in Court and that a matter is dismissed for want of prosecution when a party fails to take the necessary steps to prosecute it. That in the present case, HCCS No. 58 of 2019 was dismissed by Court because the Counsels failed to take any steps to prosecute it; That it is now established law that a decision of dismissal for want of prosecution under Order 17 rule 5 amounts to a decree and not an order, and that such a decree is only appealable as of a right and cannot be set aside as a mere order, since it is adjudged to have been given on merit. That the purpose of this is to enable Courts deal with backlog of cases; That HCCS No. 58 of 2019 was dismissed by Court not because of non-appearance; That this Application does not meet the legal threshold for the issuance of the remedies it seeks and its pertinent that the same be dismissed with costs to the Respondents.

Affidavit in Rejoinder

- 7. In rejoinder, George Byeshanika deponed that it is not true that the Application is premature and incompetent as said by the Respondents in their Affidavits under paragraph 4 thereof because COVID - brought all movements of persons to a complete halt and he was not an exception since he was not an essential person; That it is false that the Applicant has not demonstrated to this Court in the Application any sufficient cause that hindered them from prosecuting the matter. That COVID -19 lockdown which was set by the President, the Ministry of Health Standard Operation Procedures (SOPs) and the Judiciary Directions are all sufficient reasons which made the case lose its position. That therefore the Applicant was prevented from prosecuting the case by sufficient reasons and long absence and COVID -19 worldwide pandemic; That after filling of this Application the Applicants have always waited for Court to fix the date and the Applicants have no capacity whatsoever in fixing dates which is a preserve of Court in accordance with the Judge's schedules; That the COVID -19 pandemic undermined the entire social, judicial, mobility as well as legal processes and he was not an exception to the COVID -19 peculiar circumstances; That the presence of the Lawyer does not take away the COVID -19 effects and is a reasonable ground to be considered by Court.
- 8. The Applicants were jointly represented by M/s Yehangane & Co. Advocates. The parties were directed to file written submissions, and only the Applicants filed theirs which I have considered. There are no submissions on my Court record from the Respondents.
- 9. It is pertinent at this stage to make it clear that the right procedure to adopt in matters dismissed for want of prosecution is appealing that order rather than applying to set aside the said dismissal order as rightly submitted by the Principal State attorney. There is a difference between Dismissal for Want of Prosecution and Non-Appearance. Under Dismissal for Want of Prosecution, a suit is dismissed due to the Counsel's prolonged inaction in progressing the case under *Order 17 Rule 6, Civil Procedure Rules (CPR)*. In that case the party may appeal the decision under *Order 17 Rule 6(2)*, since it becomes a decree. In *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA

696* – a suit was dismissed for Counsel's failure to take steps for over a year.

- 10. On the other hand, under Dismissal for Non-Appearance, a suit is dismissed when Counsel and /or parties fail (s) to appear at a scheduled hearing, under Order 9 Rule 22, CPR. In that case, re - instatement is possible under Order 9 Rule 27 with sufficient cause. In *Lukwago vs. Kampala Capital City Authority (HCCS No. 309 of 2012),* a dismissal for non-appearance was set aside upon showing genuine cause.

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11. In this case, HCCS NO. 58 of 2019 was dismissed for want of prosecution and not for non-appearance; I agree with the argument of the Respondent that the Applicants should have appealed against the dismissal instead of applying to set it aside. Be that as it may, and for purposes of completion of this matter, I will determine it on merits.

Decision.

- 12. This Court has powers under **Section 98 of the Civil Procedure Act Cap 282 (Revised Edition)** to make such orders as may be necessary for the ends of justice as well as to set aside orders or proceedings on sufficient cause being shown. In the cases of *Florence Nabatanzi vs. Naome Binsobodde SC Civil Application No. 6 of 1987* and *Sipiriya Kyaturesire vs. Justine Bakachulike Bagambe CA No. 20/1995* both Courts noted that:
 - *(a) First and foremost, the Application must show sufficient reason which relates to the inability or failure to take some particular step within the prescribed time. The general requirement notwithstanding each case must be decided on facts.*
 - *(b) The administration of justice normally requires that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from pursuit of his rights.*
 - *(c) Whilst mistakes of Counsel sometimes may amount to an error of judgment but not inordinate delay or negligence to observe or ascertain plain requirements of the law.*
 - *(d) Where an Applicant instructed a lawyer in time, his rights should not be blocked on the grounds of his lawyer's negligence or omission to comply with the requirement of the law.*
 - *(e) A vigilant Applicant should not be penalized for the fault of his Counsel on whose actions he has no control."*
- 13. In this case, the Court record indicates that Civil Suit No. 58 of 2019 was set down to show cause why it should not be dismissed. On the 7th day of March 2022, Counsel Yehangane appeared for the Counsels who are now the Applicants, and the parties did not appear in Court. Counsel for the Counsels, now Applicants did not show cause as to why the matter should not be dismissed, and as such, Civil Suit No. 58 of 2019 was dismissed for want of prosecution, and for failure to take a step for 2 years.

- 14. In the Application, the 1st Applicant deposed that he was prevented from prosecuting the case because of absence of a Judicial Officer to handle cases in Masaka High Court which took almost two years to appoint one; That the same case was affected by the COVID -19 Worldwide Pandemic which came with lockdowns, transport restrictions and prioritisation of essential workers and non - essential workers; That soon after the filling COVID - 19 set in and the Country was at different times put under lockdown by His Excellency the President of Uganda from 2020 to January 2022 when the country was finally opened up. That the matter was allocated to Hon. Justice Moses

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Kazibwe Kawuumi who was later transferred from Masaka before hearing the case and no replacement was made by the Judiciary until late 2021 when a new Judge was posted to Masaka High Court; That the file was placed before His Lordship Hon. Justice Lawrence Tweyanze who fixed the same for Notice to Show Cause on 27th of February 2022 when the matter was dismissed for want of prosecution in the presence of his Lawyer Mr. Patrick Yehangane who had come to show cause; That the Applicants were prevented from prosecuting the case by sufficient reasons of absence of the Trial Judge, the World Wide Pandemic of COVID - 19 which paralysed the world and Uganda was not an exception.

- 15. From the above, the Applicants blame Court for not having a judge from the time they filed the suit in 2019 until 2022 when the matter was dismissed. Also the Applicants blame the effects of COVID - 19, and they averred that soon after the filing, COVID - 19 set in and the country was at different times put under lockdown by His Excellency the President of Uganda from 2020 to January 2022 when the country was finally opened up. To set aside a dismissal order, the Applicants must show sufficient cause.
- 16. The term sufficient cause has received extensive adjudication on its meaning. In the case of **The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others** cited in **Gideon Mosa Onchwati vs Kenya Oil Co. Ltd & Another [2017] eKLR** discussing what constitutes **sufficient cause** had this to say: -

"It is difficult to attempt to define the meaning of the words 'sufficient cause'. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant."*

17. In the same Kenyan authority of **Gideon Mosa Onchwati** (supra) reliance was made on the Supreme Court of India case of **Parimal vs Veena** which attempted to describe what was "**Sufficient cause**" when it observed that: -

"Sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the

facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of*

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each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously"

- 18. In my view, the circumstances explained by the Applicants are not satisfactory at all, first, there were two Judges at Masaka High Court at the time, with Hon Justice Victoria Nakintu who reported in early 2020, and Hon Justice Lawrence Tweyanze reporting in October 2021. The averment that there was no judge in Masaka between 23rd December 2019 when the matter was filed and 7th March 2022 when the matter was dismissed is void of merit, and I reject that explanation. In any case, that matter was put on a Notice to Show Cause for a whole month and that notice was even posted on the Uganda Law Society forum and Masaka JLOS forum so any prudent Lawyer or party should have followed even in that window.
- 19. Clearly, there were was no total hindrance to the Applicants or their lawyers to prosecute the matters from the time they filed Civil Suit No. 58 of 2019 in 2019 up to 7th March 2022 when the matter was dismissed. Worst of all, there was no even any summons for directions taken out on Court record.
- 20. The Applicants have not demonstrated any sufficient cause, as to why they did not prosecute the matter as the arguments of absence of a Judge and COVID - 19 lockdown are not satisfying at all. There is no sufficient cause to warrant setting aside the dismissal order and reinstatement of the dismissed suit.
- 21. I am therefore not satisfied that there are sufficient grounds for setting aside the dismissal order in Civil Suit No. 58 of 2019 and thus this Application fails and it is hereby dismissed with no orders as to costs.
- 22. I therefore decline to grant the Application with the following order(s):
 - a. This Application lacks merit and it is hereby dismissed with costs awarded to the Respondents.

I so order.

Ruling signed and delivered electronically Masaka this 18th day of April, 2025

..... LAWRENCE TWEYANZE JUDGE. 18th April, 2025.

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Prepared on 14 October 2026 · Esheria