

UGANDA / JUDGMENT

Imochu & Others v Kibuye & Another (Miscellaneous Application 163 of 2024) [2025] UGHC 255 (5 May 2025) [2025] UGHC 255

COURT
High Court of Uganda

BEFORE
Lubega, J

CASE / FILE NUMBER
Miscellaneous Application 163 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBALE
MISCELLANEOUS APPLICATION NO. 163 OF 2024 (ARISING FROM CIVIL SUIT NO.
027 OF 2021)

1. JANE IMOCHU NAMISANO

2. MUKASA MICHEAL

3. PATRICE NAMISANO: (Suing through his lawful attorney Masuo Andrew)

VERSUS

- 1. ANDREW KIBUYE MUTUBUSI

- 2. MICHEAL KIBUYE : (Lawful attorney of Kibuye Mutubusi)

BEFORE: HON. JUSTICE LUBEGA FAROUQ

RULING

1. Introduction

- 2. This application was brought by way of a Notice of Motion under S.98 of the Civil Procedure Act, Cap. 282, Order 9 Rule 18 of the Civil Procedure Rules SI 71-1, and Order 52 Rules 1 & 3 of the Civil Procedure Rules SI 71-1, seeking for orders that

- a) The order of this court dismissing Civil Suit No. 021 of 2021 for nonattendance of the parties be set aside;
- b) The Applicants' head suit vide High Court Civil Suit No. 021 of 2021, Jane Imochu Namasino & 2 others Versus Andrew Kibuye Mutubusi & Another be reinstated and heard on merits inter parties;
- c) Costs of this application be provided for.
- 3. The application is premised on the grounds set out in the supporting affidavit of Masuo Andrew, the holder of powers of attorney of the 3rd Applicant, briefly the grounds are that-
- a) The Applicants through their former lawyers of Angulia Busiku & Co. Advocates filed Civil Suit No. 027 of 2021 against the Respondents, to which the Respondents filed a written statement of defence;
- b) Summons for directions were taken out by the Applicants' former lawyers, and the same was fixed for hearing on 9/09/2022, but the same were never served unto the Defendants now Respondents;
- c) That owing to the COVID 19 inconveniences, the Applicants' former lawyers informed them that since the matter was still in the initial stages, there was no need for them to go to court since they were represented;
- d) The Applicants' former lawyers also told them that they were going to schedule a meeting at their offices to extract witness statements from them in around the month of October, 2022;
- e) The Applicants made attempts to physically visit their former lawyers' offices to get update on their file, but were only told to be patient;
- f) After waiting for a reasonable time without getting any feedback from their former lawyers, the Applicants decided to follow up on their case by coming to court in the month of June, 2024;
- g) At court, they were informed that their case had been dismissed on \$28/03/2024\$ for non-attendance of parties;
- h) The Applicants with the advice of their new lawyers filed the instant application for reinstatement of Civil Suit No. 027 of 2021;
- i) The Applicants are ready and willing to prosecute their case to its final conclusion once reinstated;
- j) The mistake and negligence of the Applicants' former lawyers cannot be visited on them;
- k) The Respondents will not be prejudiced by the grant of this application.

- 1) It is fair, reasonable and in interest of justice that this application is granted.
- 4. The application was opposed through an affidavit in reply deposed by the 1st Respondent, ANDREW MUTUBUSI on grounds briefly that-

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- a) The Applicants failed to take out summons for directions after the closure of pleadings in the main suit as required under the law, and the suit abated without notice;
- b) The Applicants voluntarily abandoned prosecution of the main suit when it was called for hearing;
- c) The Applicants have not advanced any valid reason why they did not turn up for hearing when the main suit was called for hearing.

5. Background

- 6. The background of this application is that sometime in 2021, the Applicants filed Civil Suit No. 027 of 2021 against the Respondents. The Respondents filed their respective written statements of defence to the suit. The Applicants allegedly took out summons for directions, but did not appear in court when the summons for directions were fixed for hearing. Accordingly, Civil Suit No. 027 of 2021 was on the 28th day of March, 2024 dismissed for non-attendance of parties.
- 7. As a result, the applicants filed the present application for court to set aside the dismissal order for non-attendance of parties, and have Civil Suit No. 027 of 2021 reinstated on the premise of negligence and mistake of their former lawyers.

8. Representations

- 9. At the hearing of this application the Applicants were represented by Counsel Luchivya Faith of M/s Luchivya & Co. Advocates, while the Respondents were represented by Mr. Wamukoota Charles holding brief for Mr. Allan Kikwe of M/s Nandoah Wamukoota & Co. Advocates.

10. Submissions

- 11. The parties were given directions to file written submissions. Only the Applicants' counsel complied. I have considered the same in determination of this application.

12. Issues

- 13. This application presents two issues for determination as follows-
- a) Whether the Applicants have shown sufficient cause for setting aside an order of dismissal, and reinstatement of *Civil Suit No.027 of 2021?*

- *b) What remedies are available to the parties?*

14. Analysis of court

15. Issue One: Whether the Applicants have shown sufficient cause for setting aside an order of dismissal, and reinstatement of Civil Suit No.027 of 2021?

16. Order 9 Rule 18 of the Civil Procedure Rules SI 71-1 provides that-

"Where a suit is dismissed under rule 16 or 17 of this Order, the plaintiff may, subject to the law of limitation, bring a fresh suit or he or she may apply for an order to set the dismissal aside; and if he or she satisfies the court that there was sufficient cause for his or her not paying the court fee and charges, if any, required within the time fixed before the issue of the summons or for his or her nonappearance, as the case may be, the court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit."

17. The condition referred to under Rule 17 of Order 9 mentioned under rule 18 of the same order is to the effect that-

> "Where neither party appears when the suit is called on for hearing, the court may make an order that the suit be dismissed."

18. The Applicants argue that they instructed their former lawyers of M/s Angulia Busiku & Co. Advocates to manage the conduct of their case vide Civil Suit No.027 of 2021. That the Applicants' said former lawyers, filed Civil Suit No.027 of 2021 on 18/05/2021 against the Respondents as per the Applicants' instructions.

- 19. In paragraph 4 of the affidavit in support, the Applicants indicate that their former lawyers took out summons for directions that were fixed for hearing on 9/9/2022, but due to COVID 19, their former lawyers told them that there was no need for the applicants to appear in court.
- 20. Later, the Applicants learnt that their case had been dismissed for nonattendance. The Applicants apportion the cause for the dismissal of their case on the negligence and mistake of counsel, which they argue that it should not be placed on them as litigants. For this proposition, Counsel for the Applicants cited the case of Phillip Ongom V. Catherine Nyero Owota, (Civil Appeal 14 of 2001), [2003] UGSC 16.
- 21. In paragraph 2 of the affidavit in support, it is stated that Civil Suit No.027 of 2021 was filed on 18/5/2021. The record of court shows that on 28/3/2024 the said suit was dismissed for non-appearance by the parties.
- 22. It settled law in accordance with Order 9 Rule 18 of the Civil Procedure Rules (supra) that a dismissal order can only be set aside upon proof of a sufficient cause by the Applicant.
- 23. In the case of Hadondi Daniel V. Yolam Egondi, Court of Appeal Civil Appeal No 67 of 2003, the court stated that-

"Sufficient cause must relate to the inability or failure to take necessary steps within the prescribed time."

24. Also in the case of the Registered Trustees of the Archdiocese of Dar es Salaam V. The Chairman Bunju Village Government & Others quoted in Gideon Mosa Onchwati V. Kenya Oil Co. Ltd & Another [2017] eKLR it was stated that-

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"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

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justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant."

25. Further, the Supreme Court in the case of Kansiime K. Andrew V. Himalaya Traders Ltd & 5 others, Supreme Court Civil Application No. 60 of 2021, adopted the dicta in Supreme Court of India in Parimal versus Veena alias Bhart 13 SCC 348 where it was observed thus: ".... In this context sufficient cause means a party had not acted in a negligent manner or there was want of bona-fide on its part in view of the facts and the circumstances of each case..."

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- 26. In the present case, the Applicants assert that through their former lawyers of Angulia Busiku & Co. Advocates, they filed Civil Suit No. 027 of 2021 against the Respondents, to which the Respondents filed a written statement of defence. That owing to the COVID 19 inconveniences, the Applicants' former lawyers informed them that since the matter was still in the initial stages, there was no need for them to go to court since they were represented.
- 27. In paragraph 7 of the affidavit in support, it is averred that the Applicants made attempts to physically visit their former lawyers' offices to get updates on their file, but were only told to be patient. After waiting for a reasonable time without getting any feedback from their former lawyers, the Applicants decided to follow up on their case by coming to court in the month of June, 2024.
- 28. The applicants received information from court that their case had been dismissed on 28/03/2024 for non-attendance of parties.
- 29. The court of Appeal in the case of Mutaba V Bazirakye (Civil Application No 158 of 2014) 2015 UGCA 27 held that'

"Mistakes or inadvertence by counsel should not be visited on litigants themselves who come to court seeking substantive justice."

- 30. Where a litigant has instructed an advocate to conduct his or her case, it is expected that the instructed advocate or law firm assumes a duty to be personally responsible for the work undertaken on behalf of client, and to exercise professional supervision and monitoring of the progress of the client's case. (Ref. Rgn. 6 of the Advocates (Professional Conduct) Regulations SI 267-1).
- 31. Again, Regulation 12 of Advocates (Professional Conduct) Regulations (supra) enjoins Advocates to give professional advice to clients in their best interest. It thus provides that-
"Every advocate shall advise his or her clients in their best interest, and no advocate shall knowingly or recklessly encourage a client to enter into, oppose or continue any litigation, matter or other *transaction in respect of which a reasonable advocate would advise* that to do so would not be in the best interests of the client or would *be an abuse of court process.*"
- 32. In that view, the Applicants' former lawyers had a duty to advise them to appear in court and personally monitor the progress of their case. On contrary, the applicants state that they were misled by their former lawyers who told them not to appear in court because the case was at its initial stages that could be managed by the advocates without the presence of the Applicants.
- 33. In that perspective, I find the decision of the court of appeal in the case of **Mutaba v Bazirakye (Supra)** is applicable in the present case. The reason why the Applicants were not able to attend court has been explained. This is because they relied on the advice of their former lawyer who told them that he would handle the initial stages of their case without them. Therefore, it would be unjust to condemn the applicants for neglecting their case.
- 34. In the view of the above, I am convinced that the Applicants have laid a sufficient cause warranting this court to set aside the dismissal order dismissing Civil Suit No. 027 of 2021.

35. Issue Two: What remedies are available to the parties?

- 36. I have found under issue one that the Applicants have shown a sufficient cause necessitating the setting aside of the dismissal order entered on 28/3/2024 in Civil Suit No. 027 of 2021. Order 9 Rule 18 of the Civil Procedure Rules (supra) inter alia provides that upon proof of a sufficient cause, court has the discretion to set aside the dismissal order entered in accordance with Order 9 Rules 16 & 17 of the Civil Procedure Rules (supra).
- 37. This application accordingly succeeds in the terms below-
 - a) The order of court dismissing Civil Suit No. 027 of 2021 is hereby set aside.
 - b) Civil Suit No. 027 of 2021 is hereby reinstated and shall be heard interparty.
 - c) The file shall be referred back to the Deputy Registrar to manage the pretrial process from the stage of closure of the parties' pleadings.

- d) The reason for the dismissal having been the fault of the Applicants, costs of this application are awarded to the Respondents.

I so order 38.

LUBEGA FAROUQ Ag. JUDGE

Ruling delivered electronically via the emails of the Advocates of parties on this 5th day of May, 2025*

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