

UGANDA / JUDGMENT

Kambuga and 3 Others v Walugembe and 4 Others (Miscellaneous Application 1136 of 2023) [2023] UGHCLD 261 (29 August 2023)

[2023] UGHCLD 261

COURT

HC: Land Division (Uganda)

BEFORE

Nkonge, J

CASE / FILE NUMBER

Miscellaneous Application 1136 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION)
MISCELLANEOUS APPLICATION NO.1136 OF 2023

(Arising out of Miscellaneous Appeal No.0026 of 2022) (Arising from Taxation Application No.0003 of 2022)

- 1. HASSAN SEGAWA KAMBUGA
- 2. BONY M. KASUJJA
- 3. NSANGI SARAH 10

 $\$S$

- 4. NABUULE BEATRICE & 95 OTHERS:.....

VERSUS

- 1. WALUGEMBE DANIEL
- 2. BLASIO BWISE
- 3. YOSAM MASEMBE \$15\$
- 4. SENDAULA RONALD
- 5. LATIMER MPAGI:.....

Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

This application brought by way of motion under the provisions of Section 33 of the \$20\$ Judicature Act cap.13, Sections 82 & 98 of the Civil Procedure Act Cap.71, and order 46 rules 1 & 2 of the Civil Procedure Rules SI 71-1 seeks orders that the ruling and order dismissing Taxation Appeal No.26 of 2022, be reviewed, set aside, and Taxation Appeal No.26 of 2022 be reinstated. It also seeks orders that costs of the application be provided

\$25\$ for.

The grounds in support of the application are contained in the affidavit in support of the application deposed by Counsel Nakachwa Sarah, an advocate of the High Court practicing with *M/s Nakachwa Matovu & Co. Advocates*, and counsel for the applicants in this matter.

The applicants also filed a supplementary affidavit in support of the application deposed by Counsel Mpirwe Isaac, an advocate of the High Court practicing with *M/s Ouma Tinyinondi* 30

& co. Advocates.

The gist of their argument was that the appeal which was dismissed by court sought to challenge the high, and unconscionable bill of costs allowed by *His Worship Kintu Simon* Zirintusa in Taxation Application No.0003 of 2022 and that while the appeal was allocated No. 26 of 2022, it appears to not have been endorsed by the Assistant Registrar,

or have a date on ECCMIS.

Deposits

That an error on the face of the record had been the basis of the dismissal of the appeal wherein the ECCMIS administrator had erroneously uploaded Miscellaneous Cause No.26 of 2022 Kamanya Richard & Anor vs Muteebi George William with directions in the same docket as Miscellaneous Taxation Appeal No. 26 of 2022.

- That no notice of the intended proceedings before the trial judge was given to the applicants $\$ \text{mathsf{S}} \$$ either physically, or electronically, despite the fact that the applicants' lawyers physical and electronic addresses as well as contact details are duly documented on court record thereby denying them an opportunity to object to the glaring procedural irregularities in conduct of the application.
- That it is upon the directions of court that counsel for the respondent filed for dismissal of \$10\$ the appeal on grounds that the directives had not been complied with, and yet the same lawyers had erroneously cited that M/s Lukwago & Co. Advocates had replied to the application without instructions, and that the timelines had lapsed.

That it was upon the lawyers' representation that the judge dismissed Miscellaneous Taxation Appeal No.26 of 2022 basing on untrue grounds because the directives referred 15 to the applicants in Miscellaneous Cause 26 of 2022 Kamanya Richard & Anor vs Walugembe Daniel & ors thus the dismissal of Miscellaneous Appeal No.26 of 2022 creates an error apparent on the record which prejudices the applicants herein.

The affidavit in reply was filed by the 1st respondent, Pastor Walugembe Daniel for the 1st, 4th, & 5th respondents who opposed the application. It was stated therein that the 1st and 2nd respondent have since passed on.

Representation.

The applicants were represented by *M/s Nakachwa Matovu & Co. Advocates* while the respondents were represented by *M/s Mwesigwa Rukutana & Co. Advocates*. Both counsel filed written submissions in support of their respective clients' cases as directed by this court.

Decision of court:

\$25\$

I have read the arguments for and in opposition of this application which I will not reproduce here. The issue for determination is whether the applicants have demonstrated sufficient cause to justify the reinstatement of *Miscellaneous Appeal No.26 of 2022*.

- In Florence Nabatanzi vs. Naome Binsobodde SC Civil Application No. 6 of 1987 court 30 noted that;
- 1. 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.

Jako 8

- 2. The administration of justice normally requires that 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.

- \$\mathsf{S}\$

\$10\$

- 3. Whilst mistakes of counsel sometimes may amount to an error of judgment but not inordinate delay negligence to observe or ascertain plain requirements of the law. Attorney General vs. Oriental Construction Limited (supra).
- 4. 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.

- 5. A vigilant applicant should not be penalized for the fault of his counsel on whose actions he has no control."

(See also: Sipiriya Kyaturesire vs. Justine Bakachulike Bagambe CA No. 20/1995)

In relation to this application, from the onset, it is evident that there were some errors partly attributed to the confusion as detected in the numbering of Miscellaneous Appeal No.26 of

2022 which was dismissed for non-service of summons on 7th March 2023 and another 15 application Miscellaneous Application No.26 of 2022: Kamaanya Richard & Jjuko Tadeo Musisi vs Mutebi George William and in respect of which directives had been issued by this court on 15th September 2022 and made available via the ECCMIS court file.

The said directives had been brought to the attention of the applicants' lawyers in a letter dated 28th November 2022 but no action was taken by the applicants to either comply with 20 them or have the same extended.

According to **Annexure 'E'** of the applicants' affidavit in support which is a copy of the directives issued by this court on 15th September 2022, this court made the same in respect of *Miscellaneous Appeal No.26 of 2022 (ML 26 OF 2022)* contrary to counsel's allegations.

With due respect, the errors as identified emanating from and attributed to the court system 25 could have been brought to the attention of court if applicants' counsel had been vigilant to follow up for rectification.

Instead they waited until the matter was dismissed, and execution had commenced before filing this application. Be that as it may, in Joel Kato & Anor v Nuulu Nalwoga (Misc.

Application No 04 Of 2012) [2012] UGSC 2 (26 June 2012); the Supreme Court had this 30 to say:

> "I do not think it is right to blame the applicants, lay people as they are, for the delay....and matters which squarely fall within the province of professional lawyers who possess the necessary training and experience to handle them.

Julat 8

In the case before me, the applicants cannot be faulted for the negligence of their counsel and if the order dismissing *Miscellaneous Appeal No.26 of 2022* is maintained, there would be a miscarriage of justice occasioned to the applicants. That therefore constitutes sufficient cause to reinstate the appeal.

It is would be a flimsy excuse that the directives of this court referred to the parties as \$ \mathsf{S} \$ applicants and respondents. I am inclined to agree with the argument that the learned counsel had not been vigilant in pursuing the appeal.

On the issue raised by the respondents regarding the applicant's failure to furnish security for costs, court noted that a sum of *ugx 30,000,000/=* was paid on 26th August, 2019 which settles that issue.

Under Section 98 of the Civil Procedure Act Cap 71 court has powers to make such orders as may be necessary for the ends of justice to set aside dismissal on sufficient cause being shown.

it is therefore just and fair that this application be allowed; the order of dismissal is set aside and *Miscellaneous Appeal No.26 of 2022* reinstated in the following terms;

- 1. The applicants shall file written submissions and serve both the appeal, and written submissions on the respondents by \$11\$th September, 2023, and attach proof of service;
- 2. The respondents shall file their reply, and submissions in support by \$18^{th}\$ 20 September, 2023 (and attach proof of service);
- 3. The applicants/appellants shall file their rejoinders, if any, by \$25^{th}\$ September, 2023.
- 4. The execution of the orders of this court issued in Execution Miscellaneous Application No.00288 of 2022, is stayed pending the determination of Miscellaneous Appeal No. 26 of 2022.
- 5. Costs of the application shall be borne by counsel for the applicants. 30

I so order.

\$15\$

\$25\$

Alexandra Nkonge Rugadya

35 Judge 29th August, 2023

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29/8/2023

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