

UGANDA / JUDGMENT

Katungulu & 2 Others v Rwabuganda & Another (Miscellaneous Application 167 of 2024) [2024] UGHC 911 (24 September 2024)

[2024] UGHC 911

COURT
High Court of Uganda

BEFORE
Karemani Jamson K, J

CASE / FILE NUMBER
Miscellaneous Application 167 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KIBOGA MISC. APPLICATION NO. 0167 OF 2024

(ARISING FROM LAND CIVIL CASE NO. 038 OF 2020 AT MUBENDE) 1. KATUNGULU JOHN MATOVU

2. NSENGA PADDY ROBERT

3. NINSIIMA SOPHIA ::::::::::::::::::::::::::::::::::

VERSUS

1. GODFREY RWABUGANDA

2. THE COMMISSIONER LAND REGISTRATION:::::: RESPONDENTS

BEFORE HON. MR. JUSTICE KAREMANI JAMSON. K

RULING

Introduction:

This is an application brought by Notice of Motion under 0.9 rule 18 CPR, Section 98 of CPA and 0.52 rules 1, 2 and 3 of CPR

The application seeks the orders of this Court that;

- 1. Civil Suit No. 38 of 2020 be reinstated and disposed of on merits.

- 2. A temporary injunction granted thereunder also be reinstated until the disposal of Civil Suit No. 38 of 2020.
- 3. Costs of this application be provided for.

The application is supported by the affidavits of Katungulu John Matovu and Twagira Emmanuel Godwin. The two applicants set out the grounds of this application.

The grounds as can be derived from the two affidavits are that;

1. The applicants were plaintiffs in Civil Suit No. 38 of 2020 before this Court.

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- 2. The Suit was fixed for hearing on 15th February, 2022 without the knowledge of the applicants/plaintiffs and without the hearing notice being served upon the parties
- 3. The Suit was dismissed under \$0.9 \text{ r } 17\$ of the CPR
- 4. That subsequently the plaintiffs tried to fix the matter for hearing by writing several letters to Court but the file couldn't be found.
- 5. That the plaintiffs later found out that the case had been dismissed and the file misplaced.
- 6. That it is in the interest of justice that the matter be reinstated and determined on its merits.

The respondent filed an affidavit in reply opposing the application. The grounds of opposing the application as hereunder;

- 1. That the main Suit was dismissed by this Court on \$15/2/2022\$
- 2. That there is no letter by the applicant trying to trace the file after its dismissal any hearing notice moving court to fix the matter.
- 3. That the only letter available is one written 2 years after the dismissal of the case.
- 4. That the applicant has applied for an injunctive remedy yet has no cause of action against the respondent.

The respondent gave the history of the matter in his affidavit in reply which I could reproduce.

Both Counsel filed written submissions which I will take into account in this ruling.

Background

The three plaintiffs/applicants filed civil Suit No. 38 of 2020 at Mubende High Court on \$20/8/2020\$.

The defendant filed a written statement of defence on \$10/9/2020\$

From the record there are no proceedings until the \$15/2/2022\$ when the matter was dismissed under 0.9 rule 17 of Civil Procedure Rules for non. appearance of both parties.

Prior to the dismissal of this case, the plaintiff/applicants had obtained a temporary injunction vide miscellaneous application No. 104 of 2020 granted by the Deputy Registrar of this Court.

Submissions

The learned Counsel for the applicants submitted that Civil Suit No. 038 of 2020 is not res judicata

The learned Counsel further submitted that the dismissal of the Suit contravened the provisions of Article 28 of the constitution of the Republic of Uganda on the right to a fair hearing

That the matter was dismissed in the absence of the applicants contrary to the principle of natural justice

The learned Counsel prayed that the dismissal be set aside and the matter heard on merit

In his submissions in reply the learned Counsel for the respondent stated that the applicant lodged this application for reinstatement four years from the time the Suit was filed.

That when the case was dismissed on \$15/2/2022\$ a written statement of defence had been lodged on the Court file on \$10/9/2020\$.

The learned Counsel for the 1st respondent prayed for dismissal of this application

Resolution

From the proceedings in the impugned Civil Suit No. 38 of 2020, the Suit was dismissed on \$15/2/2020\$ in absence of both parties under 0.9 r 17 of CPR

The same Rule provides as follows;

"Where neither party appears when the Suit is called on for hearing, the Court may make an order that the Suit be dismissed"

According to 0.9 r 18 CPR it is provided that when a suit is dismissed under rule 17 of order 9, the plaintiff may subject to the law of limitation bring a fresh Suit or he/she may apply for an order to set aside the dismissal and if he or she satisfies the court that there was sufficient cause for his or her not paying the court fees and charges, if any, required within the time fixed before the issue of the summons or for his or her nonappearance, as the case maybe, the court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

\$-110N\$

In the instance case the applicant contends that upon fixing the hearing no hearing notice was issued out for the parties to attend court.

The applicant contended that the file had not been located despite several letters being written.

In the case of Makasi Paul & 13 others vs. Alfred Mandala & 2 others Misc. App *No. 036 of 2024 this* Court held that sufficient cause is an occurrence that prevents a party from appearing when the matter is called in court and that occurrence doesn't involve negligence on the part of the party in default.

In the instance case despite non – activeness on the part of the applicant/plaintiff to fix the case for hearing after the pleadings had closed, there is proof that some letters were written in 2023 inquiring about the matter. Despite there being a stamp on the letter from the court officials, there is no response from Court giving the position of the case.

Since there is proof that the applicant/plaintiff through his counsel made an effort to find out the position of the matter and when it was fixed no notice was given, this constitutes a sufficient cause that prevented the applicant/plaintiff from appearing when the matter was called on 15/2/2020 and dismissed.

I accordingly set aside the dismissal and order that the matter be re-instated to be heard on its merits.

There was a prayer that the temporary injunction granted before be reinstated until Civil Suit No. 38 of 2020 is disposed of.

The Suit was dismissed on 15/2/2020. It is now over four years since then. It is not clear as to what could be the current status quo. It is my considered position that a fresh application would suit the current status. I decline to reinstate the injunction order.

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All in all, the application is allowed with orders that:

- 1. The order of dismissal of civil suit No, is set aside.
- 2. The suit is reinstated for hearing on merit
- 3. The order for temporary injunction not restored.
- 4. Costs of this application will abide the outcome of the main suit.

Main

KAREMANI JAMSON.

JUDGE

24.09.2024

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