

Lukanga and Another v Takaya
(Miscellaneous Application 23 of
2025) [2025] UGHC 193 (16 April 2025)
[2025] UGHC 193

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- 1. This Application is brought by the Applicants, Lukanga Charles and John Ntale, pursuant to Section 37 of the Judicature Act (Cap 16)(Revised Edition), Section 98 of the Civil Procedure Act (Cap 71), and Order 51 Rules 1, 2, and 3 of the Civil Procedure Rules. The Applicants seek the following reliefs: (a). An order setting aside the dismissal of Miscellaneous Application No. 99 of 2018, which arose from High Court Civil Appeal No. 86 of 2015 and Civil Suit No. 152 of 2014; (b). An order reinstating and re - admitting

Miscellaneous Application No. 99 of 2018 to be heard on its merits interparties.; (c.) An order that the costs of this Application be in the cause.

- 2. The grounds for this Application are set forth in the affidavit deposed by Lukanga Charles, the 1st Applicant. The Applicants contend that: They, through their former Advocates, M/s Paulsen Nalubega & Co. Advocates, filed Miscellaneous Application No. 99 of 2018 seeking a consequential order of eviction and vacant possession against the Respondent, Takaya Frank, in respect of the suit property located at Kanabukuliro - Nabinene village; The Application was fixed for hearing, but neither the Applicants

nor their Advocates attended, due to the later's advice that their presence was unnecessary and that they would be updated on proceedings.

- 3. Subsequently, in 2023, the Applicants engaged new Advocates, M/s Jingo, Ssempijja & Co. Advocates, to prosecute their case. The new Advocates discovered that Miscellaneous Application No. 99 of 2018 had been dismissed for want of prosecution due to the former Advocates' failure to attend Court; The Applicants assert that the dismissal resulted from the negligence or default of their former Advocates and that they should not be penalised for such professional lapses. They further argue that their continued pursuit of the matter demonstrates their bonafide interest in seeking justice.
- 4. The Respondent, Takaya Frank, opposes the Application through an affidavit, alleging inordinate delay by the Applicants, including their failure to diligently pursue Miscellaneous Application No. 57 of 2023, which was later withdrawn. The Respondent submits that the Application is frivolous, misconceived, and an abuse of Court process, warranting dismissal with costs.

Representation and hearing

- 5. The Applicants were represented by M/s Jingo, Ssempijja & Co. Advocates, while the Respondent was jointly represented by M/s Succor Advocates and M/s Mbeeta, Kamya & Co. Advocates. Court ordered both parties to file written submissions which was done by both Counsel. Having carefully reviewed the grounds of the Application, the supporting affidavit, the Respondent's affidavit in reply, and the respective submissions, I now proceed to analyse the same and later deliver my Ruling.

Issue for Determination

- 6. The sole issue for determination is whether the Applicants have demonstrated sufficient cause to warrant the setting aside of the dismissal order in Miscellaneous Application No. 99 of 2018 and its reinstatement for hearing on its merits.

Legal framework and analysis

- 7. The Court's jurisdiction to entertain this Application is anchored in *Section 98 of the Civil Procedure Act* and *Section 37 of the Judicature Act*, which confer inherent powers to make orders necessary for the ends of justice. Additionally, *Order 9 Rule 18 of the Civil Procedure Rules* provides a statutory basis for setting aside a dismissal order where sufficient cause is shown. For context, Miscellaneous Application No. 99 of 2018 was dismissed under *Order 9 Rule 17*, which permits the Court to dismiss a suit where neither party appears when it is called for hearing.
- 8. The pivotal question, therefore, is whether the Applicants have established "*sufficient cause*" for their non-appearance at the hearing of the earlier Application. The term "*sufficient cause*" is not rigidly defined but has been expansively interpreted by Courts to promote substantial justice, provided there is no negligence, inaction, or lack of bonafides attributable to the Applicant. This principle finds support in several judicial precedents.
- 9. In *The Registered Trustees of the Archdiocese of Dar es Salaam Vs. The Chairman Bunju Village Government & Others* (*quoted in Gideon Mosa Onchwati Vs. Kenya Oil Co. Ltd & Another [2017] eKLR*), it was held that "*sufficient cause*" should be construed liberally to advance justice where no negligence or bad faith is imputed to the Applicant. Similarly, the Supreme Court of India in *Parimal Vs. Veena* emphasized that "*sufficient cause*" implies that a party has not acted negligently or failed to act diligently, assessed against a reasonable standard.
- 10. Ugandan jurisprudence further reinforces this position. In *Banco Arabe Espanol Vs. Bank of Uganda SCCA No. 8 of 1998*, the Supreme Court held that a mistake, negligence, or oversight by Counsel should not be visited upon the litigant, constituting just cause for the Court to exercise its discretion in favour of a merits-based hearing. This principle was echoed in *Kaderbhai & Anor Vs. Shamsherali & Ors S. C. Civil Application No. 20 of 2008*, where inadvertent failures by Counsel were deemed sufficient cause. Likewise, in *Attorney General Vs. AKPM Lutaaya SCCA No. 12 of 2007*, Katureebe, JSC (as he then was), underscored that a litigant's interests should not be defeated

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by their Counsel's lapses. The case of *Godfrey Magezi & Brian Mbazira Vs. Sudhir Ruparelia SCC Application No. 10 of 2002* and the unreported *Nicholas Roussos Vs. Gulamhussein Habib Virani & Another Civil Appeal No. 9 of 1993* further affirm that Counsel's negligence, ignorance of procedure, or other excusable errors may constitute sufficient cause.

- 11. Applying these principles to the present case, the evidence reveals that the Applicants' non-attendance at the hearing of Miscellaneous Application No. 99 of 2018 stemmed from their reliance on the professional advice of their former Advocates, M/s Paulsen Nalubega & Co. Advocates, who assured them that their presence was unnecessary. The dismissal arose solely due to the Advocates' failure to appear, an omission for which the Applicants bear no personal responsibility. The Applicants' subsequent engagement of new Counsel and their persistent efforts to prosecute the matter including filing Miscellaneous Application No. 57 of 2023 demonstrates their good faith and diligence.
- 12. The Respondent's contention of inordinate delay is noted. However, the delay in seeking to set aside the dismissal appears attributable to the Applicants' discovery of the prior dismissal only upon engaging new Counsel in 2023. This does not reflect negligence on their part but rather a reasonable response to the circumstances. Moreover, the withdrawal of Miscellaneous Application No. 57 of 2023 does not negate their intent to pursue justice, as it was likely a strategic decision upon realizing the earlier Application's fate.
- 13. The Court is mindful of the fact that the right to a fair hearing is a cornerstone of the rule of law, enshrined under Article 28 of the Constitution of the Republic of Uganda. Denying the Applicants an opportunity to be heard on merit due to their Counsel's default would undermine this fundamental principle. The balance of justice tilts in favour of reinstating the Application, particularly where no prejudice to the Respondent is evident, and the Applicants' conduct has been marked by reliance on professional advice rather than willful neglect.
- 14. For the foregoing reasons, I find that the Applicants have demonstrated sufficient cause to justify setting aside the dismissal of Miscellaneous

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Application No. 99 of 2018. Accordingly, I allow the Application and issue the following orders:

- a. The dismissal of Miscellaneous Application No. 99 of 2018, arising from High Court Civil Appeal No. 86 of 2015 and Civil Suit No. 152 of 2014, is hereby set aside.
- b. Miscellaneous Application No. 99 of 2018 is reinstated and shall be listed for hearing on its merits inter-parties.
- c. Each party shall bear their own costs of this Application, given the circumstances and the need to encourage access to justice without undue financial burden.

It is so ordered.

Ruling delivered electronically at Masaka this 16th day of April 2025.

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