

UGANDA / JUDGMENT

## Mangeni and Others v Nalweyiso (Miscellaneous Application 194 of 2020) [2023] UGHCCD 141 (30 March 2023)

[2023] UGHCCD 141

COURT

HC: Civil Division (Uganda)

BEFORE

Bukirwa, J

CASE / FILE NUMBER

Miscellaneous Application 194 of 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

HOLDEN AT JINJA

MISC. APPL. NO. 194 OF 2020

(Arising from HCT Civil Appeal No. 056 of 2018)

1. MANGENI PAUL
2. WABWIRE SYLVESTER
3. OKUKU ROBERT
4. BARASA OFFISI
5. OKWERO PHILLIP
6. AJIAMBO ALFRIDAH
7. EGESEA CHRISTOPHER

APPLICANTS

**VERSUS****NALWEYISO FARIDAH ::::::::::::::::::::::::::::::****BEFORE JUSTICE FARIDAH SHAMILAH BUKIRWA****RULING**

This Application was brought under Order 43 rule 16, Order 52 rules 1, 2 and 3 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act for orders that the Civil Appeal No. 56 of 2018 and all applications incidental thereto dismissed on 1<sup>st</sup> September 2020 be readmitted and heard on their merits and costs of this application be provided in the cause.

**Background**

The Applicants herein filed Civil Appeal Number 56 of 2018 on 10<sup>th</sup> September, 2018. On 1<sup>st</sup> September 2020 when the appeal was called for hearing, the Applicants were not in Court thus its dismissal under Order 43 rule 14(1) of the Civil Procedure Rules. On 23<sup>rd</sup> September, 2020, the Applicants filed this suit for readmission of the Appeal on grounds that the Applicants/Appellants were not served with the hearing notice in respect of the main appeal in time, that five of the Appellants were caught up in Kenya and could not access Uganda due to the international boundary restrictions imposed during the covid lockdown, that the 3<sup>rd</sup> Applicant had

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a fractured hand and was unable to travel and attend Court and that therefore all the Applicants were prevented by reasonable cause from attending Court on 1<sup>st</sup> September 2020 hence this application.

**Representation**

The Applicants are represented by M/s Okello & Associates Advocates, Plot 37, Ssaima Complex, Cathedral Avenue and the Respondent was selfrepresented.

The parties filed written submissions which Court has considered in determining this matter. Counsel for the Applicants reproduced the grounds upon which this application is premised which I will not reproduce and submitted that it would be justifiable, lawful and equitable that this Court allows and readmits Civil Appeal No. 056 of 2018 to be heard on its merits.

In reply, the Respondent submitted that the Appeal was fixed several times at the instance of the Respondent and on all occasions the Applicants did not appear in Court to pursue the appeal which was later dismissed. The Respondent submitted that the lapse between the time of filing of the appeal and its dismissal is two years. For two years, the Applicants did not follow up their Appeal yet it was their duty to pursue it. Court fixed the Appeal on its own accord and the Applicants were served but they chose not to attend Court.

The Respondent further submitted that the Applicants did not attach any evidence like travel documents to prove that they were outside Uganda and that they were still in Kenya at the time the Appeal was called for hearing. The Respondent submitted that the Applicants could not rely on border restrictions as a ground for having failed to appear in Court on 1st September 2020 since even prior to that date, they had not taken any steps to progress the Appeal. The Respondent concluded by stating that the Applicants had failed to prove sufficient grounds to warrant the grant of this application and prayed for the same to be dismissed with costs.

In rejoinder counsel for the Applicants submitted that they were given schedules to file their submission before 7<sup>th</sup> June 2021, and they filed on 31<sup>st</sup> May 2021 which shows how committed the Applicants are this time around.

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## Issue

Whether Civil Appeal No. 56 of 2018 should be readmitted and heard on its merits.

## Analysis

I will now turn to resolution of the issue.

Civil Appeal No. 56 of 2018 was dismissed under Order 43 rule 14 for nonappearance of the Appellants/Applicants herein. This Application is seeking for readmission of Civil Appeal No. 56 of 2018 and the subsequent applications thereunder to be heard on their merits.

Court derives power to readmit a dismissed appeal from Order 43 rule 16 of the Civil Procedure Rules which provides that;

"Where an appeal is dismissed under rule 14 or 15 of this order, the appellant may apply to the High Court for the readmission of the appeal; and where it is proved that he/she was prevented by any sufficient cause from appearing when the appeal was called for hearing or from depositing the sum so required, the Court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit.

In line with the above provision, the Applicant has to demonstrate to Court that there is sufficient cause that barred him/her from appearing when the appeal was called for hearing.

Sufficient cause does not have a statutory definition however, it has received extensive adjudication. In Bishop Jacinto Kibuuka Vs The Uganda Catholic Lawyers Society & Anor MA 696 of 2018 where Court cited the case of Gideon Mosa Onchwati Vs Kenya Oil Co. Ltd & Anor [2017] KLR, it was observed that;

"Sufficient cause" is an expression which has been used in a 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 bonafide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have

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been "not acting diligently" or "remaining inactive." However, the facts and circumstances of 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"

In the affidavit in support of the application, the 6<sup>th</sup> appellant who swore the said affidavit in support contends that the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup> Appellants failed to appear in Court because the appellants movements to Uganda were restricted in Kenya as a result of the Covid lock down and that Okuku Robert, the 3<sup>rd</sup> Applicant who was in Uganda was suffering from a broken hand and the hearing notice was served on his wife who thought they were medical records for the husband and kept them as averred in Paragraph 7 and 9 of the affidavit in support of the Application.

According to Section 101 and 103 of the Evidence Act, the Applicants had to prove that they were prevented from attending Court because they were restricted in Kenya as a result of the Covid lockdown restrictions.

"In Civil cases to which this Application falls, the burden lies on the Plaintiff to prove his or her case on the balance of probabilities. See Section 101 of the Evidence Act and the case of Nsubuga Vs Kavuma [1978] HCB 307 cited with approval in Dr. Julius Amumpe Vs Wilberforce Muhangi (Civil Appeal No. 62 of 2019)

I have perused the Court record and failed to find any iota of evidence to prove that the Appellants were indeed in Kenya when the matter came up for hearing on 1<sup>st</sup> September 2020.

In paragraph 10 of the affidavit in support of the Application, the 6<sup>th</sup> Appellant contends that she was not served with the hearing notice and that is why she did not attend the hearing on the 1<sup>st</sup> day of September 2020. I wonder how the Appellants in Kenya were served and only prevented by lock down from attending Court and the 6<sup>th</sup> Appellant who was in Uganda was not served. I am not persuaded that the 6<sup>th</sup> Appellant was not served.

That notwithstanding the Applicants seem to have left their appeal for the responsibility of the Court and the Respondent. The appeal was filed in 2018 and dismissed in 2020. The Appellants were only awakened by the dismissal of their appeal thus filing this Application.

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The Appellants were informed of the hearing date but neither of them attended nor did they appoint any one to represent them when the file was called for hearing. I thus find that the Appellants/Applicants did not act diligently. They acted negligently hence do not have a sufficient cause that prevented them from attending Court.

I am alive to the principle that litigation must come to an end. This is an application to readmit an appeal which was dismissed for want of prosecution and to which the Applicants have failed to satisfy Court that they were barred by a sufficient cause from attending Court.

In the premises, the application is dismissed with costs to the Respondent.

I so order.

**JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI** Ruling delivered on 30<sup>th</sup> March 2023.

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