

UGANDA / JUDGMENT

Muhindo v Kuka (Uganda) Limited (HCT-01-LD-MA-0086-2024) [2025] UGHC 279 (25 April 2025)

[2025] UGHC 279

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

HCT-01-LD-MA-0086-2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01-LD-MA-0086-2024

(ARISING OUT OF HCT-01-LD-CS-0028-2021)

MUHINDO PEACE FREDRICK ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

KUKA (UGANDA) LIMITED ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

Introduction:

1. The Applicants brought the instant Application under Section 98 of the Civil Procedure Act, Cap 282, Order 9 Rules 22, 23, and Order 52 Rules 1 & 3 of the Civil Procedure Rules seeking Orders that: -
2. The Order dismissing Civil Suit No. 28 of 2021 be set aside and the suit be reinstated for hearing on its merits.
3. Stay of execution doth issue of the judgment and decree issued by this Honourable Court in Civil Suit No. 0028 of 2021.
4. The costs of this Application be in the cause.

Background:

1. On 19th August 2021, the Applicant bought Civil Suit No. 28 of 2021 against the Respondent for trespass who filed a Written Statement of Defence on 9th September 2021 and later took out a third party notice against the now defunct Uganda National Roads Authority. Thereafter, the matter came up several times in the absence of the Applicant or his Counsel until the 4th day of March 2024 when the Defendant's Counsel moved Court and the matter was dismissed under **Order 17 Rule 6** of the Civil Procedure Rules.
2. On 3rd October 2024, the Applicant filed the instant Application for reinstatement of Civil Suit No. 28 of 2021 on grounds that shortly after the filing of Civil Suit No. 28 of 2021, the Applicant lost touch with his Counsel of M/s KM Advocates & Associates and that he did not receive updates from the said law firm regarding the progress of the suit. That he was surprised to be served with a Taxation Hearing Notice and a Bill of Costs in the matter. That Civil Suit No. 28 of 2021 is a land matter on which the Applicant resides and derives sustenance and that the Applicant is likely to suffer more if the same is not adjudicate upon by court in a full trial. That the Applicant has a sufficient cause for non-appearance on the day the matter was called and that he is interested in the prosecution of the suit to its logical conclusion.
3. By an Affidavit in Reply deposed by *Mr. Muhumuza Joseph*, the Respondent's Project Manager, the Respondent opposed the instant Application on grounds that the Applicant did not follow up on Civil Suit No. 28 of 2021 for a period of over 2 years prompting the dismissal of the same on 4th March 2024 for want of prosecution. That the dismissal was justifiable and the Applicant has no sufficient grounds for reinstatement of the suit since it was clear that he had no interest in having the suit heard and determined. That the Respondent has not applied for execution of the Court Order in Civil Suit No. 28 of 2021 against the Applicant, and the Bill of Costs has not even been taxed and that there is no threat of execution thereby rendering the Application for stay of execution premature.

Representation and Hearing:

1. The Applicants were represented by *M/s Proelium. Advocates* while the Respondents were represented by the *M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates*. Both Counsel addressed me by way of written submissions which I have considered.

Applicant's Submissions:

1. Learned Counsel for the Applicant submitted that the thrust of the Application is that the Applicant was prevented by sufficient cause from appearing when the suit was called for hearing and that Court has powers under **Section 98** of the **Civil Procedure Act** to make such orders as may be necessary for the ends of justice and that under **Order 9 Rule 23** of the **Civil Procedure Rules**, the Court has power to set aside the dismissal where sufficient cause has been shown and that the only issue for determination is *whether the Applicant has proved sufficient cause for the reinstatement of Civil Suit No, 28 of 2012*.

2. Counsel referred me to the case of **Florence Nabatanzi vs. Naome Binsobedde, SCCA No. 6 of 1987** for the guiding principles to be followed by courts when faced with situations like the instant case. He then submitted that as per Paragraphs 3-6 of the Affidavit in Support of the Application, the Applicant was informed by his former lawyers that they were in the process of fixing the matter for hearing after which he lost touch with the said lawyers and that when he inquired from the clerks he was informed that the matter has never been fixed for hearing only to be served with a bill of costs and taxation hearing notice, and that upon checking the court record, there was no hearing notice served upon him by his former lawyers. That parties should not be visited with punishment arising from the mistake or inadvertence or negligence of their Counsel when such mistake, inadvertence or negligence is in respect of procedural matters, in which case, the court would lean towards accommodating the parties' interests without allowing mere procedural irregularities, brought about by counsel, to preclude the determination of a case on the merits. He then referred me to the case of **Banco Arabe Espanol vs. Bank of Uganda, SCCA No. 1 of 1998** for the proposition that mistake of Counsel should not be visited on the litigant. He then prayed that the court be pleased to make a finding that the failure of the Applicant to appear when the suit was called for hearing was as a result of mistake of counsel and that the same should not be visited on him and as such, Civil Suit No. 0028 of 2021 should be reinstated and heard on its merits.
3. Counsel did not make any submissions in respect of the Order sought for stay of execution of the judgment and decree issued by this Honourable Court in Civil Suit No. 0028 of 2021.

Respondent's Submissions:

1. Learned Counsel for the Applicant submitted that this Application is opposed because the Applicant never followed up on Civil Suit No. 28 of 2021 for a period of over two years and that the dismissal on 4th March 2023 was justified. That the Applicant has not furnished any sufficient cause as to why the said suit should be reinstated. That the suit was called on three different occasions but the Applicant never appeared. The Applicant cannot put blame on his former counsel because even him, he does not show in his Affidavit that he tried to check on his former counsel to inquire about the progress of his case. That the Applicant was only awakened by the Respondent who served him a bill of costs on 10th September 2024.
2. He further submitted that the application for stay of execution is premature since there is no threat of execution because the Respondent has not commenced any execution of the decree in Civil Suit No. 28 of 2021. Counsel then referred me to the case of **William Kaija & Ors. vs. Kasoya Justine & Anor, HCMA No. 29 of 2023**.

Issues:

1. In my view, the issues for determination are; -
2. ***Whether there is sufficient cause for reinstatement of Civil Suit No. 28 of 2021.***

3. ***Whether execution of the judgment and decree in Civil Suit No. 28 of 2021 should be stayed.***

CONSIDERATION OF THE APPLICATION:

Issue No 1: Whether there is sufficient cause for reinstatement of Civil Suit No. 28 of 2021.

1. On 4th March 2023 when the matter was dismissed, the Applicant had taken a period of more than two years without taking steps towards proceeding with the suit, and upon a prayer by Counsel for the Respondent, the Suit was dismissed under **Order 17 Rule 6** of the **Civil Procedure Rules**. **Order 17 Rule 6** of the **Civil Procedure Rules** provides that; -

*****Suit may be dismissed if no step taken for two years*****

1. ***In any case, not otherwise provided for, in which no application is made or step taken for a period of two years by either party with a view to proceeding with the suit, the court may order the suit to be dismissed***
2. ***In such case the plaintiff may, subject to the law of limitation, bring a fresh suit.***
3. Therefore, a suit that is dismissed under **Order 17 Rule 6 (1) of the Civil Procedure Rules** is so dismissed when no step has been taken in the matter with a view of having the suit prosecuted for 2 years and when such a dismissal occurs, the most appropriate remedy to the aggrieved party is provided under **Order 17 Rule 6 (2) CPR**. This is by way of filing a fresh Suit and not by way of reinstatement of the suit. In the case of **Ogwang Olebe Francis vs. Stanbic Bank (U) Ltd, Miscellaneous Cause 548 of 2012**, ***Hon. Mr. Justice Stephen Musota***, stated that; -

“There is no legal provision which mandates this court to reinstate a suit dismissed under such circumstances. The remedy for the plaintiff lies in Order 17 rule 6 (2) of the Civil Procedure Rules which provides that:

“2. In such a case the plaintiff may subject to the law of limitation bring a fresh suit”

The dismissed suit under Order 17 rule 6 (1) of the Civil Procedure Rules cannot in law be reinstated. It is surprising that this application was brought inter alia under the whole Order 9 rule 23 of the Civil Procedure Rules as if the suit had been wholly or partially dismissed under Order 9 rule 22 of the Civil Procedure Rules when only the defendant appeared and the plaintiff did not appear.

1. It was therefore erroneous for the Applicant to bring this Application under **Order 9 Rules 22 and 23** of the **Civil Procedure Rules** when the suit was dismissed under **Order 17 Rule 6**. In this case however, the Applicant also majorly relies on **Section 98** of the **Civil Procedure Act, Cap 282** which provides for the inherent powers of Court thus: ***"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. "***

2. I am also aware of the position in **Rawal vs. Mombasa Hardware Ltd** 68l EA 392 which was cited with approval by the East African Court of Appeal sitting in Kampala in **Adonia versus Mutekanga** [1970] I EA 429, *Spry VP* held at page 432 thus:

"There is no rule of law, as Mr. Kazzora implied, that inherent powers cannot be invoked where another remedy is available. The position, as I understand it, is that the courts will not normally exercise their inherent powers where a specific remedy is available and will rarely if ever do so where a specific remedy existed but, for some reason, such as limitation, is no longer available. The matter is, however, not one of jurisdiction. The High court is a court of unlimited jurisdiction, except so far as it is limited by statute, and the fact that a specific procedure is provided by rule cannot operate to restrict the court's jurisdiction. ""

1. In this case, it is not pleaded by the applicant that the remedy available under Order 17 Rule 6 (2) CPR of bringing a fresh suit is no longer available so as to justify resorting to asking court to invoke its inherent powers under **Section 98 of the Civil Procedure Act**. Be that as it may, for the Court to exercise its power to set aside the dismissal, sufficient cause has been shown. The Applicant must prove that sufficient cause prevented him or her from entering appearance when the suit was called for hearing.
2. In the case of **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 stated that: *"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 justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant."* Further to that, the Supreme Court in **Kansiime K. Andrew vs. Himalaya Traders Ltd & 5 others, Supreme Court Civil Application No. 60 of 2021**, adopted the dicta of the Supreme Court of India in **Parimal vs. Veena alias Bhart** 1z01-1-l 3 SCC 34S 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..."*
3. Therefore, sufficient cause connotes any legally justifiable excuse presented by a party that prevented him or her from doing an act mandated by the law in a given period of time as long as such excuse or conduct was not negligent or a party has not taken steps to take the act without undue delay and the omission was an innocent one. (See: **Alisen Foundation Group of Companies Ltd vs. Bazara Julius**, HCMA No. 0054 of 2023).
4. The case law appears to leave the meaning of "sufficient cause" to judicial discretion and determination based on the facts, surrounding circumstances and the merits of each particular case and to ensure the ends of justice. The conduct of the parties, for example, whether or not, a party has been grossly negligent, careless, reckless or palpably indifferent in prosecuting the case, would be a consideration. A delay that is beyond the full control of the party or due to occurrence of facts that could not be contemplated by the party, should favour an extension of time in appropriate cases. (See **Kyegegwa District Local Government**

vs. Aharikundira Margaret, HCMA No. 25 of 2022)

5. In the case of **Tiberio Okeny & Anor vs. The Attorney General and 25 Ors CA 51 of 2001**, *Twinomujuni JA (RIP)* gave the broad contours within which the discretion is to be exercised where he observed thus:
6. ***“First and foremost, the application must show sufficient reason related to the liability or failure to take some particular step within the prescribed time. The general requirement notwithstanding each case must be decided on facts.***
7. ***The administration of justice normally requires that substance of all disputes should be investigated and decided on the merits and that error and lapses should not necessarily debar a litigant from pursuit of his rights.***
8. ***Whilst mistakes of counsel sometimes may amount to sufficient reason this is only if they amount to an error of judgment but not inordinate delay or negligence to observe or ascertain plain requirements of the law.***
9. ***Unless the Appellant was guilty dilatory conduct in the instructions of his lawyer, errors or omission on the part of counsel should not be visited on the litigant. 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 requirements of the law...”***
10. The *Hon. Justice Twinomujuni* further held that **“*it is only after “sufficient reason” has been advanced that a court considers, before exercising its discretion whether or not to grant extension, the question of prejudice, or the possibility of success and such other factors ...”***
11. In the instant Application, the reasons advanced by the Applicant for his failure to take any steps towards the progress of the hearing of the suit for a period of over two years are contained under **Paragraphs 3 and 4** of his Affidavit in Support of the Application where he states that; -

“3. THAT Shortly thereafter, I lost touch with the above said law firm and did not receive updates from them regarding the progress of the case despite several attempts to communicate with them.

4. THAT neither my former lawyers nor myself were served with hearing notices in the main suit at one time.”
1. Learned Counsel for the Applicant also extensively submitted on this and argued that the dismissal of the suit was as a result of mistake, negligence and inadvertence of the Applicant’s former counsel which mistake, negligence and inadvertence should not be visited on the Applicant.

2. I have critically analysed the affidavit evidence on record and I have not seen any evidence of attempts made by the Applicant to get in touch with his former Advocates or the Court and neither does he demonstrate how he lost touch with his lawyer. Civil Suit No. 28 of 2021 came up for hearing several times between 19th August 2021 when it was instituted and 4th March 2023 when it was dismissed but the Applicant never attended court at any one time. The duty of attending court is not only for the advocate but more so for the litigant because the cases in court do not belong to the advocates but to the litigants. The advocate acts on the instructions of the litigant. Whereas equity aids the vigilant, the Applicant was not vigilant in any way and he never at any one time followed up on the case he had instituted. In my view, the defence of mistake of Counsel is only justifiable when the litigant has him or herself demonstrated that he or she was vigilant but was let down by his advocate and yet that is not the case in the instant case. I find that the Applicant was equally negligent in the prosecution of his case.

3. In the case of **External Church of God vs. Sunday Kasoke Joseph High Court of Uganda HCT-CV-MA-0011 of 2016**, *Hon. Justice Musalu Musene,* stated that;

“The issue of not visiting the negligence of Counsel on the litigant in my view is a mere excuse by new advocates to get themselves clients, the litigant just as his advocate needs to know the hearing dates of his case. Equity aids the vigilant as the maxim states. It is not only the duty of the advocate to show up in Court but the litigant too. Litigants ought to be vigilant and follow up on their cases. Besides execution was already effected in this case and a return made on the 20th May 2016. That is 2 years ago. Litigation must come to an end.”

1. The Applicant has not only failed to prove vigilance on his part, but his evidence is also contradictory and unbelievable. Whereas he states under **Paragraph 3** of the Affidavit in support of the Application that he lost touch with his former advocates and did not receive any updates from them regarding the progress of the case despite several attempts to communicate with them, he contradicts this in **Paragraph 4** of his Affidavit in Support of Application when he states that his former lawyers were never served with hearing notices in the main suit at any one time. The fact that the Applicant is aware that his former lawyers were never served with hearing notices in the main suit at any one time means that he never lost touch with them. That be as it may, the duty of ensuring the smooth progress of a case primarily belongs to the Plaintiff who must not wait to be served with hearing notices but must be the one to serve any hearing notices. The fact that the Applicant and his former lawyers were waiting to be served with hearing notices for a period of more than 2 years before they start attending court is further evidence of lack of vigilance on their part.
2. Under **Paragraph 2.6** of his written submissions, Learned Counsel for the Applicant stated that, after having lost touch with his former lawyers, the Applicant inquired from the clerks and he was informed that the matter had never been fixed for hearing. I have critically perused the Applicant’s Affidavit in Support of the Application and I have not found any such averment made by the Applicant. I accordingly find that learned counsel was giving evidence from the bar in an act of departure from the Applicant’s pleadings. **Order 6 Rule 7**

of the **Civil Procedure Rules** prohibits departure from pleadings and parties in civil matters are bound by what they say in their pleadings which have the potential of forming the record and moreover, the court itself is also bound by what the

parties have stated in their pleadings as to the facts relied on by them. No party can be allowed to depart from its pleadings. (See **Jani Properties Ltd. vs. Dar es Salaam City Council** [1966] EA 281; and **Struggle Ltd vs. Pan African Insurance Co. Ltd.** (1990) ALR 46 – 47)

3. I accordingly resolve the first issue in the negative and find that the Applicant has failed to demonstrate any sufficient cause to warrant the reinstatement of Civil Suit No. 28 of 2021.

ISSUE 2: Whether execution of the judgment and decree in Civil Suit No. 28 of 2021 should be stayed.

1. In an application for stay of execution, the Applicant must prove the following grounds:

1. Proof of lodgement of an appeal
2. There is serious threat of execution of the decree appealed against.
3. Irreparable injury/Substantial loss may result to the applicant unless the order for stay is made.
2. Refusal to grant would inflict greater hardship than it would avoid.
3. Application was filed without unreasonable delay.
4. Deposit of security for due performance of the decree or costs.

(See: **Musiitwa Kyazze vs. Eunice Busingye**, Civil Application No. 18 of 1990, **Dr. Ahmed Muhammed Kisule Vs. Greenland Bank (in Liquidation)**, Supreme Court Civil Application No. 7 of 2010, and **Kyambogo University vs. Prof. Isiah OmoloNdiege**, C. A. C. A No. 341 of 2013).

1. Therefore, by necessary implication, since there are no sufficient grounds for reinstatement of the Civil Suit No. 28 of 2021 as held in the first issue above, a prayer for an order of stay of execution is premature in the absence of a reinstatement order or an appeal. I therefore also resolve the second issue in the negative.

This Application therefore fails and it is hereby dismissed with costs awarded to the Respondent. It is so ordered.

Dated at Fort Portal this 25th day of April 2025

Vincent Wagona

High Court Judge

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