

UGANDA / JUDGMENT

Muzafaru v Dezideliyo (Miscellaneous Application 1475 of 2023) [2025]

UGHCFD 22 (29 May 2025)

[2025] UGHCFD 22

COURT

HC: Family Division (Uganda)

BEFORE

Echokit, J

CASE / FILE NUMBER

Miscellaneous Application 1475 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 1475 OF 2023 (ARISING OUT OF CIVIL SUIT NO. 786 OF 2017)

MUZAFARU MATOVU ::::::::::::::: APPLICANT

VERSUS

YIGA DEZIDELIYO :::::::::::::::

Before: HON LADY JUSTICE DR. CHRISTINE A. ECHOKIT

RULING

INTRODUCTION:

- [1] The Applicant filed this application by way of Notice of Motion under Section 98 of Civil Procedure Act, Order 9 rule 12, Order 52 rule 1 and 2 of the Civil Procedure Rules for orders that:
 - 1) An order dismissing Civil Suit No. 786 of 2017 by this Honourable Court for want of prosecution be set aside and the main suit reinstated.
 - 2) Costs of this application be provided.

- [2] The application was supported by an affidavit deposed by Muzafaru Matovu who is the Applicant with grounds that;
- a) The Applicant filed Civil Suit No. 786 of 2017 on the 26th October, 2017 for trespass on land comprised in Block 29 Plot 651 land at Mulago, Kampala District.
- b) On 26th June, 2018, the Applicant's former lawyer filed an application for leave to amend the plaint. The said application was granted and thereafter the amended plaint was filed in court on the 13th November, 2018.
- c) The said matter was sent for mediation where both parties reached an amicable settlement and agreed to enter into a consent judgment which was agreed to be drafted by the defence lawyer.
- d) The Applicant was not able to attend court proceedings because he was medically indisposed due to his advanced age and that his former counsel defaulted to appear in court when the matter came up for hearing.
- e) On the 21st November, 2021, Lady Justice Hon. Immaculate Busingye dismissed the main suit for want of prosecution.
- f) The Applicant is still interested in his case and it is in the interest of justice that the dismissal order of in Civil Suit No. 786 of 2017 be set aside, the main suit be reinstated and heard on its merits.
- [3] The Respondent filed an **Affidavit in Reply** and argued that the application is prolix, frivolous, vexatious and does not conform to the procedural requirements of the pleadings.
- [4] **In rejoinder**, the Applicant affirmed his submissions that were stated in the Affidavit in Support of the application.

REPRESENTATION AND HEARING:

- [5] The Applicant was represented by M/s Mayanja & Arinatwe Advocates and Solicitors. The Respondent was represented by M/s Katende, Ssempebwa & Co. Advocates, Solicitors and Legal Consultants. Both parties filed written submissions which have been taken into consideration by the Court.

ISSUES FOR DETERMINATION BY THE COURT:

- [6] The Applicant raised two issues for determination by the court and they are;
- 1. Whether the Applicant has established sufficient reasons to justify the reinstatement of Civil Suit No. 786 of 2017.
- 2. Whether any injustice will be caused if the application is not granted.

DETERMINATION OF THE ISSUES BY THE COURT:

Issue 1: Whether the Applicant has established sufficient reasons to justify the reinstatement of Civil Suit No. 786 of 2017.

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Submissions of the Applicant;

- [7] Counsel for the Applicant cited Order 8 rule 12 of the Civil Procedure Rules but I note that this was most likely done in error as the correct citation is Order 9 rule 12 of the Civil Procedure Rules.
- [8] Counsel relied on the case of **Janet Nakalembe Vs Attorney General Misc. Application No. 452 of 2022**, where court held that;

The notion of "sufficient cause" or "sufficient reason" refers to the legal determination that adequate grounds exist to support the case or decision."

- [9] Counsel submitted that the Applicant could not attend court proceedings because he was indisposed on medical conditions and that the Applicant had poor communication with his former lawyer who could hardly update him on the progress of the court proceedings. Counsel submitted further that the main suit went in abeyance due to the fact that the entire country was in a total lockdown; and that the Applicant's former lawyer neither fixed nor followed up the main suit after the lockdown and this led to dismissal of the main suit immediately after the lockdown, without the Applicant's knowledge.
- [10] Counsel relied on the case of **Captain Phillip Ongom Vs 36 Catherine Nye-Ro Iwota SCCA No.14 2001** which emphasized that a litigant's right to fair hearing in the determination of civil rights and obligations is enshrined in Article 28 of the Constitution and should not be defeated on the grounds of his or her lawyers' mistakes. In that case, court further stated that the Applicant should not be condemned for Counsel's mistake given that she had duly instructed her lawyers and it was the lawyers who did not enter appearance.

Submissions for the Respondent;

- [11] Counsel cited Order 9 rule 12 of the Civil Procedure Rules and relied on the case of **The Registered Trustees of Madi West Nile Diocese Vs Lucia Eyotaru and others MA. No. 43 of 2021** where Justice Serunkuma held that; "to succeed in an application under Order 9 **rule 12** one has to show cause."

- [12] Counsel submitted that the Applicant's reason for not attending court proceedings is dishonest and is intended to mislead court. Counsel relied further on the case of Bagonza Edward (Administrator of The Estate of the Late Zabuloni Daki Byegarazo) Vs Dr. John Nsasi Kununka and Masindi District Land Board Misc. Application No. 0178 of 2023 where Justice Isah Serunkuma held that; "irrespective, a vigilant litigant also must keep a keen interest in their matter and the reason of Counsel's negligence ought to have a limit."
- [13] Counsel averred that the delay and failure of mediation was directly caused by the Applicant's attempts to involve third parties who were not parties to the suit. Counsel submitted that such conduct amounts to abuse of court process and cannot justify reinstatement.

Court's consideration;

- [14] The main suit vide Civil Suit No. 786 of 2017 under which this application emanates, was dismissed by Lady Justice Immaculate Busingye for want of prosecution in the absence of both counsel and parties when the matter came up for hearing on the 1st November, 2021. The suit was dismissed pursuant to the provisions of Order 17 rule 6 of the Civil Procedure Rules. Former rule 6 of Order 17 is now rule 5 following the Civil Procedure (Amendment) Rules SI 33 of 2019.

[15] Order 9 rule 12 of the Civil Procedure Rules provides that;

"Where Judgment has been passed pursuant to the preceding rules under this order, or where Judgment has been entered by the registrar in cases under Order 50 of these rules. the court may set aside or vary the judgement upon such terms as may be just."

This calls for court to exercise its discretionary powers under **Section 98 of the Civil Procedure Act**. This discretion, once exercised, reinforces the role of court in balancing judicial efficiency while protecting the rights of litigants.

- [16] Order 9 Rule 23 of the Civil Procedure Rules sets out specific conditions for reinstatement, particularly in cases of nonappearance. Under rule 22, if a suit is dismissed due to a plaintiff's failure to appear, they are barred from filing a new suit on the same cause of action. However, they may apply for reinstatement if they can demonstrate "sufficient cause" for their absence.
- [17] The term "sufficient cause" has been defined in several cases. In the case of **Gideon Mosa Onchwati Vs Kenya Oil Co. Ltd and Anor** Civil Suit No.140 of 2008 [2017] eKLR the Court relied on the definition in the Indian case of **Parimal Vs Veena Alias Bhati**, (2011) 3 SCC 545, in which the Court 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 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 circumstances of a case or the party cannot be alleged to have 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."

[18] In the instant case, perusal of the record vide Civil Suit No.786 of 2017 before court shows that the amended plaint was filed on the 13th November, 2018 and the amended written statement of defence was filed on the 13th November, 2018. The suit was sent for mediation vide Mediation Cause No. 538 of 2018. An order of dismissal was pronounced by the Judge on the 1st November, 2021.

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[19] In the Applicant's affidavit in support of the application, he stated that he could not attend court proceedings because he was indisposed on medical conditions. He attached medical records marked as annexure "F". The said notes reveal that the Applicant was suffering from the COVID 19 pandemic and as a result he was advised to be isolated from the public. This was in 2021.

Prima facie, the proof of the Applicant's illness would constitute good cause as per the decision in Nicholus Roussos Vs Gulamhussein Habib Virann & Anor (SCCA No. 9 of 1993. However, there is a lapse of time between the Applicant's illness and when this application for re-instatement was made. The case was dismissed on the 1st November, 2021. The present application was filed on the 28th July, 2023. The Applicant had enough time to pursue reinstatement of the suit but instead he sat on his rights until 2023.

[20] The Applicant stated further in his affidavit in support that his former lawyer did not follow up the main suit after the covid-19 pandemic lockdown; and that this led to dismissal of the main suit immediately after the lockdown, without the Applicant's knowledge.

[21] In the case of **Banco Arabe Espanol Vs Bank of Uganda SCCA No. 8 of 1998**, court held that:

"A mistake, negligence, oversight or error on the part of counsel should not be visited on the litigant. Such mistake, or as the case may be, constitutes just cause entitling the trial judge to use his discretion so that the matter be considered on its merits."

The case of Capt. Phillip Ongom Vs Catherine Owala [2003] KALR 53 SCCA No. 14 of 2001 held that:

"... A litigant ought not to bear the consequences of the advocate's fault, unless the litigant is privy to the default, or the default results from failure on the part of the litigant, to give to the advocate due instructions."

(See also; the case of AG Vs AKPM Lutaaya SCCA No.12 of 2002; Godfrey Magezi and Brain Mbazira Vs Sudhir Ruparelia SCC Application No.10 of 2002).

[22] It is indeed plausible that where a former counsel of the Applicant was negligent or erred in the prosecution of the Applicant's case, such negligence or error should not be visited on the Applicant. However, that conclusion is premised on the fact that evidence is adduced to show the errant conduct of counsel. A mere assertion of the same is insufficient. Otherwise, many lax litigants could use the same excuse to have their cases re-instated.

In the present matter, the covid-19 lockdown ended around 2022. The case was dismissed on the 1st November, 2021. The present application was filed on the 28th July, 2023. There was a lot of time in that period for the Applicant to follow up on his case. Ultimately, the case is still his and he cannot be seen to blame the lapses on his former counsel alone.

Even if it were true that former counsel was negligent or had erred, still, it ought to be seen that the litigant was diligent enough to apply for re-instatement of the suit as soon as possible after the dismissal.

I am, therefore, not satisfied that the Applicant has provided sufficient cause, nor did he exercise due diligence in pursuing his case.

Issue 2: Whether any injustice will be caused if the application is not granted?

Submissions of the Applicant;

[23] It was submitted by counsel for the Applicant that there is a likelihood of success in the instant case; that while the Applicant is in possession of the certificate of title to the suit land, the Respondent is in physical possession of the land; that the Respondent is solely benefiting from the said land; and that he has put up a commercial building on part of the said land. Counsel invited this Honorable Court to investigate and decide this matter on its merits in the interest of justice.

Submissions of the Respondent;

[24] Counsel submitted that reinstating the suit would cause substantial injustice to the Respondent who has been in peaceful and uninterrupted possession of the suit land for decades.

Consideration by court;

[25] Ordinarily, where sufficient cause has not been shown, an application for re-instatement of a suit would be dismissed. However, procedural rules are handmaidens of justice, not its master. Hence, although the Applicant has not shown sufficient cause and as such has not passed the procedural test, the consequences of not granting this application for re-instatement may be quite severe.

As submitted by counsel for the Applicant, the Applicant is in possession of the certificate of title to the suit land while the Respondent is in physical possession of the land and is allegedly solely benefiting from the said land.

To leave those kinds of dynamics unresolved may have dire consequences as the two parties will continue squabbling over the same piece of land – one with de facto occupancy and the other with the certificate of title. In those circumstances, a re-instatement of the suit will not occasion any prejudice to the Respondent as he is in occupation of the suit land. On the other hand, the Applicant has the right to be heard in the main suit, which right is protected by Article 28 of the Constitution (see; Kityo & 2 Ors Vs Kamya & 3 Ors (Misc. Application No. 30 of 2015) [2015] UGHCLD 69 (16 October 2015); Kibugumu Vs Mulungi & Anor (Misc. Application No. 455 of 2014) [2014] UGHCLD 30 (19th September, 2014).

A perusal of the court record shows that the parties had been involved in mediation vide Mediation Cause No. 538 of 2018, culminating in a draft consent judgement marked annexure "E" attached to the affidavit in support of the application.

[26] Order 9 rule 23 of the CPR allows the court discretion to allow reinstatement of a dismissed suit with appropriate terms. In my view, this includes a consideration of the nature of the Applicant's claim in the main suit. In the present matter, the nature of the claim requires an interrogation of ownership rights. Hence, this court will exercise its discretion under Section 98 of the Civil Procedure Act to allow this application, in the interest of justice.

DECISION OF COURT:

\$[27]\$ In the final result;

- a) This application is granted.
- b) The Applicant shall meet the costs of this application, and shall be in the cause.

Dated at Kampala this.....

Hon. Lady Justice Dr. Christine A. Echokit Judge

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