

UGANDA / JUDGMENT

Namuli & Another v Kibuuka & 2 Others
(Miscellaneous Application 204 of 2023)
[2024] UGHC 233 (12 April 2024)
[2024] UGHC 233

COURT
High Court of Uganda

BEFORE
Matovu, J

CASE / FILE NUMBER
Miscellaneous Application 204 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUKONO

MISCELLANEOUS APPLICATION NO. 204 OF 2023

ARISING FROM CIVIL SUIT NO. 158 OF 2019

1. NAMULI MILLY

2. SSEWANKAMBO GODFREY ::::::::::::::::::::::::::::::

VERSUS

1. KIBUUKA WILLIAM

2. THE REGISTERED TRUSTEES OF THE LITTLE SISTERS OF ST. FRANCIS

**3. COMMISSIONER LAND REGISTRATION ::::::: RESPONDENTS BEFORE HONOURABLE
JUSTICE DAVID MATOVU**

RULING

Introduction

- an application brought by Namuli Milly and 1. This is Ssewankambo Godfrey hereinafter referred to as the "Applicants" against Kibuuka William, The Registered Trustees of the Little Sisters of St. Francis and Commissioner Land Registration hereinafter referred to as "Respondents".
- 2. The Application is brought under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 52

rules 1, 2 and 3 of the Civil Procedure Rules seeking for orders \$that: -\$

- $\mathbf{i}$ The dismissal order in Land Civil Suit No. 158 of 2019 be set aside.
- ii. Land Civil Suit No. 158 of 2019 be reinstated
- iii. Costs of this application be provided for.
- 3. This application is supported by an affidavit deposed by Ssewankambo Godfrey, the 2nd Applicant herein and the grounds are briefly that: -
- 4. The Court on the 5th day of May, 2023 dismissed civil suit No. 158 of 2019 for want of prosecution in the presence of the 2nd Applicant.
- 5. That the 2nd Applicant appeared in Court on that ready to proceed with the hearing of their case, since all the pre-trial documents were on record.
- 6. That unfortunately, his Advocate was denied audience by Court since he did not have a valid practicing certificate by then.
- 7. That the process of renewing the practicing certificate by his advocate had been delayed by the absence of the Chief Registrar who had been away on sick leave for over three weeks.
- 8. That he learned of these developments on the 5th day of May, 2023 when the suit came up for hearing and as such did not have enough time to instruct another advocate to represent him in Court that very day.
- 9. That he was also unprepared to proceed with the hearing of the case on the said date without a lawyer.
- That any mistake by Counsel and/ or the office of the Chief 10. Registrar should not be vested on an innocent litigant.
- 11. That it in the interest of justice that this application is allowed and the main suit reinstated, heard and disposed off on its merits.
- 12. The 1st Respondent filed an affidavit in reply opposing the application.

- 13. The rest of the Respondents did not file affidavits in reply to this application.

Legal representation

14. At the hearing of this Application, the Applicants were represented by Mr. Gad Batala while Mr. Denis Nyombi represented the 1st Respondent.

Submissions

15. Both the Applicants and 1st Respondent addressed this Court by way of written submissions, which are on record, and have been carefully considered by this Court while arriving at its decision.

Decision of Court

- 16. Re-instatement of a suit is a remedy available to a party whose suit has been dismissed in default or judgement passed in default. He or she must have sufficient grounds lest the application is dismissed.
- 17. To succeed in an application of this nature, the Applicant has to satisfy Court that there was sufficient cause for non-

appearance and the sufficient cause had to relate to the failure by the Applicant or his advocate to take the necessary step at the right time.

See NIC versus Mugenyi and Co. Advocates (1987) HCB 28 and Girado versus Alarm & Sons Uganda Ltd (1971) EA 448.

- 18. The issue therefore for determination by this Court is whether there is sufficient cause shown by the Applicants to warrant reinstatement of land Civil Suit No. 158 of 2019.
- 19. The powers of this Court to exercise its discretion to set aside and reinstate a dismissed suit are not in dispute. Such powers are set out in Sec 98 of the Civil Procedure Act which empowers Court to make such orders as may be necessary for the ends of justice and also Order 9 rule 23 of the Civil Procedure Rules which also vests Court with power to set aside dismissal where sufficient cause has been shown.
- 20. In William Odoi Nyandusi vs. Jackson Oyuko Kasendi C. A. Civ. Appl. No.32 of 2018, the **Court of Appeal held that the** expression 'sufficient cause' has no statutory definition. Relying on the case of Rosette Kizito vs. Administrator General & Others SC Civ. Appln. No. 9 of 1986 reported in Kampala Law Reports Vol.5 of 1993 at page 4, the Court went on to hold that:

"Sufficient reason' must relate to the inability or failure to take any particular step in time."

Similarly, in Bishop Jacinto Kibuuka vs. The Uganda 21. Catholic Lawyers Society & Anor MA 696 of 2018 Sekaana J., aptly observed as follows;

"Sufficient cause" is an expression which has been used in 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 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."

22. Applying the above principles and basing on the evidence of the Applicants in the instant case, the Court finds that the Applicant has not demonstrated sufficient cause to warrant the reinstatement of Civil Suit No. 158 of 2019.
23. Furthermore, it should be noted that the circumstance of this case are unique and It should be noted from the onset that the court proceeded under Order 17 rule 4 which provides as follows:-

"Where any party to a suit to whom time has been granted fails to produce his or her evidence, or to cause the attendance of his or her witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding that default, proceed to decide the suit immediately".

- 24. Once a matter proceeds under the above order, such order cannot be set aside but the only remedy open to the applicant is an Appeal after the whole case is determined.
- 25. Upon perusal of the Court record, it reflects that when Civil Suit No. 158 of 2019 came up for hearing on the 29th day of March. 2023, Counsel for the Plaintiffs, a one Gad Batala did not have a practicing certificate and as such, the case was adjourned to the 5th day of May, 2023.
- 26. On the 5th day of May, 2023, Counsel for the Plaintiffs, Gad Batala, still appeared before the Court with no practicing certificate and Court noted that the said conduct was unacceptable from Counsel and tasked the 2nd Plaintiff to proceed with his case.
- 27. The 2nd Plaintiff/Applicant was not willing to give his evidence and as such the suit was dismissed for want of prosecution under order 17 rule 4 of the Civil Procedure Rules.

- 28. The Learned Justices in **Ntalo Mohammed versus Stanbic Bank** Miscellaneous Application No. 211 of 2017 interpreted the said rule as such; - "In our interpretation the above rule applies either where the suit has been properly fixed for hearing and a party fails to adduce evidence or where a party having been given time to do any other act in furtherance of the progress of the case, such party fails to do either or both".
- 29. In the case of **Akamba Public Road Services Ltd Vs Davis Muchunguzi Mutabiirwa** High Court Misc Application No. 155 of 2010 arising from HCCS No. 616 of 2006 (unreported) the Hon. Justice Bamwine sated as follows: -

"I have of course addressed my mind to the effect of a decision made under Order 17 Rule 4 in A. H. ZAIDI VS F. H HUMEIDAN [1960] EA 92 and TARIOL SINGH SACTGU VS ROADMASTER CYCLES (U) LTD CACA NO. 46 OF 2000. It was held that a decision made under this rule was a decision on the merit which gave rise to decree.

- 30. It has also been severally argued that a decision under O17 rule 4 is a decision on merits, that is to say, on consideration of such materials as may be available, and that if in the case of a plaintiff, such materials as presented, fail to substantiate the claim presented, the suit is dismissed on that ground and not for the default.
- This position is fortified by the case of **AP Bhimji Ltd versus 31. Michael Opkwo** wherein Hon Justice Eldard Mwangusya stated that: - "First of all since as Justice Bamwine rightly

states SALEM A. H ZAIDI VS F. H HUMEIDAN [1960] EA 92 is still good law. The position is that a judgment pronounced against a party under this rule "must be deemed to be a decision on the merits and have the same effect as a dismissal upon evidence and accordingly the matters in issue in the first action must be deemed to have been heard and determined; the dismissal of the earlier action therefore operated as res judicata." The dismissal of the suit in this case is a final disposal of the suit as envisaged by Order 17 Rule 4"

- 32. Counsel for the 1st Respondent submitted that the laws under which the Applicants sought to have the suit reinstated do not provide for reinstatement and that the Counsel sought to rely on the general applicability of Section 98 of the Civil Procedure Act and Section 33 of the Judicature Act, however the same were too stretched to provide the remedy sought by the Applicants.
- 33. That the only remedy available for the Applicants is to Appeal to the Court of Appeal to strike out the dismissal.
- 34. This Court agrees with Counsel for the 1st Respondent as ably discussed herein above and finds that this application for setting aside the orders of this court is devoid of merit and no sufficient cause has been shown by the applicant to warrant setting aside the dismissal order and re-instate the main suit, Land Civil Suit No. 158 of 2019.
- 35. In the circumstances, the application is dismissed with costs to the \$1st respondent.

Conclusion

36. In the final result, this application is dismissed with costs to the 1st Respondent.

Dated this 12th day of April 2024. David Matovu

JUDGE

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