

UGANDA / JUDGMENT

Nanyonga alias kyeyune and 3Others v Uganda Land Commission and 2 Others (Miscellaneous Application 47 of 2024) [2024] UGHC 1056 (30 October 2024)

[2024] UGHC 1056

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

Miscellaneous Application 47 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA TA FORT PORTAL

3 MISC. APPLICATION NO. 0047 OF 2024

(ARISING FROM CIVIL SUIT NO. 0018 OF 2017)

- 1. NANYONGA DIANA (Alias KYEYUNE JOAN)
- 6 2. NABULIME TEOPISTA
- 3. NAKYUNE MARY NAMAYANJA
- 4. NAMUKWAYA BETTY::::::::::::::::::::::::::::::::: APPLICANTS
- 9 (Beneficiaries of the late Mataayo Kyeyune)

VERSUS

1. UGANDA LAND COMMISSION

- 12 2. REGISTRAR OF TITLES
- 3. ADMINISTRATGENERAL ::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE VINCENT WAGONA

15 RULING

This application was brought under Order 9 Rule 18, 52 rule 1, 2 and 3 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act for orders that;

(a) The order made on the 22nd day of January 2024 dismissing Civil Suit No. 0018 of 2017 for non-appearance of the applicants be set aside and Civil Suit No. 18 of 2017 be restored, heard and disposed of on merits.

(b) The costs of taking out the application be provided for.

The application is supported by the averments of Nanyonga Diana (1st applicant) 3 contained in the supporting affidavit in which she stated in brief as follows:

- (a) That the matter was originally filed in Kampala and later transferred to Fort Portal.
 - 6 (b) That she was not aware of the hearing date on which the case was dismissed and this was on account of the mistake by her counsel which should not be visited on her since she was not aware of the date when the cause was cause 9 listed.
 - (c) That later on her own volition, she checked on the court file on 18th June 2024 and found that the case had been cause-listed for 21st March 2023 12 where counsel did not appear or inform her and later the case was dismissed on 22nd January 2024.
- (d) That she has since changed counsel who upon discovering such fact filed 15 the current motion.
- (e) That she is still interested in prosecuting her case and as such the same should be reinstated and heard on merits.

18 *Representation and hearing:*

M/s Banada Advocates represented the applicants and argued the merits of the application by way of written submissions. The Respondents were served with a 21 copy of the motion and directions per the return of service attached as annexure A to the affidavit of service of Lakot Concy an Advocate under Bananda Advocates. The return of service was duly stamped by the Respondents using

their official stamps. I am thus satisfied that there was effective service and thus I will proceed to consider this motion ex-parte.

3 *Issues:*

One issue is pertinent for determination in the current motion being; whether there is sufficient cause for re-instatement of Civil Suit No. 0018 of 2017?

6 *Legal Arguments:*

Learned counsel for the applicants made lengthy submissions which I will attempt to capture herein in brief. It was submitted that under Order 9 rule 23 of the Civil

9 Procedure Rules which was considered by court in *Lucas Mariza v Uganda Breweries Ltd (1988-90)*, court may for sufficient cause shown re-instate a suit. That sufficient cause relate to the inability to take a specific or required step in

12 time. (See: *Nic v Mugenyi & Co. Advocates (1987) HCB 28*).

That in the current suit, the failure by the applicants to appear when the suit was cause listed for hearing was on account of their former advocates who did not 15 inform them of the date. That it was discovered on the applicant's own volition that the case had been dismissed on 22nd January 2024. That as such, the nonattendance of the applicants on the date the case was cause-listed for trial was on 18 just cause as such the case should be heard on merits. That granting this motion will abate multiplicity of suits as found in *Bonabana Janet v Byamugisha Baby*

Coach & Sons Transport Co. Ltd & others HCCS No. 010 of 2020.

21 *Decision.*

The applicants filed civil suit No. 352 of 2014 at the Land Division in Kampala. The 3rd defendant filed a defense on 23rd July 2014 and subsequently, the file was

- 3 transferred to Fort Portal High Court Circuit where the subject matter is situated. Since the transfer of the file to this circuit, no action was taken by applicants to have the case progressed. Court on its own motion fixed it on two occasions and
- 6 later dismissed it for none attendance under Order 9 rule 17 of the Civil Procedure Rules. The applicants later lodged this motion to have the dismissal order set aside.
- 9 Order 9 rule 18 of the Civil Procedure Rules provides:

Plaintiff may bring fresh suit or court may restore suit to file.

Where a suit is dismissed under rule 16 or 17 of this Order, the plaintiff 12 *may, subject to the law of limitation, bring a fresh suit or he or she may apply for an order to set the dismissal aside; and if he or she satisfies the court that there was sufficient cause for his or her not paying the court fee* 15 *and charges, if any, required within the time fixed before the issue of the summons or for his or her nonappearance, as the case may be, the court shall make an order setting aside the dismissal and shall appoint a day for* 18 *proceeding with the suit.*

Therefore as submitted by learned counsel for the applicant, a suit dismissed under Order 9 rule 17 of the Civil Procedure Rules can be re-instated by court 21 under Order 9 rule 18 of the Civil procedure Rules. The re-instatement is conditioned upon the applicant proving sufficient cause that prevented him or her from appearing in court when the case was cause listed for trial. The term

sufficient cause has been considered in a wealth of authorities where in all, it is emphasized, that it relates to the inability to take a step required at law within the

3 required time. That it connotes some excusable cause that prevented a party from entering appearance when the case is called for hearing.

The cause envisaged under the law in my view should be one that placed a party 6 alleging so in a position that he could not by any reasonable inference either appear in court or do an act required under the law within the required time or that the failure to act or enter appearance was on account of negligence of another 9 person who is mandated to act in a given direction, case in point, an advocate. That is, a party must demonstrate that he or she was incapacitated by reasons of the situation that he or she was in at the time that he or she was required to act. 12 Therefore intentional, arrogant, negligent and reckless conduct on the part of a party alleging such cannot be accepted by court as constituting sufficient cause.

Where a party was in position to act or was duly aware of the date when the case 15 was cause listed for hearing/trial and did not attend, he or she cannot front sufficient cause as an excuse for his or her dilatory conduct.

In the current motion, the applicants averred that they had duly instructed

- 18 Omongole & Co. Advocates as their counsel. That their attorneys did not inform them of the dates the case was cause listed for trial. That as such, they were unable to attend court on those dates resulting in the case being dismissed under Order 9
- 21 rule 19 of the Civil Procedure Rules. That it was on the applicants' own motion that they discovered that the case had been dismissed for none attendance and later instructed the current attorneys. That they were still interested in pursuing
- 24 their claim.

The main excuse fronted by the applicants is mistake of counsel which learned counsel for the applicants submitted that it should not be visited on the applicants

- 3 who are innocent. I am alive to the guidance by the Supreme Court in **Banco Arabe Espanolvs Bank of Uganda' SCCA No. 8 of 1998**, that a mistake by an advocate however negligent it may be, cannot be visited on the litigant to be used as a bar in pursuit of his or her rights or claims. Court further observed that not every mistake by a litigant should be used to debar him or her from pursuit of his
- rights. (See: **Banco Arabe (supra)**). It in the same breath clarified further in **Re-*9 *Christine Namatovu Tebajjukira [1992-93] HCB 85 and in Banco Arabe**
- **(supra)** citing Article 126 (2) (e) of the 1995 Constitution, that the said Article requires court to dispense justice without undue regard to technicalities. That
- 12 justice is served where the case is heard on merits and denying a litigant an opportunity to be heard should be the last resort. However in **Tororo Cement v Frokina International SCCA No. 2 of 2001 and Utex Industries Ltd v AG SCCA**
- 15 **No. 52 of 1995**, the same court clarified that article 126 (2) (e) is not a cave for the lazy or those who fault on timelines set by law and not intended to circumvent the spirit of the rules which must be applied with due regard to the circumstances
- 18 of each case.

The net effect therefore, is that, court in assessing whether or not a case should be re-instated or not, it must independently examine the case before it and the

21 explanation fronted. Where there is dilatory conduct or where a party has been negligent or palpably indifferent in prosecuting his or her claim, then court may refuse a re-instatement or grant it with conditions attached. That being the case, a 24 re-statement should not be denied mechanically but in the same vein, it should

not be granted casually. Demonstrable efforts must be channeled by a party who seeks a re-instatement to show that indeed the cause that prevented him or her

- 3 from entering appearance or doing an act authorized by law is permissible and acceptable at law and by any reasonable hypothesis placed in the eyes of a reasonable man.
- 6 In this case, I find the explanation offered by the applicants bona-fide. The case was moved from Kampala to Fort Portal High Court Circuit with the knowledge of the applicants' former attorneys. The said attorneys extracted hearing notices
- 9 which were endorsed by court and it seems none was served since all the copies are still on the Court file. It is not apparent on record as to whether the applicants were aware of these developments on the file. Even when court scheduled the

- 12 case for trial/mention on its own motion, the said attorneys did not attend court. It is further not clear as to whether the applicants were aware of the said date. There may have been some form of negligence on the part of the applicants'
- 15 former attorney which made the applicants incapable of knowing the date the case was cause listed for trial. This mistake should not be used to debar the applicants from pursuing their claims.
- 18 I am satisfied that the applicants have proved their claims in the motion before me on the balance of probabilities and I allow the application with the following orders:
- **1. The order made on the 22nd 21 day of January 2024 dismissing Civil Suit No. 0018 of 2017 for none appearance of the applicants is hereby set aside.**

- **2. That Civil Suit No. 18 of 2017 is hereby re-instated and shall be heard on merits interparty after the parties have fully complied with all the 3 requirements under Summons for Directions.**
- **3. No order is made as to the costs since it was the applicants' fault that resulted into the case being dismissed.**
- **6 I so order.**

Vincent Wagona 9 **High Court Judge FORTPORTAL**

DATE: 30/10/2024

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2024/1056/eng@2024-10-30>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/nanyonga-alias-kyeyune-and-3others-v-uganda-land-commission-and-2-others-miscellaneous-application-47-of-2024-2024-ughc-1056-30-october-2024-unknown-t>

Prepared on 12 October 2026 · Esheria