

UGANDA / JUDGMENT

**Ndawula v Mayanja & Another
(Miscellaneous Application 216 of
2024) [2025] UGHC 55 (24 January 2025)
[2025] UGHC 55**

COURT
High Court of Uganda

BEFORE
Karemani Jamson K, J

CASE / FILE NUMBER
Miscellaneous Application 216 of 2024

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KIBOGA
MISCELLANEOUS APPLICATION NO. 216 OF 2024**

(ARISING FROM MISCELLANEOUS CAUSE NO. 19 OF 2024)

HON. ENG. DR. NDAWULA EDWARD KAWEESI:.....

VERSUS

**1. DR. SAM MAYANJA (MINISTER OF STATE FOR LANDS, HOUSING AND URBAN
DEVELOPMENT)**

2. ATTORNEY GENERAL :.....

BEFORE HON. MR. JUSTICE KAREMANI JAMSON. K

RULING

Introduction.

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Hon. Eng. Dr. Ndawula Edward Kaweesi (hereinafter referred to as the applicant) filed this application under Article 126 (2) of the Constitution of Uganda 1995 as amended, Section 98 of the Civil Procedure Act (CPA), Section 33 of the Judicature Act (now section 37), Order 9 Rule 23 and Order 52 Rules 1 and 3 of the Civil Procedure Rules (CPR) against Dr. Sam Mayanja (Minister of state for Lands, Housing and Urban Development) and The Attorney General (hereinafter referred to as the respondents) seeking for orders that;

- 1. The dismissal of Miscellaneous Cause No. 019 of 2024 be set aside.
- 2. Costs of this application to be provided for.

The grounds of this application are set out in the application and the affidavit in support sworn by the applicant but briefly are: -

- a) That the counsel in personal conduct was indisposed and as such unable to attend court.

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- b) That the counsel for the 2nd respondent was aware and duly informed of counsel Haguma Daniel's indisposition.
- c) That the applicant was ready and willing to come to court but was only stopped by his counsel
- d) That it is in interest of substantive justice that the dismissal be set aside and the case proceeds on its merits and court effectually adjudicates upon and settles all questions involved in the suit.

The 1st respondent filed an affidavit in reply opposing the application on the grounds;

- a) That the application is ill advised, an abuse of court process and instituted to waste this court's time
- b) That on the 25th September 2024 when the application was heard the applicant was not present in court personally.
- c) That on 16th October 2024 when the matter came up, the applicant and his legal representative were not present.
- d) That there are no grounds to set aside the dismissal of the application.

The parties were given schedules to file written submissions but only the learned counsel for the applicant filed. I will now proceed to consider the application based of the pleadings of all the parties and the submissions of only the applicant.

Background.

The brief background of this application is that the applicant was also the applicant Miscellaneous Cause No.019 of 2024 against the respondents. On 16/10/2024, Miscellaneous Cause No.019 of 2024 was dismissed under Order 9 Rule 22 of Civil Procedure Rules (CPR).

It is upon this background that the applicant brought this application seeking this court to review and set aside the said orders in misc. application no. 177 of 2022.

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Representation

v.

The applicant was represented by Mr. Haguma Daniel of M/S Haguma Law Chambers, the 1st respondent by Mr. Bonny Karokoro of M/S Kampala Associated Advocates and the 2nd respondent by Mr. Emmanuel Achellam of M/S The Attorney General's Chambers.

Issues for determination.

- 1. Whether there is sufficient cause shown for setting aside the dismissal in Miscellaneous Cause No. 019 of 2024.
- 2. What remedies are available to the parties?

Resolution of issues:

1. Whether there is sufficient cause shown for setting aside the dismissal in Miscellaneous Cause No. 019 of 2024.

The learned counsel for the applicant submitted that the applicant did not attend court due to sufficient cause. The cause raised in this case is that on the day in issue when the matter was dismissed the learned counsel for the applicant woke up feeling weak with a lot of joint pains and High body temperature, he was rushed to Faith Heath Clinic and Nursing Home where he was diagnosed with malaria and immediately intra venus (IV) treatment.

That he failed to become stable throughout the day and knowing he could not make it he sent an email to the registrar and counsel for the 2nd respondent also called him.

That the learned counsel intended to attend court but was unable due to conditions beyond his control.

That the applicant was willing to attend court but was told not to by his counsel.

That it is trite law that a mistake or oversight or error of counsel should not be visited under any circumstances on the innocent litigant.

Decision of Court

According to the order of court dated 16th October 2024, Miscellaneous Cause No.019 of 2024 was dismissed under Order 9 Rule 22 of Civil Procedure Rules (CPR).

Order 9 r.22 of CPR provides as hereunder;

§ §

"Where the defendant appears and the plaintiff does not appear, when the suit is called on for hearing, the court shall make an order that the suit be dismissed, unless the defendant admits the claim or part § "

Order 9 Rule 23(1) of CPR provides that: $\frac{1}{2}$

"Where a suit is wholly or partly dismissed under Rule 22 of this Order, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action, but he or she may apply for an order to set the dismissal aside and if he or she satisfies the court that there was a sufficient cause for nonappearance, when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with suit."

The applicant in this case did not show any cause why he did not attend court on the day in issue. It is instead the learned counsel who labored to show why he did not attend court. The primary participant in a matter like this one is the party himself. That is why the rules refer to the plaintiff and in this case the applicant.

The Rules emphasize attendance of parties and not their counsel. That is why the rules refer to the *plaintiff* and the *defendant*. The rules do not refer to *counsel*. The parties are the ones who are primary and ought to attend court when required to do so or to show sufficient cause when they fail to attend. The representatives like counsel are secondary as long as the parties attend. Where a party is represented by counsel and both the party and the counsel do not attend, court will be interested in knowing why the party did not attend and not much of the counsel

In this case there is no sufficient cause advanced by the applicant who did not even depone an affidavit to support the averments that he was willing to attend court but was discouraged by the counsel. It was not explained as to why counsel discouraged a party from attending court in a matter he had personally filed.

In the case of M/S TAD Beer Trading Centre (U) Ltd v Caroline Blackburn Amero Miscellaneous Application No.0571 of 2024 at Commercial Court Unreported it was held that a phrase sufficient cause refers to a factor or reason which occasioned a party's failure to take necessary step in litigation within the prescribed time.

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24/01/2025

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