

**Odeng Patrick Pius v Nanjing Hotel
(Miscellaneous Application No. 481 of
2025) [2025] UGCommC 219 (15 July 2025)**
[2025] UGCommC 219

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- 1. That he filed *Civil Suit No. 663 of 2024* against the Respondent claiming UGX 200,000,000/ = (Uganda Shillings Two Hundred Million Only) for unjust enrichment for use of his images and videos in the Respondent's commercial advertisements.
- 5 2. That his lawyers filed summons for directions on 5th August, 2024 however, the same have never been admitted nor have they been signed.
- 3. That his lawyers never received any notice requesting him to appear for hearing.
- 10 4. That on 27th January, 2025, the suit was dismissed under Order 9 rule 17 of the Civil Procedure Rules.
- 5. That it is in the interest of justice that the dismissal order be set aside and the suit reinstated and heard on its merits.

In reply, **Mr. Kangye Stanley**, the Respondent's Legal Counsel, opposed 15 the application contending that:

- 1. The Applicant filed *Civil Suit No. 663 of 2024* on 31st May, 2024 to which the Respondent filed its Written Statement of Defence on 19th July, 2024.
- 2. The pleadings were deemed closed on 11th September, 2024 but the
- 20 Applicant did not take out summons for directions within the 28 days.
- 3. When the suit came up on 27th January, 2025, the same had automatically abated on 10th October, 2024.
- 4. Since the suit had abated on 10th October, 2024 for failure to extract 25 summons for directions, the dismissal order cannot be set aside.
- 5. The Applicant never filed any summons for directions and is guilty of inordinate delay.

Representation

The Applicant was represented by Learned Counsel Tukashaba Alex of

30 M/s **Generis Advocates** while the Respondent was represented by Learned Counsel Tendo Lubwama of M/s **K&K Advocates**.

5 Both parties filed their written submissions as directed and the same have been considered by the Court.

Issues for Determination

Following **Order 15 rule 5(1) of the Civil Procedure Rules**, and the case of *Oriental Insurance Brokers Limited Vs Transocean (U) Limited*

- 10 *SCCA No. 55 of 1995*, the Court has rephrased the issues so raised to read as follows:

- 1. Whether there is sufficient cause to set aside the dismissal order of *Civil Suit No. 663 of 2024*?
- 2. What remedies are available to the parties?
- 15 Issue No.1: Whether there is sufficient cause to set aside the dismissal order of *Civil Suit No. 663 of 2024*?

Applicant's submissions

Learned Counsel for the Applicant first relied on **Section 98 of the Civil**

Procedure Act and Order 9 rule 18 of the Civil Procedure Rules and

20 the case of *Gideon Mose Onchwati Vs Kenyan Oil Co. Ltd & Another [2017] eKLR* for the principles that govern such applications and the definition of sufficient cause.

Learned Counsel then contended that on 5th August, 2024, the Applicant filed summons for directions and a letter requesting that the said 25 summons be issued as per annexures "A" and "B" attached to the affidavit in support.

That the summons and hearing notice were never issued for the Applicant to appear before Court. That the Applicant only discovered that on 27th January, 2025, the Court had dismissed the suit under **Order 9 rule 17**

30 of the Civil Procedure Rules.

5 That the application has been brought without undue delay. In conclusion, Learned Counsel for the Applicant submitted that the suit should be reinstated and determined on its merits.

Respondent's submissions

- Learned Counsel for the Respondent contended that despite the suit 10 having been dismissed under **Order 9 rule 17 of the Civil Procedure Rules**, the same cannot be reinstated since it had automatically abated due to the Applicant's failure to extract or take out summons for directions within the 28 days as per **Order 11A rule 1(2) and (6) of the Civil Procedure Rules**. That considering that the pleadings were effectively 15 deemed closed on 11th September, 2024, when the suit came up for hearing on 27th January, 2025, the same had automatically abated on 10th October, 2024. Learned Counsel relied on the case of *Kalemesa Samuel Wilson Vs Kaggwa Christopher Chris & 7 Others HCMA No. 776 of 2023*.
- 20 Further, that the Applicant's allegations that on 5th August, 2024 he filed summons for directions and a letter requesting for the same to be issued are false since the same were never filed and they do not appear on ECCMIS. That therefore, since the summons for directions were never filed, the Deputy Registrar could not have signed the same in accordance
- 25 with the **Judicature (Electronic Filings, Service and Virtual Proceedings) Rules, 2025.**

Learned Counsel also submitted that there has been inordinate and inexcusable delay by the Applicant in filing this application considering that the suit abated five months ago. That delay defeats equity and equity 30 aids the vigilant. In conclusion, Learned Counsel submitted that the 5 present application lacks sufficient cause to warrant the Court to reinstate the main suit.

Analysis and Determination

According to the Court record, *Civil Suit No. 663 of 2024* was dismissed under **Order 9 rule 17 of the Civil Procedure Rules**. Learned Counsel 10 for the Respondent now contends that by the time of its dismissal, the same had abated on 10th October, 2024 since the Applicant had not extracted or taken out summons for directions. Further that much as the Applicant avers that he filed the summons for directions for signing, the same do not reflect on ECCMIS.

15 I have carefully perused the ECCMIS Court record and on 5th August, 2024 at 4:40pm, the Applicant uploaded summons for directions and a letter under the "Other Documents" card. In the said letter dated 5th August, 2024, the Applicant requested for directions on how the suit would progress however to date, the said summons for directions have neither 20 been admitted nor endorsed by the Court.

Therefore, the Applicant extracted the summons for directions within time but the same were never endorsed by Court.

Section 98 of the Civil Procedure Act, empowers this Court to make such orders as may be necessary for the ends of justice.

25 Order 9 rule 18 of the Civil Procedure Rules stipulates that:

"Where a suit is dismissed under rule 16 or 17 of this Order, the Plaintiff 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* 30 *not paying the Court fee and charges, if any, required within the time*

5 *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 proceeding with the suit."*

In the cases of *Florence Nabatanzi Vs Naome Binsobedde SCCA No. 6 of 1987* and *Sipiriya Kyarulesire Vs Justine Bakanchurike Bagambe*

- 10 *SCCA No. 20 of 1995*, the Supreme Court while handling such applications laid down the principles to apply and these are summarized as follows:
- i) First and foremost, the application must show sufficient reason which relates to the inability or failure to take some particular 15 step within the prescribed time. The general requirement notwithstanding each case must be decided on the facts at hand.

- ii) The administration of justice normally requires that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights.
- iii) Whilst mistakes of Counsel sometimes may amount to an error of judgment but not inordinate delay or negligence to observe or ascertain plain requirements of the law.
- iv) 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 requirement of the law.
- v) A vigilant Applicant should not be penalized for the fault of his Counsel on whose actions he has no control.

The term "sufficient cause" though not defined by the Civil Procedure Rules has been defined in several cases. In the case of *Gideon Mose Onchwati Vs Kenya Oil Co. Ltd and Another (supra)* 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:

"In 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."

- 15 In the instant case, the Applicant avers that he filed the summons for directions and a letter requesting for their issuance as per annexures "A" and "B" attached to the affidavit in support, but the same were never signed by the Registrar. Further that the Applicant never received the notice fixing the matter for hearing on 27th January, 2025.
- 20 According to the Court record, on 31st May, 2024, the Applicant filed *Civil Suit No. 663 of 2024* and a Written Statement of Defence was filed on 19th July, 2024. On 5th August, 2024 the Applicant extracted summons for directions but the same were not endorsed by Court, as earlier stated.

On 27th January, 2025, the matter was fixed for hearing. However, parties did not appear in Court on that day and the suit was dismissed under

Order 9 rule 17 of the Civil Procedure Rules.

In the circumstances, Learned Counsel for the Applicant was negligent in failing to notice that the matter was fixed by Court for hearing on that day. Learned Counsel ought to have received a notification about the same from 30 ECCMIS. However, it is now trite that mistake of Counsel though negligent

5 cannot be visited on a vigilant litigant. (See: *Nicholas Roussos Vs Gulam Hussein Habib Virani & Another SCCA No. 9 of 1993).*

Therefore, there is sufficient cause to warrant the setting aside of the dismissal order that was entered in *Civil Suit No. 663 of 2024*.

In the premises, I am inclined to rely on the case of *AG Vs AKPM Lutaaya* 10 *SCCA No. 12 of 2002*, in which **Katureebe, JSC**, held that the litigant's interests should not be defeated by the mistakes and lapse of his Counsel. The same was considered in the case of *Godfrey Magezi and Brian Mbazira Vs Sudhir Ruparelia SCC Application No. 10 of 2002*.

The Respondent also contended that the Applicant is guilty of inordinate delay however, considering that the instant application was filed on 11th 15 March, 2025, in the circumstances at hand, the Applicant is not guilty of inordinate delay.

Further, the suit was dismissed for non-appearance of both parties on the hearing day under **Order 9 rule 17 of the Civil Procedure Rules** and not

20 for failure to take out summons for directions. However as stated above, the Applicant filed summons for directions and also wrote a letter dated 5th August, 2024 requesting that directions be given though the summons were not endorsed by Court.

In the premises and in the interest of justice pursuant to Section 98 of

25 **the Civil Procedure Act**, the dismissal order of *High Court Civil Suit No. 663 of 2024; Odeng Patrick Pius Vs Nanjing Hotel* is set aside. This issue is answered in the affirmative.

Issue No.2: What remedies are available to the parties?

Having resolved issue No. (1) above in the affirmative, *High Court Civil* 30 *Suit No. 663 of 2024* is hereby reinstated.

- 5 Accordingly, the application is allowed with the following orders:
- 1. The dismissal order of *High Court Civil Suit No. 663 of 2024; Odeng Patrick Pius Vs Nanjing Hotel* is hereby set aside.
- 2. *High Court Civil Suit No. 663 of 2024; Odeng Patrick Pius Vs Nanjing Hotel* is hereby reinstated.

- 10 3. *High Court Civil Suit No. 663 of 2024 Odeng Patrick Pius Vs Nanjing Hotel* is fixed for mention on **27th August, 2025 at 8:30am.**
- 4. Costs of this application shall be in the cause.

I so order.

Dated, signed and delivered electronically via ECCMIS this **15th** day of
15 July, 2025.

Patience T. E. Rubagumya **JUDGE** 15/7/2025 20 6:45am

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