

UGANDA / JUDGMENT

Strogen Limited and Others v Vehicle and Equipment Leasing Ltd (Miscellaneous Application No. 348 of 2025) [2025] UGCommC 175 (17 June 2025)

[2025] UGCommC 175

COURT

Commercial Court of Uganda

BEFORE

Tumusiime Rubagumya, J

CASE / FILE NUMBER

Miscellaneous Application No. 348 of 2025

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**5 THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION) MISCELLANEOUS APPLICATION NO. 348 OF 2025
(ARISING FROM CIVIL SUIT NO. 194 OF 2017)**

10 1. STROGEN LIMITED**2. FARM ENGINEERING INDUSTRIES LTD**

**3. TARANJEET SINGH PADHAAL ::::::::::::::::::::::::::::::::::: APPLICANTS VERSUS
VEHICLE AND EQUIPMENT LEASING LTD ::::::::::::::::::::::::::::::::::: RESPONDENT**

BEFORE: HON. LADY JUSTICE PATIENCE T. E. RUBAGUMYA RULING**Introduction**

- 20 This application was brought by way of Notice of Motion under **Section 98 of the Civil Procedure Act, Cap. 282 and Order 52 rules 1 and 2 of the Civil Procedure Rules, SI 71-1**, seeking orders that:
- 1. The ex parte Judgment/Decree in **Civil Suit No. 194 of 2017** be set aside.
- 25 2. **Civil Suit No. 194 of 2017** be set down for hearing inter parties.
- 3. The costs of the application be in the cause.

Background

The background of this application is contained in the affidavit in support deposed by **Mr. Taranjeet Singh Padhaal**, the 3rd Applicant and 30 Director of the 1st and 2nd Applicants, and is summarized below:

1. That on 5th February, 2025, he was served with a notice to show cause why execution should not issue.
- 5 2. That on 10th February, 2025, he was informed by his lawyers that the Judgment in *Civil Suit No. 194 of 2017* was delivered on 19th April, 2024 against the Applicants.
- 3. That on perusal of the Court record, it was established that the matter came up three times for hearing. That on 20th September, 10 2022 and 5th December, 2022, his former Counsel informed Court that he was unable to communicate or make contact with the Applicants and on 17th May, 2023, neither the Applicants nor their Counsel was present in Court and to that, Court ordered that the matter proceeds ex parte.
- 15 4. That their previous lawyer never took a step to update them on the progress of the trial, and it was false on the part of the lawyer to allege that he had failed to locate his clients and would therefore not present any evidence since on 22nd September, 2022, he and the 2nd Applicant had a hearing at the Commercial Court Division
- 20 in *Civil Suit No. 967 of 2018* before **Hon. Justice Stephen Mubiru**, two days after their previous lawyer informed the Court that he had failed to locate his clients.
- 5. That it would be unfair in the circumstances to penalize the 25 Applicants due to the glaring acts of negligence of their previous lawyers as established by the Court record.
- 6. That the application was filed without inordinate delay.

In reply, the Respondent through an affidavit deposed by **Ms. Babirye Joanita**, its Legal Officer, opposed the application contending that:

30 1. The Applicants' application is incompetent and is devoid of merit as the affidavit in support of the application is riddled with falsehoods.

- 5 2. The Judgment in *Civil Suit No. 194 of 2017* is not an ex parte Judgment as alleged by the Applicants since the Applicants filed their defence, but chose not to produce evidence nor cause their witnesses' attendance and this failure should not be visited on the Respondent.
- 10 3. On 21st October, 2024, the 3rd Applicant was informed about the Judgment in *Civil Suit No. 194 of 2017* and he even requested to meet so that they can discuss ways of settling the liability however, to date, the Applicants have never proposed a payment plan nor solutions to settle the decretal sum.

- 15 4. The Applicants' negligence, and lack of vigilance in defending *Civil Suit No. 194 of 2017*, cannot be visited on the Respondent who prosecuted its matter and took the effort to notify the Respondent about the hearing dates through service of hearing notices whenever the Applicants' lawyer was not in Court.
- 20 5. The Court issues a cause list every week with all matters scheduled for the week and if the Applicants were interested in defending the case, they ought to have seen that *Civil Suit No. 194 of 2017* was scheduled in the same week as *Civil Suit No. 967 of 2018*.
- 6. The Applicants' application was brought 11 months after the 25 Judgment was delivered.

In rejoinder, the Applicants through an affidavit deposed by **Mr. Taranjeet Singh Padhaal**, reiterated their earlier averments and added that:

1. Their former Counsel's mistake and negligence to lead evidence 30 cannot be visited on them.
- 5 2. The purported meeting on 23rd October, 2024, does not affect the merits of this application seeking to set aside the ex parte Judgment.
- 3. The cause lists are only accessed by Advocates through their emails and Court WhatsApp groups, which they have no access to.

10 Representation

The Applicants were represented by Learned Counsel Jude Byamukama of **M/s JByamukama & Co. Advocates** while Learned Counsel Kenneth Akampurira of **M/s Amber Solicitors & Advocates** represented the Respondent.

15 Both parties filed their written submissions and the same have been considered by Court.

Issues for Determination

- 1. Whether there is sufficient cause to set aside the Judgment in *Civil Suit No. 194 of 2017*?
- 20 2. What remedies are available to the parties?

In its affidavit in reply, Learned Counsel for the Respondent raised a preliminary point of law to the effect that the affidavit in support is riddled with falsehoods, hence the application should be dismissed.

Order 6 rule 28 of the Civil Procedure Rules, is to the effect that a 25 point of law that is pleaded when so raised is capable of disposing of the suit, may by consent of the parties or by order of the Court on the application of either party, be set down for hearing and disposed of at any time before the hearing.

5 As to whether to dispose of a preliminary point first before hearing the merits of the matter, the Supreme Court, in the case of *Uganda Telecom Ltd Vs ZTE Corporation SCCA No. 3 of 2017*, held that a trial Court has the discretion to dispose of a preliminary point either at or after the hearing. However, the exercise of the discretion depends on the 10 circumstances of each case. It is therefore trite that where preliminary objections are capable of disposing of the matter in issue, it is judicious to determine the objections before embarking on the merits of the case.

Guided by the above authorities, I shall proceed to resolve the preliminary point so raised.

15 Whether the affidavit in support of the application is riddled with falsehoods?

Respondent's submissions

Learned Counsel for the Respondent submitted that in his affidavit in support of the application, the 3rd Applicant averred that he got 20 knowledge of the Judgment in *Civil Suit No. 194 of 2017* when he was served with a notice to show cause why execution should not issue on 5th February, 2025, by Gerald Opero, yet he was notified about the Judgment on 21st October, 2024 as per annexure "A" attached to the affidavit in reply. That he was also served with the notice to show cause 25 on 23rd January, 2025 and not 5th February, 2025 as alleged.

Learned Counsel relied on the cases of *Col. (Rtd) Dr. Kizza Besigye Vs Yoweri Kaguta Museveni & Another Election Petition No.1 of 2001*, *Home Connect Properties (U) Ltd Vs Kassim Buyondo & Another Misc. Application No. 258 of 2022*, *Eric Tibebaga Vs Fr. Narsensio* 30 *Begumisa & Others Civil Application No. 18 of 2002* and *Ndejje*

5 *University Vs E-Live International Services Ltd HCMA No. 1999 of 2024* and prayed that the Applicants' application be dismissed since the affidavit in support is riddled with falsehoods.

The Applicants did not file submissions in rejoinder.

Analysis and Determination

10 In the case of *Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Limited [1969] EA 696*, Justice Sir Charles Newbold stated that:

"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the* 15 *assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."*

The contention of both parties regarding when the Applicants got knowledge of the Judgment in issue, delivered on 19th April, 2024 by

20 **Hon. Lady Justice Cornelia Kakooza Sabiiti** (as she then was), is a matter of evidence that involves the analysis and determination of the merits of this application. Therefore, the contention shall be resolved under issue No.1.

In the premises, this preliminary objection is overruled.

25 Issue No.1: Whether there is sufficient cause to set aside the Judgment in *Civil Suit No. 194 of 2017*?

Applicants' submissions

Learned Counsel for the Applicants relied on **Article 28(1) of the Constitution of the Republic of Uganda, 1995, Order 9 rule 27 of the 5 Civil Procedure Rules** and the case of *Florence Nabatanzi Vs Naome Binsobedde SC Civil Application No. 06 of 1987* for the principles that govern such an application and for the definition of sufficient cause.

Learned Counsel then submitted that mistake of Counsel has been held to amount to sufficient cause. That in the instant application, on 20th 10 September, 2022, the Applicants' former lawyer, Mr. Jordan Kinyera informed the Court that he had failed to locate his clients and would therefore not present any evidence, and was directed by the Court to notify his clients of the status of the matter and confirm whether he still had instructions to represent them, and whether they would allow the 15 matter to proceed without adducing any evidence. That it is worth pointing out that on 22nd September, 2022, the 2nd and 3rd Applicants had a hearing at the Commercial Court Division in *Civil Suit No. 967 of 2018*, before **Hon. Justice Stephen Mubiru** two days after the Applicants' previous lawyer informed the Court that he had failed to 20 locate his clients. That on 5th December, 2022, the Applicants' former lawyer still informed the Court that he was unable to contact the Applicants, prompting the Court to direct the filing of pre-trial documents. That on 17th May, 2023, the Applicants nor their former lawyer were present in Court and their lawyer had not complied with the 25 instructions, so the Court ordered the matter to proceed ex parte.

Owing to the above background, Learned Counsel contended that the Applicants should not be penalized for the glaring acts of negligence of their previous lawyer since their failure to appear on 17th May, 2023, was on account of the negligence of their previous lawyer which should not be 30 visited on them. In conclusion, Learned Counsel submitted that the

5 above is sufficient cause to set aside the said Decree and set down the suit for hearing.

Respondent's submissions

In reply, Learned Counsel for the Respondent contended that the Judgment in *Civil Suit No. 194 of 2017* is not an ex parte Judgment 10 and as such, **Order 9 rule 27 of the Civil Procedure Rules** does not apply. That this is because the Applicants filed their written statement of defence on 8th May, 2018 but failed to adduce their evidence despite the several adjournments as per annexure "F" attached to the affidavit in support.

- 15 Learned Counsel further contended that much as they appreciate the rules against visiting mistakes of Counsel on their clients, this Court in the case of *M/s Tad Beer Trading Center (U) Ltd Vs Caroline Blackburn Amero Misc. App No.571 of 2024*, noted that in reality,

many litigants abuse the rule by remaining indolent throughout Court 20 proceedings only for them to turn up at later stages of the proceedings with new Counsel seeking to undo the earlier proceedings. That in the case of **Hakan Turkmen & Another Vs Petua Kateeba HCMA No. 619 of 2024**, this Court recognized that the claim of mistake of Counsel is not a magic wand that entitles a litigant to all manner of relief as he or 25 she wishes. That it was further held that, when an indolent litigant eventually wakes up, and shows up with a new lawyer, firing his or her former lawyers, the Court need not to always undo its earlier proceedings to accommodate him, if it does not serve the interests of justice. The Court further held that the inalienable right to a fair hearing guaranteed

- 30 in **Article 28 and 44(c) of the Constitution of the Republic of Uganda, 1995** only enjoins this Court to give litigants a fair opportunity

5 to be heard, and to present their cases. If such litigants decide to misuse, or not to use that opportunity at all, and they end up losing their cases, they only have themselves to blame.

That in this matter, though the Applicants claim that their former lawyer misled the Court that he could not reach them, the Applicants have not 10 demonstrated any efforts they took to follow up on their case with their former lawyer. That such conduct was found to be negligent and dilatory by the Supreme Court in the case of **Kananura Andrew Kansiime Vs Richard Henry Kaijuka SC Civil Reference No. 15 of 2016**. Also, that the Applicants filed this application 11 months after the Judgment, 15 which is an abuse of Court process and that it is meant to frustrate the Respondent from realizing the fruits of its Judgment. In conclusion, Learned Counsel submitted that it would be a miscarriage of justice if this Honourable Court allowed the application.

Analysis and Determination

20 **Section 98 of the Civil Procedure Act** empowers this Court to make such orders as may be necessary for the ends of justice. Further **Order 9 rule 27 of the Civil Procedure Rules** stipulates that:

"*In any case in which a decree is passed ex parte against a Defendant, he or she may apply to the Court by which the decree* 25 *was passed for an order to set it aside; and if he or she satisfies the Court that the summons was not duly served, or that he or she was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him or her upon such terms as* 30 *to costs, payment into Court, or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit; except that*

5 *where the decree is of such a nature that it cannot be set aside as against such Defendant only, it may be set aside as against all or any of the other Defendants also*."

Though the law does not define what amounts to sufficient cause, case law has endeavored to define the same. In the case of **Rossete Kizito Vs**

10 *Administrator General & Others SCCA No. 9 of 1986*, it was stated that "sufficient reason (cause)" relates to some inability or failure to take a particular step in time.

Further, in the cases of *Florence Nabatanzi Vs Naome Binsobedde (supra)* and *Sipiriya Kyarulesire Vs Justine Bakachulike Bagambe*

- 15 *Civil Appeal No. 20 of 1995*, the Supreme Court, while handling such an application, laid down the guiding principles which can be summarized as follows:
- i. First and foremost, the Applicant must show sufficient reason which relates to the inability or failure to take some particular step 20 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 25 from the pursuit of his rights.
- iii. Whilst mistakes of Counsel sometimes may amount to an error of judgment, but not inordinate delay, negligence to observe or ascertain plain requirements of the law.
- iv. Where an Applicant instructed a lawyer in time, his rights should 30 not be blocked on the grounds of his lawyer's negligence or omission to comply with the requirement of the law.

5 v. A vigilant Applicant should not be penalized for the fault of his Counsel, on whose actions he has no control.

Also, as was held in the case of *Capt. Philip Ongom Vs Catherine Nyero Owota, SCCA No. 14 of 2001*, a litigant ought not to bear the consequences of the Advocate's default, unless the litigant is privy to the 10 default, or the default results from failure, on the part of the litigant, to give the Advocate due instructions. However, a litigant who is guilty of dilatory conduct cannot use the principle as a shield to conceal his conduct. (See also: *Sipiriya Kyarulesire Vs Justine Bakanchulika Bagambe (supra)*.

15 As per the proceedings of this suit on Court record; *Civil Suit No. 194 of 2017*, was instituted on 14th March, 2017. On 11th December, 2017, it came up for mention, but only the Respondent's Counsel was present. The parties were directed to file their Joint Scheduling Memorandum, witness statements, and the matter was fixed for hearing on 26th 20 February, 2018.

The matter next came up on 22nd February, 2021, and the Applicants, and their Counsel were absent. It was adjourned to 25th May, 2021, for hearing. On 25th May, 2021, both Counsel for the Applicants and the Respondent were present but the Applicants had not filed their 25 documents and Court gave further directives and adjourned the matter to 14th September, 2021, for hearing. On 14th September, 2021, Counsel for the Applicants informed the Court of a probable settlement and requested Court to accord them sometime.

The matter was then adjourned to 12th October, 2021 for mention. On 30 22nd February, 2022, the matter came up for mention in the presence of both Counsel but with no parties. Counsel Jordan Kinyera who always

- 5 appeared for the Applicants informed Court that settlement was not possible. To that the Court directed the parties to file a Joint Scheduling Memorandum, and the Applicants were directed to file their witness statements and trial bundle by 16th March, 2022. The matter was set down for scheduling and hearing on 4th April, 2022 at 10:30am.
- 10 On 4th April, 2022, the Applicants Counsel intimated that they had a preliminary point to raise to which the Court directed them to file a formal application with submissions, and serve. The matter was adjourned to 26th April, 2022 at 9:30am. The matter next came up on 4th May, 2022 and since the Applicants' Counsel had not complied with the 15 directives, their formal application raising a preliminary point was dismissed and Court proceeded with the main suit. The Applicants were again directed to file their trial bundle and witness statements by 18th May, 2022, but by 28th June, 2022, a date set for scheduling, the Applicants had not filed their respective documents. On that day, 20 Counsel for the Applicants informed Court that he was unable to file the Applicants' witness statements because they had moved their operations to Kenya. The Court went on to admit the Respondent's document in the trial bundle and directed Counsel Kinyera again to file the Applicants' witness statements by 15th July, 2022 and the matter was adjourned to
- 25 20th September, 2022 for hearing.

On 20th September, 2022, the Applicants had not complied with the directives, yet the Respondent was ready with its witnesses. The Applicants' Counsel also informed Court that he had failed to locate the Applicants. To that Court asked him to confirm that he had instructions, 30 and update the Applicants on the status of the matter. The matter was then adjourned to 5th December, 2022 for hearing. On 5th December,

5 2022, Counsel Kinyera appeared for the Applicants and informed Court that he had failed to contact the Applicants personally.

The Court gave the Applicants one more chance to file their witness statements and trial bundle and the matter was adjourned to 29th March, 2023 for hearing. On 29th March, 2023, Counsel Kinyera appeared for 10 the Applicants, but the matter was adjourned to 17th May, 2023 because the trial Judge was indisposed. On 17th May, 2023, both the Applicants and their Counsel were absent, so the matter proceeded ex parte under

Order 17 rule 4 of the Civil Procedure Rules, and on 19th April, 2024, **Hon. Justice Cornelia Kakooza Sabiiti** (as she then was) entered 15 Judgment in favour of the Respondent.

The Applicants now seek to set aside the said Judgment and Decree attributing their nonattendance of Court to the mistake of their previous Counsel who failed to comply with the directives of the Court. The background above shows that Counsel Jordan Kinyera used to attend 20 most of the Court sessions in the absence of the Applicants except for the last adjournment of 17th May, 2023. His failure to file the relevant

documents in Court was premised on allegations that he had lost contact with the Applicants.

As demonstrated in the above authorities, errors and omissions by 25 Counsel are no longer considered fatal to an application unless there is evidence that the Applicant was guilty of dilatory conduct in the instruction of his/her lawyer. The record of this Court shows that on all the days that the matter was called for either mention, scheduling or hearing, the Applicants never entered any appearance. No reason was 30 given for that. Further, though the Applicants blame their Counsel for negligence, they never adduced any evidence to show that they were in 5 contact with their Counsel or that they had availed him with the required documents to be filed in Court. No evidence has been adduced to show that they at one time followed up the case against them to establish its status.

As stated in the case of *Kananura Andrew Kansime Vs Richard*

10 *Henry Kaijuka (supra)*, it is the litigant's duty to follow up his/her case and inquire from his/her lawyer the status of the same. In the instant case, the Applicants contend that they got to know of the Judgment on 5th February, 2025 when they were served with the notice to show cause why execution should not issue. Considering that they filed their written 15 statement of defence on 4th April, 2017 but never followed up on the matter, that portrays the Applicants' dilatory conduct.

Further, though the Applicants insist that they were not aware of the Judgment until 5th February, 2025, the 3rd Applicant does not dispute the fact that on 21st October, 2024, he was sent a copy of the Decree via

20 WhatsApp to which he requested for a meeting so as to forge a way forward as per annexure "A" attached to the affidavit in reply, a screenshot of a WhatsApp conversation between the 3rd Applicant and the Respondent's Counsel.

In addition, as per annexure, "B" attached to the affidavit in reply, and as 25 admitted by the 3rd Applicant, on 23rd October, 2024, the Respondent's lawyer met with the 3rd Applicant regarding the settlement of their liability in the Judgment and Decree. Further, as per annexure "D" an affidavit of service attached to the affidavit in reply, the Applicants were further notified of the pending hearing regarding a notice to show cause 30 why execution should not issue vide *EMA No. 279 of 2024*.

- 5 From the foregoing, I find that the Applicants were always aware of the matter but decided not to enter their personal appearance, comply with the Court directives and failed to avail their Counsel with the necessary documents to prosecute their matter. As a result, the Applicants have not satisfied the Court that they were prevented by any sufficient cause,
- 10 from attending Court when the matter was called for hearing.

In the premises, this application is hereby dismissed. Costs of the application are awarded to the Respondent.

I so order.

Dated, signed and delivered electronically via ECCMIS this **17th** day of

15 June, 2025.

Patience T. E. Rubagumya **JUDGE** 17/06/2025 6:45am

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