

THE REPUBLIC OF UGANDA

**IN THE HIGH COURT OF UGANDA HOLDEN AT MAKINDYE
(FAMILY DIVISION)**

**MISCELLANEOUS APPLICATION NO. 1196 OF 2023
(ARISING FROM MISC. APPLICATION NO. 23 OF 2023)
(ARISING OUT OF CIVIL SUIT NO. 0089 OF 2014**

[illegible]

VERSUS

1. SILVER WAKAYINJA
2. JUSTIN WAKAYINJA
3. CYRUS OPIGO

..... RESPONDENTS

Before: **HON. LADY JUSTICE DR. CHRISTINE A. ECHOOKIT**

RULING

BRIEF BACKGROUND:

This is an application for re-instatement of MA No. 23 of 2023 which was dismissed for non-appearance of the applicant and her counsel. The application is brought under Section 98 of the Civil Procedure Act Cap 71, Order 9 rule 18 and Order 52 rules 1, 2 and 3 of the Civil procedure Rules SI -71 -1. The application is supported by the affidavit of Babirye Petwa who is the applicant herein.

HEARING AND REPRESENTATION:

The applicant was represented by Counsel Ramathan Shafic and the 1st and 3rd Respondents were represented by Barnaba Atwiine holding brief for Counsel Fred Gadala in personal
35 conduct. The Applicant and the 1st, 2nd and 3rd Respondents were present in court.

ISSUES FOR DETERMINATION OF COURT:

1. Whether the dismissal order for Miscellaneous Application No. 23 of 2023 should be set aside and the said Miscellaneous Application re-instated.

5 **DETERMINATION OF ISSUES BY THE COURT:**

Issue 1: Whether the dismissal order for Miscellaneous Application No. 23 of 2023 should be set aside and the said Miscellaneous Application re-instated.

10 The applicant stated that she genuinely believed the matter was before J. Keitirima who was previously handling it and did not know it had been transferred to this court. She stated that she had been waiting for the calling of the matter at Justice Keitirima's chambers when this court dismissed it.

Counsel for the 1st and 2nd respondents stated that the applicant did not demonstrate that she was prevented by sufficient cause from attending court and that since she pleads that she was waiting at J. Keitirima's chambers, the evidence should be presented to that effect.

The applicant undertook to obtain CCTV footage to show that she was indeed at court premises on the 3/10/2023 at 10.00a.m. when MA No. 23 of 2023 was called for hearing. This court granted the applicant permission to obtain the said footage.

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On the 17/01/2024 when this matter came up for mention, court was informed by counsel for the applicant that it was not possible to obtain CCTV footage of the day of 3/10/2023 since there were technical glitches experienced by the IT department of court. Counsel submitted that in the interest of justice, the applicant should be allowed to prosecute her case to its logical conclusion. Also, he appealed to the inherent powers of court in that regard. He also stated that the applicant was very vigilant in that this application was brought just a day after MA No. 23 of 2023 was dismissed, showing that the applicant is very interested in pursuing the matter.

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30 Additionally, he stated that the 2nd respondent has consented to this application and that the respondents will not be prejudiced should the MA No. 23 of 2023 be reinstated.

5 Counsel for the 1st and 3rd respondents submitted that it is difficult to establish if the applicant
and her counsel were in court on the day in question, in the absence of CCTV footage; and
that the IT department of court has not confirmed the averment of counsel for the applicant
that there was a technical glitch with the CCTV footage, preventing the said footage from
being accessed. He prayed that this court compels the IT department of court to provide the
10 said footage.

I have listened to counsel for the applicant and of the 1st and 3rd respondents. I also called in
the IT Officer of court who confirmed orally in court that there was indeed a technical glitch
with the CCTV footage of the day in question i.e. 3/10/2023, which had not been fixed to date
and that it was not possible to access the relevant CCTV footage.

Section 33 of the Judicature Act enjoins court in the exercise of its jurisdiction, to grant such
remedies as may be necessary to enable the final determination of issues before it. Section
98 of the Civil Procedure Act allows court to exercise its inherent powers for the ends of justice
20 or to prevent an abuse of court process.

It is a requirement of the law that parties to a matter exercise due diligence in pursuing their
case. This diligence includes being in attendance at court when the matter comes up for
hearing. Indeed, under the Civil Procedure Rules and the other laws on court procedure, a
25 matter can be dismissed for non-appearance of a party/parties, which happened in regard to
MA No. 23 of 2023.

A matter can be re-instated where a party shows that she was either prevented from attending
30 court by sufficient reason, or that she was actually available in court premises but did not
attend court due to sufficient reason.

5 In the instant case, the applicant states she was in court premises in attendance at Justice Keitirima's chambers and did not know that the matter had been re-allocated to me.

Counsel for the 1st and 3rd respondents had indicated that a cause list had been shared before and indicated before which judge the matter was coming and that the explanation of the
10 applicant is not plausible.

It is my considered view that where counsel for the applicant does not inform his client about the cause list, it is highly probable that the client will not be able to access it, let alone know that the matter was re-allocated to another Judge. The mishap by their counsel cannot be
5 visited on her.


In respect to proof that the applicant was really at court premises on the said date of 3/10/2023, it is unfortunate that court cannot access the CCTV footage and it has been confirmed by the IT department of court not to be working, the fixing of which would need to
20 await allocation of funds by the Judiciary for the purpose.

In the interest of justice and due to the fact that the applicant has shown interest in prosecuting MA No. 23 of 2023 and indeed the case, I will exercise my discretion to allow re-instatement of the application. This is especially so as I believe the parties will not be prejudiced.
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In the premises;

a) The dismissal order for MA No. 23 of 2023- is hereby set aside..

b) MA No. 23 of 2023 is hereby re-instated.

 c) The costs of this application shall be borne by the applicant.

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I so order.

5 Delivered on this.....17th.....day of.....January.....2024.

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DR. CHRISTINE A. ECHOOKIT

10 Judge

17/01/2024 at 3.33p.m.

Right of appeal explained.