

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CRIMINAL APPLICATION NO. 0022 OF 2017**

**(Arising from Court of Appeal Criminal Appeal No. 0817 of 2014)**

**1. WAISWA JAMADA**

**2. KISIGE SALIM :..... APPLICANTS**

**3. KISIGE BAKALI**

**VERSUS**

**UGANDA :..... RESPONDENT**

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA**

**HON. MR. JUSTICE EZEKIEL MUHANGUZI, JA**

**HON. MR. JUSTICE REMMY KASULE, AG. JA**

**RULING OF THE COURT**

**Introduction**

This application was brought under **rule 73 (7)** of the **Judicature (Court of Appeal Rules) Directions S.I 13-10** for orders that:

- "i. Criminal Appeal No. 0817 of 2014, which was dismissed, be reinstated and heard on its merit.**
- ii. Costs be provided for."**

The application was supported by affidavits sworn by the three appellants, and a supplementary affidavit sworn by the first appellant, on behalf of the others. The respondent filed an affidavit in opposition to the application.

**Brief Background**

The three applicants were convicted and sentenced by the trial Chief Magistrate's Court, in its judgment delivered on the 26<sup>th</sup> day of June, 2014, of the offence of Forcible Entry contrary to **Section 77** of the **Penal Code Act, Cap. 120**. They were dissatisfied with the said decision, and appealed to the High Court (Basaza-Wasswa, J.) which, in its judgment dated the 9<sup>th</sup> day of September, 2014, quashed their conviction by the trial Court, substituted in its place a conviction for the offence of Criminal Trespass contrary to **Section 302 of the Penal Code Act, Cap. 120**, and accordingly imposed sentences on the appellants, which they have since fully served.

The appellants were dissatisfied with the decision of the High Court, and lodged a notice of appeal, dated the 18<sup>th</sup> day of September, 2014, in this Court, wherein they disclosed their intention to appeal against the said decision, and their desire to peruse the proceedings and judgment of the High Court.

It is not clear whether the appellants filed a memorandum of appeal, in the requisite time, but their matter, Criminal Appeal No. 0817 of 2014, came up for hearing, and was dismissed for the appellants' non-appearance. However, the applicants did not indicate in their respective affidavits in support of this application which panel heard dismissed the appeal, and when the same was dismissed.

Subsequently, the applicants filed Criminal Application No. 0022 of 2017, which was initially heard, on 30<sup>th</sup> October, 2017, in this Court before a Panel of Buteera, JA (as he then was), Balungi Bossa, JA and Kakuru, JA, who granted an adjournment to the applicants to file the record and memorandum of appeal. There was no further action in the matter, until this matter came up before us for hearing.

### **Representation**

At the hearing of this application, the applicants appeared in this Court, in the absence of their counsel; while Ms. Joanita Tumwikirize, learned State Attorney from the Office of the Director of Public Prosecutions, represented the respondent. We directed the parties to file written submissions, but only the applicants adhered to our directions, and we have considered their submissions in the determination of this application.

### **Applicants' case**

Counsel submitted that there was sufficient cause to justify the reinstatement of Criminal Appeal No. 0817 of 2014, which had been instituted in this Court by the applicants, but subsequently dismissed for their non-appearance. He relied on **rule 73 (7)** of the **Rules of this Court**, which is to the effect that a dismissed appeal may be reinstated, if it is demonstrated to the satisfaction of Court that the appellant was prevented by sufficient cause from appearing when the appeal was called for hearing.

Counsel submitted that the appellants were not served with hearing notices, and were therefore, not aware of the hearing date for the dismissed appeal.

He pointed out that the applicants had since filed a memorandum of appeal, and a record of proceedings in this Court, and are ready to prosecute their appeal. Counsel asked this Court to allow this application, which would preserve the applicants' right of appeal, and give them an opportunity to be heard by this Court.

### **Respondent's case.**

The respondent did not file submissions, despite this Court's direction to them to do so.

### **Resolution of the Application**

We carefully considered the application, the accompanying affidavit and the annexures thereto, as well as the affidavit in reply, the submissions of both sides, the law applicable, the authorities cited, and those not cited which are relevant to the determination of this application.

The respondent did not file written submissions, but filed an affidavit in reply by Mr. Peter Mugisha, a State Attorney from the Office of the Director of Public Prosecutions. We have considered the affidavit in reply, which we found to be unhelpful in the determination of this application. The deponent, stated therein that the present application, which he opposed, was for grant of leave to appeal out of time, which was untrue, as the application was for reinstatement of a dismissed appeal. All the other contents of the affidavit were based on that misconception, and were therefore unhelpful to this Court.

We note that where an appeal has been dismissed under **rule 73 (6) of the Rules of this Court**, the court may restore it for hearing if it is satisfied that the appellant was prevented by any sufficient cause from appearing when the appeal was called for hearing. **(See: rule 73 (7) of the Rules of this Court)**. This Court has discretion to restore a dismissed appeal, but the discretion must be exercised judiciously.

We observe that what amounts to sufficient cause is not defined under rule 73, or indeed, anywhere in the Rules of this Court. However, the expression

"sufficient cause" has been defined in several decided cases, in the context of other provisions in the laws of Uganda, where sufficient cause is referred to. For example, sufficient cause is referred to under rule 9 (27), in the context of setting aside an ex parte decree, that:

**"27. Setting aside decree ex parte against defendant.**

**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 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 to costs, payment into court, or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit; except that 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."**

In **Nicholas Roussos v Ghulam Hussein Habib Virani, Supreme Court Civil Appeal No. 009 Of 1993**, the Court held that the following amounted to sufficient cause:

**"A mistake by an advocate though negligent may be accepted as a sufficient cause. See: Shabin Din v. Ram Parkash Anand (1955) 22 EACA 48. Ignorance of procedure by an unrepresented defendant may amount to sufficient cause Zirabamuzaale v. Correct (1962) E.A. 694. Illness by a party may also constitute sufficient cause: Patel v. Star Mineral Water and Ice Factory (1961) E.A. 454. But failure to instruct an advocate is not sufficient cause: See Mitha v. Ladak (1960) E.A. 1054. It was also held in this case that it is not open for the court to consider the merits of the case when considering an application to set aside an ex parte judgement under this rule."**

We would adopt the definition of what amounts to sufficient cause, laid down in Roussos (supra). In the present case. We observed that the applicants indicated that their address was "Nawansega Village, Namungalwe sub-county, Kigulu County in Iganga District, on the relevant Notice of Appeal which was an imprecise address. Little wonder, the Court process servers did not serve them, as it was hard for the Court officials to move from door to door in the named village, to find the applicants. To our minds, the

applicants were not served with the hearing notice for their appeal, because they negligently provided an imprecise address to the Court.

In **Roussos (supra)**, it was held that ignorance of the law by an unrepresented litigant, may constitute sufficient cause. The applicants herein were unrepresented when they filed the Notice of Appeal, with such an imprecise address, and we find that they were ignorant of the requirement to provide a more exact address. In our view, that amounts to sufficient cause in the context of **rule 73 (7)** of the Rules of this Court. We are also mindful, as was held in the **Roussos case (supra)**, that in applications of this nature, the court would not be concerned about the merits of the appeal. Accordingly, we hereby order that Criminal Appeal No. 0817 of 2014, be reinstated, and heard on its merits. The applicants are ordered to take steps to file all documents, relevant to the prosecution of their appeal, within 14 days from the date of this ruling.

This application, is therefore allowed, but with no order as to costs.

**We so order.**

Dated at Kampala this ..... 21<sup>st</sup> day of ..... Nov. .... 2019.

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**Elizabeth Musoke**  
Justice of Appeal

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**Ezekiel Muhanguzi**  
Justice of Appeal

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**Remmy Kasule**  
Ag. Justice of Appeal