

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]

M.A No. 597 OF 2019

(Arising from Misc. Cause No. 18 of 2015)

(Arising from H.C.C.S No. 275 Of 2011)

IN THE MATTER OF MINERAL ACCESS SYSTEMS UGANDA LIMITED
AND

IN THE MATTER OF THE INSOLVENCY ACT, 2011

SIMON TENDO KABENGE T/A

SIMON TENDO KABENGE ADVOCATES:.....APPLICANT

VERSUS

1. MINERAL ACCESS SYSTEMS UGANDA LIMITED
2. DIANA NABUSO KATIMBO AS LIQUIDATOR OF
MINERAL ACCESS SYSTEMS UGANDA LIMITED
3. THE OFFICIAL

RECEIVER:.....RESPONDENTS

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

- [1] This is a ruling on an application to reinstate a suit brought under Section 98 CPA, Section 33 of the Judicature Act Cap 33, Order 9 rule 18 of the CPR and Order 50(1)(2) CPR for orders that; *the order dismissing Misc. Cause No.18 of 2015 Simon Tendo Kabenge t/a Simon Tendo Kabenge Advocates Vs. Mineral Access Systems (U) Ltd, Diana Nabuuso Katimbo as Liquidator of Mineral Access Systems Uganda Ltd and The Official Receiver be set aside and or*

reversed; Misc. Cause No. 18 of 2015 be reinstated and a day appointed for proceeding with the suit and costs be provided for.

- [2] The brief background of this application is that the applicant filed Misc. Cause No. 18 of 2015 seeking to challenge the liquidation process of Mineral Access Systems (U) Ltd which would render the decree in Civil Suit 275 of 2011 nugatory and thereby denying the applicant the benefits recoverable under the said suit. Misc. Cause No. 18 of 2015 last came up for hearing on 08/07/2019 and the same was dismissed for want of prosecution due to non-appearance of Counsel and the applicant. The applicant notes that on the said date counsel was on sick leave and the applicant had to appear before Jinja Court for an earlier scheduled matter, that this amounts to sufficient cause, the reason for this application.

- [3] Counsel for the applicant relied on Order 9 rule 18 CPR and the case of The Registered Trustees of the Archdiocese of Dar es Salaam Vs The Chairman Bunju Village Government & others Civil Appeal No. 147 of 2006 and Gideon Mosa Onchwati Vs. Kenya Oil Co. Ltd & Another [2017] eKLR to state that sufficient cause is proven if a party and his advocate show that he and his lawyer did not act in a negligent manner but more importantly that there was want of bonafide on their part in view of the facts and circumstances of a case and the applicant cannot be alleged to have been “not acting diligently” or “remaining inactive”. However, that the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion which has to be exercised judiciously. Counsel further stated that the applicant and his lawyers remained active until they were able to successfully fix the same application for hearing.

That they went a step further and even applied for a certificate of urgency which was granted and that the reason for non-appearance of Counsel were clearly given i.e Counsel being on sick leave and the client having a prior fixed matter in the High Court at Jinja.

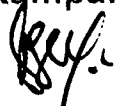
- [4] Counsel concluded by praying that the court issues an order directing that the order dismissing Misc. Cause 18 of 2015 be set aside, and an order directing Misc. Cause 18 of 2015 to be reinstated be granted and an order setting the matter for hearing to resolve the issues left unresolved be issued.
- [5] In the case of **Nicholas Roussos Vs Gulamhussein Habib Virani & another, Civil Appeal No. 9 of 1993 (SC)**, the Supreme Court laid down some of the grounds or circumstances which may amount to sufficient cause. They include mistake by an advocate though negligent, ignorance of procedure by an unrepresented defendant and illness by a party.
- [6] In **Nakiridde Vs Hotel International Ltd [1987] 85** Kalanda A.J, while relying on the holding in **National Insurance Corporation V Mugenyi and Company Advocates [1987] HCB 28** held that;

“ In considering whether there was sufficient cause why Counsel for the applicant did not appear in court on the date the application was dismissed, the test to be applied in cases of that nature was whether under the circumstances the party applying honestly intended to be present at the hearing and did his best to attend. It was also important for the litigant to show diligence in the matter.....”

- [7] In the instant application, the applicant informed court that they intended to appear in court on the said day however, the applicant was slated to appear as Counsel in Jinja High Court for a matter earlier scheduled and Counsel for the applicant was on sick leave. See annexure "D" and "C" respectively and as a sign of their diligence, the applicant and his Counsel sent a representative to this court, Mr. Tendo Deogratiuous whose instructions were to hold brief for Counsel. This conduct of Counsel and his client are indicative of their desire to have this matter brought to its logical conclusion. Perhaps I should also add that this application was not opposed by the responded. This means that the matters stated in the affidavit in support of the application are admitted. See Massa v Achen [1978] HCB 297.
- [8] In the circumstances, the court finds this application to be meritorious and the same is hereby granted. Costs shall be in the cause. Accordingly, Misc. Cause No. 18 of 2015 is hereby reinstated and will be mentioned on 20/04/2021 at 9:00am.

I so order

Dated, signed and delivered at Kampala this 23rd day of March 2021



DUNCAN GASWAGA

JUDGE