

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

M.A 259 of 2021

Civil Suit No. 17 of 2017

FARM ENGINEERING INDUSTRIES LTD:.....APPLICANT

VERSUS

KITAKA MUHAMMAD:.....RESPONDENTS

**BEFORE: HON. JUSTICE DUNCAN GASWAGA**

**RULING**

- [1] This is an application brought under Section 98 CPA and Order 9 rule 18 & Order 52 rule 1,2 and 3 CPR for orders that; *the order for dismissal of High Court Civil Suit No.17 of 2017 Farm Engineering Industries Limited Vs Kitaka Muhammad be set aside; that High Court Civil Suit No.17 of 2017 Farm Engineering Industries Limited Vs Kitaka Muhammad be reinstated and that costs of the application be provided in the main cause.*
- [2] The grounds of the application are contained in the affidavit of Jude Byabakama and they are briefly that; *the respondent/defendant failed to comply with the directives issued by the trial judge Hon. Justice Elizabeth Jane Alvidza on the 12<sup>th</sup> of December 2019 which frustrated the applicant/plaintiff's ability to prosecute the matter; the applicant/plaintiff's directors availability was interrupted by the institution of the national lockdown due to Covid-19 as they were out of the country; the applicant filed its amended plaint on*

*18/12/2019 as directed by court and served the same on the respondent/defendant; the failure of the respondent/defendant to comply with the directives issued by the trial judge affected the timelines in respect of the joint scheduling memorandum and witness statements by both parties; that the applicant is still interested in prosecuting the matter to its final determination and that it is in the interest of justice that the matter be reinstated.*

- [3] At the hearing of the application, the respondent and Counsel for the respondent were absent without excuse at all whereof the applicant prayed to proceed exparte. Leave was granted and the applicant proceeded exparte.
- [4] This application raises one issue to wit;  
***Whether there is sufficient cause to allow the reinstatement of Civil Suit No. 17 of 2017***
- [5] The applicant submitted that as per Order 9 rule 17 CPR where neither party appears when the suit is called for hearing, the court may make an order that the suit be dismissed. Further that under Order 9 rule 18 CPR it is provided that where a suit is dismissed under rule 16 or 17 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 not paying the court fee charge if any, required within the time fixed before the issue of the summons of for his non-appearance, 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.

- [6] The test for reinstating a dismissed case like this one was laid out in the case of **Nakiridde Vs Hotel International Ltd [1987] 85** where it was 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."*

See also **Lucas Marisa Vs Uganda Breweries Ltd (1988-1990) HCB 131 at 132** and **National Insurance Corporation Vs Mugenyi and Company Advocates [1987] HCB 28**. So, the question is did the applicant in the facts before us honestly intend to attend the hearing and indeed did his best to do so?

- [7] Clearly, what is required in an application of this nature is for the applicant to demonstrate that there was sufficient cause that prevented the applicant/plaintiff's appearance to warrant the orders sought. According to the authority of **Lucas Marisa** (supra) sufficient cause had to relate to failure by the applicant to take the necessary step at the right time. The record shows that the applicant had filed its amended plaint as ordered by the trial Judge on 18/12/2019 and served the same on the respondent who on the other hand had not complied with the said orders. On the other hand, the respondent in his affidavit in reply averred that he had complied with the orders of the trial Judge by filing his witness statement on 12/02/2020. Further, it is noted that the plaintiff/applicant's directors were prevented from attending court

because of the imposition of the lockdown and as such these factors constitute sufficient reasons to set aside the order of dismissal of the suit. These reasons relate to the failure by the applicant to take a necessary step at the right time.

**[8]** I have once again perused the pleadings and submissions on record. I am satisfied that the reasons advanced as well as the plausible explanation made by the applicant amount to sufficient cause that would warrant a reinstatement of Civil Suit No. 17 of 2017. In addition, it was noted that the amended plaint filed by the applicant raises triable issues that ought to be dealt with in a trial. See National Insurance Corporation Vs. Mugenyi and Company Advocates (supra) and Barclays Bank Uganda Ltd Vs Edison Kikwaya Musinguzi M.A No. 128 of 2012.

**[9]** Accordingly, I find this application meritorious and it is hereby granted. The costs shall be in the cause. It is hereby ordered that Civil Suit No. 17 of 2017 be and is hereby reinstated on the list and shall be mentioned on 06<sup>th</sup> July 2021 at 9:00 O'clock. Let both parties be notified.

I so order

Dated, signed and delivered at Kampala this 30<sup>th</sup> day of April 2021



Duncan Gaswaga

JUDGE