

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
M.A 226 of 2021
Civil Suit No. 441 of 2012

RAJINISH JAIN

(Administrator of estate of R.L Jain):::APPLICANT

VERSUS

1. LEGIA MUKIZA

2. GEORGE WILLIAM S. KYEYUNE:::RESPONDENTS

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

- [1] This is an application brought under Section 98 CPA and Order 9 rule 23 & Order 52 rule 1 and 3 CPR for orders that; *the order dismissing Civil Suit No. 441 of 2012 be set aside; that Civil Suit No. 441 of 2012 be reinstated and for costs of the application.*
- [2] The grounds of the application are contained in the affidavit of Rajinish Jain and they are briefly that; the applicant/plaintiff and his lawyer reached Court on 19/01/2021 at about 8:50am and proceeded to find the court room where the court hearing the suit was sitting. That upon arrival they were informed by Counsel Sebugwawo for the second respondent that Civil Suit No.441 of 2012 had been dismissed. That the applicant is interested in prosecuting the suit to its logical conclusion and that it is in the interest of justice that the application should be granted.

[3] The respondents opposed the application on grounds that it does not disclose sufficient cause warranting Civil Suit 441 of 2012 to be reinstated.

[4] This application raises one issue to wit;

Whether the Civil Suit 441 of 2012 should be reinstated.

[5] It is beyond the grounds of contention that the applicant filed Civil Suit No. 441 of 2012 against the respondents. Thereafter, an ex parte judgment was entered and execution commenced. In August 2019 the ex parte judgment was set aside and the respondents filed their written statements of defence. The 2nd respondent also filed a counterclaim. Since then, no action was taken to have the matter prosecuted until 2021 when the 1st respondent on their own fixed the matter for hearing on 19/01/2021 and extracted hearing notices which were served on the applicant/plaintiff as well. On the day of hearing, the applicant/plaintiff did not attend court and the case was dismissed at 9:30am by the court for want of prosecution.

[6] Order 9 rule 23 states thus;

Decree against plaintiff by default bars fresh suit.

(1) Where a suit is wholly or partly dismissed under Rule 22 of this Order, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But 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 non-appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal, upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

- [1] The test for reinstating a dismissed case like the one at hand was laid out in the case of **National Insurance Corporation V Mugenyi and Company Advocates [1987] HCB 28** which 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 **Joseph Sengendo and another Vs. Semakula Muganwa Charles and anor M.A No. 167 of 2011.**

- [7] 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? The answer is no. I am not satisfied with the explanation by the applicant that he was in the court registry by 8:50am seeking for directions to my court, which is one floor above the registry and could not make it in the 30-40 minutes at his disposal to his destination. Even if one were to accept that indeed the applicant and his lawyer arrived after the dismissal order had been made at least a party still interested in pursuing their case would have made contact with the pertinent Court staff (clerks) to assist him for instance in informing the Judge or even swearing an affidavit in support of the application. Apart from merely stating that he arrived at the court registry 10 minutes before 9:00am, the time at which courts in Uganda commence their courtroom tasks, there's nothing else to show that indeed the applicant was around court on that day, especially at the

relevant time. Had the applicant and his counsel been around by 9:30am or shortly thereafter, they would have seen and also talked to the respondents counsel. In any case, and if at all the applicant was at the court before 9:30am then one would be compelled to conclude that he was not vigilant. For the distance between the court registry and the court room would take at most five minutes. This court is unable to agree with the applicant's submission and finds no plausible explanation advanced by the applicant for their non-attendance of court on that day. In short, I find that there is no sufficient cause for the non-appearance of the applicant that has been advanced.

- [8]** Be that as it may, I have considered all the circumstances of this long outstanding matter and its chequered history and it is in the interest of the court that the ends of justice are served. As such, I shall treat this case with these unique facts as an exception. **I shall therefore reluctantly allow this application pursuant to Order 9 rule 23 CPR but only on condition that the applicant bears and pays the taxed costs of this application to the respondents within three months from the date hereof (12/07/2021) before the case can be reinstated. For avoidance of doubt, Civil Suit No.441 of 2012 shall not be reinstated unless all the costs awarded have been paid within the stipulated period and failure to do so, the application will stand dismissed.**

I so order

Dated, signed and delivered this 12th day of April 2021

A handwritten signature in black ink, appearing to read 'Duncan Gaswaga', written over the printed name.

Duncan Gaswaga

JUDGE