

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

M.A No. 354 OF 2021

(Arising from Court Civil Suit No.361 of 2018)

1. JOSEPH OCEN OGARAM
2. NICK LABEJA:..... APPLICANTS


VERSUS

TRADE MARK EAST AFRICA:.....RESPONDENT

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

- [1] This is a ruling on an application brought under Order 9 rule 23, Order 52 rules 1&3 and Section 98 CPA for orders that; the dismissal of the applicant's case Civil Suit No. 361 of 2019 be set aside and the same be re-instated and heard on merit and that costs of the application be in the cause.
- [2] The grounds for this application were expounded on in the affidavit of **Nick Labeja** the 2<sup>nd</sup> applicant filed in support of the application and these are that; that the applicant filed Civil Suit No. 361 of 2018 and served on the defendants summons to file a defence through their lawyers AF Mpanga advocates on 23/05/2018. That the defendant thereafter filed a defence on 07/06/2018. That throughout mediation, the respondent's lawyers never turned up in court despite being served hearing notices on various occasions. In an attempt to secure a hearing date, the applicant's counsel was advised to file joint scheduling memorandum and thereafter secure a hearing date. The lawyers then originated a scheduling memorandum which they served upon the respondent's lawyers for their input by

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letter dated 23/08/2019. That on the date the matter came up for hearing, the applicants were not aware as they had not been informed by their lawyers so they did not attend court. Further that upon many failed attempts to get the respondents to attend court, they lost proper follow up of the matter which was further made worse by the lawyer in personal conduct, Namuddu Jackie, leaving the law firm. The applicants have been vigilant in pursuing the matter and always attended court for mediation but the applicants have never appeared before court and were not aware of the 24/02/2020 date and so were their lawyers.

[3] The respondent opposed the application and stated that the applicant's application does not disclose sufficient cause to warrant reinstatement of the suit.

[4] This application raises one issue to wit;

***Whether the application satisfies the conditions for grant of an order for setting aside the dismissal order***

[5] In the case of **Bishop Jacinto Kibuuka v The Uganda Catholic Lawyers Society and Ors M.A No. 696 of 2018** it was held that;

*"the application must show sufficient reason which relates to inability or failure to take some particular step within the prescribed time....the administration of justice normally requires that substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from pursuit of his rights...."*

[6] It was submitted for the applicants that they are not guilty of dilatory conduct because by the time the suit was dismissed, the respondents had failed to comply with most of the pretrial procedures. The applicants have on the other hand been vigilant in pursuing the case and nothing would have prevented the applicants from attending court had they been informed of the hearing date.

[7] Order 9 rule 23 is to the effect that;

***23. 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 nonappearance*

*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.*

- [8] 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. The applicant has always shown the desire to prosecute the suit however there were set backs following the continued non-appearance of the respondents to defend the said suit. Further that the applicants and their counsel were not aware that the court had set 24/02/2020 as the date for hearing the case. Despite denying the said allegations, the respondent has presented no evidence whatsoever to counter the said allegations. These factors constitute sufficient reasons to set aside the order of dismissal of the suit.
- [9] I have 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. 361 of 2018.
- [10] **Accordingly, I find this application meritorious and it is hereby granted. The dismissal order earlier on issued herein is set aside. The costs shall be in the cause. It is hereby ordered that Civil Suit No. 361 of 2018 be and is hereby reinstated on the list.**

I so order

**Dated, signed and delivered at Kampala this 24<sup>th</sup> day of January 2022**

  
Duncan Gaswaga

JUDGE