

THE REPUBLIC OF UGANDA
THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION
MISCELLANEOUS APPLICATION NO. 0080 OF 2023
ARISING FROM MISCELLANEOUS APPLICATION NO. 0818 OF 2022
ARISING FROM CIVIL SUIT NO. 0511 OF 2018

1. ROYAL TRANSIT LIMITED

2. TADEO MUKONYEZI **APPLICANTS**

VERSUS

TWAHA GALIWANGO

t/a HABRIZ AUTO SUPPLIES **RESPONDENT**

Before Hon. Lady Justice Harriet Grace Magala

RULING

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- Application to set aside a dismissal order
 - Law Applicable – Sections 27(1) and 98 of the Civil Procedure Act, Sections 17(2) and 33 of the Judicature Act; and Order 9 rule 27 and Order 52 rules 1 & 3 of the Civil Procedure Rules as amended
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[1] Background and Introduction

- 1.1 This is an application that directly arises from *Miscellaneous Application No. 0818 of 2022: Royal Transit Limited & Tadeo Mukonyezi versus Twaha Galiwango t/a Habriz Auto Supplies* that was dismissed under Order 9 rule 22 of the Civil Procedure Rules as amended (*hereinafter the CPR*) with costs to the Respondent. The information obtained from the online court filing system (ECCMIS) shows that there are only documents on the court file. The Notice of Motion that was lodged on the System by the Applicants on the 22nd June 2022 at 11:45am and the Notice of Motion that was signed by the judicial officer to whom the matter was allocated; the Hon. Lady Justice Cornelia Kakooza Sabiiti on the 15th October 2022 at 5:21pm.

1.2 The Applicants through this Application seek the following orders from Court:

- (a) That the dismissal order issued by the trial judge in Miscellaneous Application No. 0818 of 2022 be set aside;
- (b) That Miscellaneous Application No. 0818 of 2022 be reinstated and fixed for hearing; and
- (c) Costs of the Application be provided for.

1.3 The Affidavit in support of the Application was deposed by Idyedo Lorna Patricia, an advocate with M/s Lawgic Advocates and who had personal conduct of Miscellaneous Application No. 0818 of 2022. She averred that whereas the Application was fixed for hearing on the 30th November 2022 at 9:30am, an Internal Memo from the Deputy Registrar dated 28th October 2022 to all advocates informed the latter that Hon. Lady Justice Cornelia Kakooza Sabiiti would be working from home during the period of 1st to 31st November 2022.

1.4 That Ms. Idyedo armed with the above information went to the Chambers of the trial judge on the 30th November 2022 at 10:30am to secure a new hearing date only to be informed by the Clerk attached to the Chambers that the matter had already been dismissed for non-appearance of the Applicants. The Applicants in their affidavit in support further averred that the Application was filed without inordinate delay, the Applicants had a good claim to the Main Suit and mistake of counsel should not be visited on the Applicants.

1.5 The Respondent's affidavit in reply opposing the Application was deposed by Mbiro Malik, an advocate with M/s Lukwago, Matovu & Co. Advocates who was present in Court when Miscellaneous Application No. 0818 of 2022 was dismissed on the 30th November 2022. He stated that this application was an abuse of the court process, intended to delay the Respondent from enjoying the fruits of his judgement, the Applicants were dishonest and concluded by praying that the Application should be dismissed with costs.

[2] Representation and Hearing

2.1 The Applicants were represented by Munanura Gibson of M/s Lawgic Advocates and Sawuya Banadawa and Mbiro Malik of M/s Lukwago, Matovu & Co. Advocates.

2.2 *Misc. Application No. 1628 of 2022: Royal Transit Limited & Tadeo Mukonyezi versus Twaha Galiwango t/a Habriz Auto Supplies* and *Misc. Application No. 1629 of 2022: Royal Transit Limited & Tadeo Mukonyezi versus Twaha Galiwango t/a Habriz Auto Supplies* and this application all called for mention on the 24th February 2023. On the said date, by the consent of the parties and in the interest of time it was agreed the Respondent consents to Misc. Application No. 1628 of 2022 and instead parties argue Misc. Application No. 1629 of 2022 and this Misc. Application No. 0080 of 2023.

2.3 Since the miscellaneous application (Nos. 0080 of 2023 and 1629 of 2022) although different but had the same parties and same legal representation, with the guidance of court it was agreed that parties file their written submissions in both. Court proceeded to give the parties schedules and the rulings would be delivered online via ECCMIS.

2.4 As at the time of preparing and writing this Ruling, there were no written submissions from both parties in respect of Miscellaneous Application No. 1629 of 2022. The Court has relied on the pleadings and written submissions of the Parties to determine this matter.

[3] Issues

- (i) Whether the dismissal order in Miscellaneous Application No. 0818 of 2022 should be set aside and Miscellaneous Application No. 0818 of 2022 be reinstated and heard on its merits
- (ii) What other remedies are available to the parties?

[4] Determination

4.1 Whether the dismissal order in Miscellaneous Application No. 0818 of 2022 should be set aside and Miscellaneous Application No. 0818 of 2022 be reinstated and heard on its merits

The Court in exercise of its discretion under **sections 17(2) and 33 of the Judicature Act**; and **section 98 of the Civil Procedure Act** may set aside the *ex parte* dismissal order against the Applicants. What is required of the Applicants is to show court that they have a good cause or sufficient reason as to why the Order should be set aside. This is in accordance with **Order 9 rule 27 of the CPR** as amended.

What amounts to sufficient reason varies from one case to another. The list cannot be exhausted. It is at the discretion of the court to determine and a matter of court being satisfied. In exercising its discretion and inherent power, it is incumbent upon the Court to ensure that disputes between parties are completely resolved and multiplicity of legal proceedings touching the same subject matter are avoided. I strongly believe this is the import of Section 33 of the Judicature Act and Section 98 of the CPA.

In the case of ***Bishop Jacinto Kibuuka –vs- The Uganda Catholic Lawyers Society & 2 Others MA 0696 of 2018***, Justice Ssekaana Musa cited the case of ***The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others*** that was quoted in ***Gideon Mosa Onchwati vs Kenya Oil Co. Ltd & Another [2017] KLR*** which discussed what sufficient cause amounted to and said that:

“It is difficult to attempt to define the meaning of the words ‘sufficient cause’. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant.”

In the same Kenyan authority of **Gideon Mosa Onchwati** (supra) reliance was made on the Supreme Court of India case of ***Parimal vs Veena*** which attempted to describe what was ***"sufficient cause"*** when it observed that: -

"Sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously"

The argument of sufficient good cause advanced by the Applicants is that it was the mistake of counsel who did not appear in court at the time the matter was scheduled for hearing. The learned counsel with personal conduct of the matter did not appear in court on time because of her interpretation of the Internal Memo dated 28th October 2022 to all advocates. The contents of the Internal Memo have been summarized in the Background and Introduction to this ruling.

According to the Internal Memo and Court's understanding of the same, it was very clear that the presiding judge would be away from duty and working from home for the period of 1st – 31st November 2022. I am also aware that during the said period, the Division was hosting the East African Court of Justice sessions. As such, the daily routine and business of the Division was disrupted to a great extent. This is why with the exception of the Head and Deputy of the Division some judges had to work from home.

I therefore find it odd that the Application was dismissed by my sister judge who was working from home and in the absence of any information, instruction or indication that the hearing was conducted online. I have also noted with concern that the Court file does not have a dismissal order signed by the presiding judge.

The file only has an indication of the action taken by a one Ruth Nassanga that the Application was dismissed under Order 9 rule 22 with costs to the Respondent on 30th November 2022 at 6:20pm. The learned counsel for the Applicants with personal conduct of the matter therefore did not make any mistake in attending the Chambers of the trial judge on the 30th November 2022 at 10:30am to obtain a new hearing date.

I therefore find that Miscellaneous Application No. 0818 of 2022 was incorrectly dismissed. As such, the order dismissing the said application is hereby set aside and the Application is hereby reinstated to be heard on its merits.

Before I take leave of this issue, I would like to note that when I was preparing to write this Ruling, it came to my attention that Misc. Application No. 0818 of 2022 was before Hon. Lady Justice Sabiiti. The main suit was heard by Hon. Justice Duncan Gaswaga, from whom Hon. Lady Justice Sabiiti took over. The practice at the Division is that unless good cause is given, if a matter has been handled by a particular judge and subsequent or related applications arise from that matter, they should be handled by that judge. In other words, this application, Misc. Applications No. 1628 of 2022 and 1629 of 2022 should have been allocated to Hon. Lady Justice Sabiiti. However, since I had already entertained the Parties in February, in the interest of justice and redeeming time, I proceeded to determine this matter. The reinstated Misc. Application No. 0818 of 2022 shall however be heard and determined by the Hon. Lady Justice Cornelia Kakooza Sabiiti.

4.2 What other remedies are available to the Parties?

- (a) Miscellaneous Application No. 1629 of 2022: Royal Transit Limited & Tadeo Mukonyezi versus Twaha Galiwango t/a Habriz Auto Supplies

This above application was filed on the 21st November 2022 and the same was allocated to me on the 15th December 2022. I allocated the same a hearing of 24th February 2023. This is an application to stay the execution of the Decree in the main suit pending the hearing and final determination of Misc. Application No. 0818 of 2022 that as we now know was dismissed on 30th November 2022.

In light of my findings and decision in determining the first issue and in accordance with the powers vested in this court under section 98 of the Civil Procedure Act and section 33 of the Judicature Act; I hereby make the following orders:

- (i) That the execution of the Decree of this court in *Civil Suit No. 0511 of 2018: Twaha Galiwango t/a Habriz Auto Supplies versus Royal Transit Limited & Tadeo Mukonyezi* be stayed pending the hearing and final determination of the reinstated Misc. Application No. 0818 of 2022; and
- (ii) Each party shall bear their own costs since the Application has not been argued.

(b) Costs

It is a general rule that costs shall follow the event unless the court or judge shall for good reason otherwise order.

Section 27 (1) of the CPA states that:

“subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent those costs are to be paid, and to give all necessary directions for the purposes aforesaid”.

This application was filed on the 20th January 2023 nearly two months from the date of the dismissal of Misc. Application 0818 of 2022, the court vacation period of 23rd December 2022 to 7th January 2023 notwithstanding. The Applicants had reasonable time between 1st December to 22nd December 2023 to file this application. In any case, with the advent of the online court filing system there is no bar to filing documents during weekends, holidays or after official working hours. As to when the document is admitted by the Registrar is another detail.

So it is therefore not true that this application was filed without inordinate delay seeing that the lawyer with personal conduct of the matter was made

aware of the dismissal on the 30th November 2022. The Applicants did not show any promptness in filing this application. For that reason, I award the costs of the Application to the Respondent.

Delivered electronically this 07 day of JULY 2023 and uploaded on ECCMIS.



Harriet Grace MAGALA

Judge

7th July 2023