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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS APPLICATION No. 723 OF 2021
(ARISING FROM CIVIL APPEAL No. 025 OF 2019)

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UNEEED GLOBAL GROUP LTD APPLICANT

VERSUS

KAMPALA PARKING INDUSTRY SECURITY SERVICES LTD RESPONDENT

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BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

Introduction

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This application was brought by Notice of Motion under the provisions of section 98 of the Civil Procedure Act Cap. 71, section 33 of the Judicature Act, Cap 13, Order 43 Rule 16, and Order 52 Rules 1 & 3 of Civil Procedure Rules SI 71-1, where the Applicant seeks for orders that:

1. The Order dismissing Civil Appeal No. 25 of 2019 be set aside.
2. That Civil Appeal No. 25 of 2019, be readmitted and fixed for hearing.
3. Costs of this application be provided for.

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Facts

This Application is supported by the affidavit of Nebyebyoona Doris Kaitesi an Advocate working with M/S Nangwala, Resida & Co. Advocates the Applicant's Lawyers, and possessed with authority to swear this affidavit on behalf of the Applicant in paragraphs 1-14, in which the grounds are summarized as follows: -

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- 5 i. That on the 30th day of May, 2019, the Applicant being aggrieved filed Civil Appeal No. 25 of 2019 in this Honorable Court against the Judgment and Decree of the Chief Magistrates Court of Nakawa in Civil Suit No. 76 of 2015, delivered on 15th March 2019 by Her Worship Angura Sheila Fiona in favor of the Respondent.
- 10 ii. That the matter first came up for hearing on 20th January, 2021 and was adjourned to 11th May, 2021 in the presence of Counsel for the parties herein. That Counsel for the Appellant entered on the Appellant's case file notes, and Counsel's diary that the matter was scheduled to come up for hearing on 11th May, 2021 at 11:00am. A copy of the case file notes by Counsel for the Appellant, and an extract of the diary was attached and marked Annexure "UN 1."
- 15 iii. That Counsel in personal conduct believing that the matter would come up at the time she had recorded, duly informed the Director of the Appellant company to send a representative to the Court on 11th May, 2021 at 11:00am. A copy of the sms text message forwarded to the Director of the Applicant, and or Appellant Company on 10th May, 2021 was attached and marked Annexure "UN 2."
- 20 iv. That on 11th May, 2021 at 10:30 am, she approached the clerk requesting for the matter to be called out at 11:00am, and was informed that the matter had proceeded at 10:00am in her absence, and was dismissed by Court for want of prosecution at the instance of Counsel for the Respondent.
- 25 v. That upon receiving this information, Counsel realised that she had inadvertently misheard the time the matter was supposed to come up for hearing, and recorded a wrong time in her diary.
- 30 vi. That the Applicant has acted diligently in prosecuting its matter, and would have proceeded, had it not been for the mix up in the time the matter was supposed to come up for hearing.
- 35 vii. That this application has been brought without delay, and that it is in the interest of justice that this application be reinstated and fixed for hearing to allow the Applicant the opportunity to prosecute its Appeal.

The Respondent's evidence as stated in the affidavit in reply, affirmed by Kabazaare Mujaasi Jackson the General Manager of the Respondent Company in paragraphs 1-10, is summarized as below;

- 40 i. That Counsel for the Appellant and Respondent were addressed at the same time when Court adjourned the matter to 11th May, 2021 at 10:00am.
- ii. That he is advised by their Lawyers M/S Walusimbi & Co. Advocates that by virtue of their legal training, which advise he verily believes to be true that

5 this is not a mere technicality but a procedural requirement that a party who files a suit before Court must prosecute the suit to its conclusion.

The Applicant filed an affidavit in rejoinder, deposed by Nebyebyoona Doris Kaitesi in paragraphs 1-10, in which she reiterates the averments in the affidavit in support of the application, and states under paragraph 6 thereof that the
10 affidavit in reply is argumentative and offends the law.

Representation

The Applicant was represented by Counsel Kajubi Brian of M/S Nangwala, Rezida Advocates while the Respondent was represented by Counsel Guma Daphine jointly with Counsel Nassonko Bridget of M/S Walusimbi & Co. Advocates. Counsel
15 for the parties herein filed written submissions as directed by the Court.

Issues for determination

Counsel for the Applicant framed the issue for Court's determination, however, this Court deemed it necessary to amend the issues in accordance with Order 15 Rule 5(1) of the Civil Procedure Rules SI71-1 as below:

- 20 1. Whether the application discloses sufficient cause for reinstatement of the appeal?
 2. What remedies are available?

Decision

Issue No.1: Whether the application discloses sufficient cause for reinstatement of
25 the appeal?

I have considered the submissions of Counsel for the parties herein, and the cases cited to find as follows:

Order 43 Rule 16 of the Civil Procedure Rules provides that:

30 "Where an appeal is dismissed under rule 14 or 15 of this Order, the appellant may apply to the High Court for the readmission of the Appeal; and, where it is proved that he or she was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit." (Emphasis is mine)

5 From the above provision of the law, it is clear that in an application of this nature, the Applicant has to satisfy the Court that he or she was prevented by sufficient cause from appearing when the Appeal was called on for hearing.

10 The term "sufficient cause" depends on the circumstances of each case and must relate to the inability or failure to take a particular step in time. **(See the case of Florence Nabatanzi Vs Naome Zinsobedde SC Civil Application No. 5 of 1997)** cited with approval in the case of **Moses Bekabye & 4 Others Vs Musoke Bulasio & 2 Others HCMA No. 453 of 2019**, relied upon by Counsel for the Respondent.

15 From the definition above, it is my understanding that the phrase "sufficient cause" is that reason(s), which the Court may consider appropriate in the given circumstance(s) of the case before it, where a party fails to act within the time frame prescribed by law; It is therefore relative, and can only be determined on a case by case basis.

20 In the instant case, the Applicant under paragraphs 3-9 of the affidavit in support of this application, deponed by its Counsel Nebyebyoona Doris Kaitesi, indicates the circumstances under which this Appeal was dismissed, in which she states that when the matter first came up for hearing on 20th January, 2021 in the presence of Counsel for the parties herein, it was adjourned to 11th May, 2021 at 10:00 am but Counsel for the Applicant inadvertently recorded in her case notes, and diary a wrong time that is 11:00am on the same date, and duly informed the Appellant's representative to come to Court on the said date.

30 I have looked at Annexure marked "UN1" attached to the affidavit in support, which is the Applicant's notes, and an extract from the Diary of Counsel for the Applicant, and find that Counsel for the Appellant recorded the next date for scheduling to be 11th May, 2021 at 11:00am whereas, Court had adjourned the Appeal for scheduling on 11th May, 2021 at 10:00am.

I therefore, find that this was an error by Counsel for the Applicant, since the representative of the Applicant appeared and requested the clerk to call the matter at 10:30am on the very day but was only informed by the clerk that the appeal had been dismissed at 10:00am for nonappearance of the Appellant.

35 The proposition of the law decided in a plethora of cases is that a mistake, negligence, oversight or error on the part of Counsel, should not be visited on the litigant. **(See Nicholas Roussos Vs Gulamhussein Habib Virani & Another SCCA No.**

5 **9 of 1993**, relied upon by Counsel for the Applicant, in which the case of **Shabin Din Vs Ram Parkash Anand (1955) 22 EACA 48**, was cited with approval.

In the result, I find that such mistake constitutes a just cause, in which this Court may exercise its inherent powers under section 98 of the Civil Procedure Act, Cap 71 to make orders as may be necessary for the ends of justice to the parties herein.

10 **(See Banco Arabe Espanol Vs Bank of Uganda SCCA No. 8 of 1998)**

Issue No.2: What remedies are available?

This Court having found issue (1) above in the affirmative, further finds that this application has merit.

15 Accordingly, this application is allowed, and Court makes the following Orders that: -

1. The Order dismissing Civil Appeal No. 025 of 2019, is hereby set aside.
2. Civil Appeal No. 025 of 2019, is readmitted and fixed for hearing on 3rd April, 2023.
3. Costs of this application shall be in the cause.

20 Dated, signed and delivered electronically this 11th day of January, 2023.

SUSAN ABINYO
JUDGE
11/01/2023.