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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

**MISCELLANEOUS APPLICATION No. 846 OF 2021
(ARISING FROM TAXATION CAUSE No. 001 OF 2020)
(ARISING FROM CAD/ARB/No. 24 OF 2020 AT CADER)**

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M/S MUSHABE, MUNUNGU & CO. ADVOCATES APPLICANT

VERSUS

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**1. RAYMFIELD UGANDA LIMITED
2. MUSA KAKANDE
3. ENG.SSEBAMALA RICHARD RESPONDENTS**

BEFORE: HON. LADY JUSTICE SUSAN ABINYO

RULING

20 **Introduction**

This application was brought by Notice of Motion under Article 28 of the Constitution of the Republic of Uganda 1995 (as amended), section 98 of the Civil Procedure Act Cap 71, and Order 9 Rule 18 of the Civil Procedure Rules SI 71-1, where the Applicant seeks for orders that:

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1. An Order setting aside the dismissal of Taxation Cause No. 001 of 2020 doth issue.
 2. An Order for reinstatement to restore the suit doth issue to hear the taxation cause No. 001 of 2020 and be determined on its merits
 3. Costs of the application be provided for.

30 **Facts**

This application is supported by the affidavit of Dr. David Gureme Mushabe deponed in paragraphs 1-19, a Senior Partner at M/s Mushabe, Munungu & Co.

5 Advocates, an Advocate of the High Court, and subordinate Courts thereto, and Counsel in personal conduct of Taxation Cause No. 001 of 2020, which was dismissed on 11th March, 2021 by His Worship Elias Kisawuzi. The grounds are summarised hereunder:

- 10 i. That the Partners at M/s Mushabe, Munungu & Co. Advocates had engaged the Respondents together with Counsel Nsubuga Charles of M/s Muwema & Co. Advocates with a view of settling the matter out of Court.
- 15 ii. That on 11th March 2021, Counsel for the Applicant had two matters for conferencing at the Court of Appeal to wit 1) Rwehuta Stephen & Others Vs Tumwijukye Mpirirwe & Others, Civil Appeal No. 114 of 2020, and M/S Bashasha & Co. Advocates Vs Tumwijukye Mpirirwe & Others, Civil Appeal No. 59 of 2020, scheduled for 11:00am, which was the same time the Taxation cause had been fixed for hearing.
- 20 iii. That Counsel for the Applicant agreed with Counsel for the Respondents that the latter appears before His Worship Elias Kisawuzi and informs Court about the progress of the negotiations, and seeks for an adjournment since Counsel for the Applicant was handling two cases at the Court of Appeal.
- 25 iv. That Counsel for the Respondents intentionally misled Court notwithstanding the agreement between Counsel for the parties herein, which misinformation led to the dismissal of the taxation cause before H/W Elias Kisawuzi.
- 30 v. That the Applicant continued in talks with the Respondents under false information that the Taxation cause had been adjourned whereas not, and that the Respondent's withholding of the information caused the Court to erroneously dismiss the matter to the detriment of the Applicant's interest, which Counsel for the Applicant discovered on 2nd June, 2021 as he was following up to have the matter fixed for hearing.
- 35 vi. That there is sufficient cause to set aside the dismissal and reinstate the taxation cause, and that the granting of this orders shall not prejudice the Respondents.
- vii. That it will serve the interest of justice that the application is granted.

The Respondent's did not file an affidavit in reply.

Representation

The Applicant was represented by Counsel David Gureme Mushabe of M/s Mushabe, Munungu & Co. Advocates while Counsel Nsubuga Charles of M/s
40 Muwema & Co. Advocates and Solicitors represented the Respondent.

5 Issues for determination

Counsel for the Applicant filed written submissions as directed by this Court, and framed the issues for determination as follows:

1. Whether the Applicant was prevented by sufficient cause from appearing when Taxation Cause No. 001 of 2020 was called for hearing?
- 10 2. What remedies are available to the parties?

Decision

Issue No.1: Whether the Applicant was prevented by sufficient cause from appearing when Taxation Cause No. 001 of 2020 was called for hearing?

15 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)**

20 From the above definition, 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 period prescribed by law; It is therefore relative, and can only be determined on a case by case basis.

25 In the instant case, it was the evidence of the Applicant that they had agreed with Counsel for the Respondents that the latter appears before the Registrar, and seeks for an adjournment since Counsel for the Applicant was appearing before the Court of Appeal on two matters at the same time the taxation cause was fixed for hearing before the Registrar. The Applicant attached Conferencing Notices for Civil Appeal No. 114 of 2020 in respect of Rwehuta Stephen & Others Vs Tumwijukye Mpirirwe & Others, marked Annexure "A", and Civil Appeal No. 59 of 2020 in respect of M/S Bashasha & Co. Advocates Vs Tumwijukye Mpirirwe & Others, marked Annexure "B".

In addition, it was the Applicant's evidence that they only learnt of the dismissal of the taxation cause, and that it was due to the information withheld by Counsel for the Respondents, when they were following up with Court to fix the matter for hearing.

35 The proposition of law is that, whoever alleges a given fact, and desires the Court to give judgment on any legal right or liability dependent on the existence of any fact, has the burden to prove that fact unless, it is provided by law that the proof

5 of that fact shall lie on another person. **(See sections 101 and 103 of the Evidence Act, Cap 6)**

I have looked at the said Conferencing Notices, and find that the time in which the matters were fixed for scheduling is not indicated. I therefore find that the
10 Applicant has not proved that the said matters in the Court of Appeal were fixed at the same time, when Taxation Cause No. 1 of 2020, before the Learned Registrar was called on for hearing on 11th March, 2021.

For reasons above, I find that Applicant has not adduced any evidence to prove that they were prevented by sufficient cause from appearing before the Learned
15 Registrar in Taxation Cause No.1 of 2020, when it was called for hearing on 11th March, 2021.

The answer is therefore in the negative.

Issue No.2: What remedies are available?

This Court having found issue (1) above in the negative, further finds that this
20 application lacks merit.

Accordingly, this application is dismissed with no order as to costs.

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

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SUSAN ABINYO
JUDGE
11/01/2023