

The suit then proceeded to full trial whereby the respondent, plaintiff in the suit, proved to the satisfaction of Court that on 24.04.07, the applicant's bus Number UAH 298R was negligently driven by an authorized driver of the applicant, knocked and killed the respondent's son; Adonga David, aged 30 years, at Koro, along Gulu-Kampala Highway. The trial Court, in its Judgment, awarded to respondent both general and special damages payable by the applicant. The respondent, as decree holder in the suit, proceeded to recover the damages and costs by executing against the applicant/judgment debtor.

Through High Court, at Gulu, Miscellaneous Application No.89/08, the applicant applied to have the ex parte judgment in Civil Suit Number 76/07 set aside. After a full hearing in which Counsel for both parties to the application adduced affidavit evidence followed by submissions, this Court decided, after doubting the applicant's assertion that no service to file a defence had been served upon the applicant, that:-

“Be that as it may, the interests of Justice enjoin this court to avail the applicant an opportunity to be heard. It is however his keeping away and not being available to Court, police and relatives of the deceased, victim of the accident, that resulted in proceedings being conducted against the applicant in his absence. Court therefore allows this application, but on a number of conditions, so as to ensure justice to all concerned in the case.”

Court then set conditions to be complied with by the applicant before the ex-parte Judgment could be set aside. These conditions, amongst others not relevant to this Ruling, were:-

- (i) Applicant filing and serving to opposite party a written statement of defence within 15 days from the date of the order.
- (ii) Applicant to deposit in court Shs.1,500,000/= within 15 days of the order, towards execution costs so far incurred;
- (iii) Applicant to deposit in Court Shs.1,000,000/= within 15 days of the order towards expense for recalling of witnesses who had already testified in the case.

In respect of the above conditions, and others, the Court clearly stated in its Ruling that:-

“If applicant fails to comply with all, or any one of the above conditions, within the period herein set, then the setting aside of the Judgment shall be taken as vacated and execution of the same is to proceed against the applicant/judgment debtor.”

Court delivered the Ruling on 26.09.08 in the presence of Mr. Louis Odongo, learned Counsel for the respondent; and Mr. Oloya, holding a brief for Mr. Bakidde, learned Counsel for the applicant. In effect the Ruling was delivered in presence of Counsel for each of the parties to the application.

After the delivery of the Ruling, the applicant only partially complied with the conditions set out above. He, through his new firm of lawyers, Kiwuwa & Co. Advocates, filed and served a written statement of defence on 08.10.08. He did not deposit any money to Court. He did not communicate to court about his failure to do so.

On 17.11.08 the respondent/Judgment Creditor moved court to be allowed to execute the ex-parte Judgment since, on failure by the applicant to comply with all the conditions, the same was not vacated. Court allowed the respondent’s application and ordered execution process of the Court Decree to issue. On 16.12.08 Court issued a warrant of attachment and sale of the applicant’s buses. On 06.01.09 the applicant lodged this application.

The applicant in support of his application deposed to an affidavit stating that on the day the application was argued he was in detention at “a police Station in Gulu District’ and so he could not attend Court and further his then lawyer never communicated to him the conditions set by Court to be fulfilled by him before Judgment could be set aside. He only came to know of them when a warrant of attachment of his bus was served upon him and the bus had been attached in execution of the decree.

Before obtaining the services of his present lawyers, M/S Nsubuga – Mubiru Co, Advocates, the applicant had been represented by M/S Kiwuwa & Co, Advocates, and in particular, learned Counsel Michael Bakidde appeared for and argued the Miscellaneous Application No.89/08 to

set aside the ex-parte Judgment. The Ruling in the application was delivered on 26.09.08 when learned Counsel Oloya held a brief for Mr. Bakidde for the applicant.

There is no evidence, whether by affidavit or otherwise, from Mr. Bakidde or Mr. Oloya, Counsel who represented the applicant, to the effect that each one of them never passed to the applicant the conditions set by Court, he, applicant, had to fulfill before the Judgment of the court could be set aside. There is also no evidence by way of explanation as to why each one of the learned Counsel could not have done so. The assertion that the applicant was not informed of the conditions thus remains a bare statement from him, not supported by his then lawyers.

Court notes that on 08.10.08, the then applicant's lawyers, M/s Kiwuwa & Co, Advocates filed a written statement of defence in the suit for the applicant. These lawyers must have done so pursuant to the Ruling of Court of 26.09.08. It is difficult for this Court to believe the applicant's assertion that his then lawyers, M/S Kiwuwa & Co, could have proceeded to file a written statement in the suit without first having communicated to the applicant the conditions that had to be fulfilled before the Judgment could be set aside.

Court, thus, disbelieves the applicant that his then lawyers never communicated to him the conditions that had to be fulfilled by him before Judgment could be set aside. Court comes to the conclusion that the applicant was made aware of all the conditions that he had to fulfill before Judgment could be set aside, but of his own choice, opted not to comply. He only ran to court to avoid fulfilling the decree when execution process had been effected.

Orders of Court must be obeyed to the letter, otherwise Justice as administered by the courts becomes a mockery. It is not open to any one to choose what part of the orders made by court to comply with and which part not to comply with. This court is enjoined to stop such conduct on the part of any party whose cause happens to be the subject of adjudication before the court. In this particular case, the applicant after being afforded an opportunity to be heard and to put his case in the main suit, on fulfilling a number of conditions, chose to comply with only some, and not to comply with others. This court refuses to exercise its discretion in favour of such a party.

Court is also conscious of the fact that the decree holder, the respondent, is entitled to enjoy the fruits of the court decree; and that that enjoyment should not be unduly delayed by such a conduct as that of the applicant in this application.

This court therefore disallows this application. The same stands dismissed. The respondent is awarded the costs of the dismissed application.

It is ordered that the execution of the decree in Civil Suit No.76 of 2007 continues from the stage it had so far reached.

Remmy K. Kasule

Judge

20th February 2009