THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(FAMILY DIVISION)

MISCELLANEOUS APPLICATION NO. 34 OF 2011

(ARISING OUT OF CIVIL SUIT NO. 91 OF 2008)

SARAH NYAKATO……APPLICANT

VERSUS

1. **LIN JENG LIANG AKA LIN JEFF}**

}……..RESPONDENTS

2. **EDDY CHOU }**

Before: Hon. Mr. Justice E. S. Lugayizi

Ruling

This ruling is in respect of an application that Ms. Sarah Nyakato (hereinafter referred to as ***"the applicant"***) made under Order 9 rules 17 and 18 of the Civil Procedure Rules (S.I 71-1) and section 98 of the Civil Procedure Act (Cap. 71).

The application sought the following: (a) an order to set aside the dismissal of High Court Civil Suit No. 91 of 2008; (b) an order to reinstate the above suit so that it may be heard on merit; and (c) an order providing for the costs of the application.

An affidavit that the applicant deposed to on 13th April 2011 accompanied the application.

The background to the application was briefly as follows: On 30th June 2008 the applicant filed High Court Civil Suit No. 91 of 2008 against Lin Jeng-Liang (aka Lin Jeff) and Eddy Chou (hereinafter referred to as ***"the respondents"***). The gist of the applicant's suit was this: It sought revocation of Letters of Administration this Court had earlier granted to the respondents in respect of the late Lee Sing Chiang's estate. For (in the applicant's opinion) the respondents had wrongly obtained the said Letters of Administration from Court.

In their defence the respondents denied the above claim. Subsequently, Court fixed the above suit for hearing on 15th March 2008. However, on that day none of the above parties turned up for the hearing. Therefore, Court dismissed the suit under Order 9 rule 17 of the Civil Procedure Rules (S.I 71-1); and hence the application herein.

At the time of hearing the application, Mr. Omongole represented the applicant; and Mr. Muganwa Semakula was for the respondents.

Relying on the applicant's affidavit Mr. Omongole submitted that in matters of this nature the test was simple. It is whether the applicant had shown good cause for setting aside the dismissal order? He, then, insisted that in his view the applicant had done so. For, she had revealed (in her affidavit) that on 15th March 2010 her (then) advocate had prevented her from attending Court. He convinced her that nothing of importance would happen in Court that day since he had not served the respondents' side with the hearing notice. The applicant believed her former advocate's advice; and stayed away from Court that day. This sealed her fate, for in her absence Court to dismiss the above suit. Thereafter, her advocate did not come back to her over the said suit. However, subsequently when she personally visited Court she was shocked to discover that Court had dismissed her suit on 15th March 2010. Eventually, she changed advocates and began working on the reinstatement of her suit.

According to Mr. Omongole, the above scenario clearly showed that the applicant's previous advocate was guilty of negligence. That negligence led to the dismissal of the applicant's suit on 15th March 2010; and it would be unjust to visit the negligence on the applicant. Therefore, Mr. Omongole prayed this Honourable Court to grant the orders that the applicant sought. He cited 4 Ugandan authorities to back up his submissions. **(See William Gubaza HCCS No. 571 0f 1995; National Insurance Corporation v Mugenyi and Company Advocates [1987] HCB 28; Edward Kamana Wesonga v Interim Electoral Commision & 2 Others Election Petition Application No. 36 of 1997; and Ggolooba Godfrey v Harriet Kizito (SC) Civil Appeal No. 7 of 2006).**

On his part Mr. Muganwa Semakula relied on Ms. Grace Nanteza's affidavit, which was dated 17th November 2011; and opposed the application. In essence his submissions were as follows: (a) the applicant had not shown good cause for setting aside the order in question and was not vigilant in making the application herein; (b) the suit in question was res judicata. (For various courts had previously decided a string of suits which involved the parties herein and also touched the very matters the applicant was seeking to restore and contest against the respondents); and (c) the applicant had no locus standi in the suit in question because she was neither Lee Singh Chiang's widow nor his lineal descendant.

In reply to the above submissions Mr. Omongole stood by his earlier submissions. He further pointed out that High Court Civil suit No. 91 of 2008 was not barred by the principle of res judicata. For the central issue in that suit (i.e. revocation of Letters of Administration that was

granted to the respondent in respect of the late Lee Sing Chiang's estate) had not been adjudicated upon in an earlier suit between the parties herein.

Lastly, Mr. Omongole explained that the matter of locus standi which Mr. Muganwa Semakula raised was one of substance; and can only be resolved during the hearing of High Court Civil Suit No. 91 of 2008.

After carefully considering the submissions of both counsel, Court fully agrees with Mr. Omongole that the law governing the situation at hand is as he stated it above. Therefore, once the applicant succeeded in showing good cause for setting aside the dismissal order of High Court Civil Suit No. 91 of 2008, Court would not deny the remedies sought in the application herein. For to do so, would be an exercise in punishing an innocent party (i.e. the applicant) for the wrongs or failures of her previous advocate.

Indeed, the Supreme Court of Uganda in **Ggolooba Godfrey v Harriet Kizito (supra)** was quite explicit on the above point; and had this to say: ***"… a mistake by an advocate should not be visited on a party"***.

From the contents of the applicant's affidavit, it is quite obvious that her previous advocate misled her when he prevented her from attending Court on 15th March 2010, (i.e. the day Court dismissed her suit under Order 9 rule 17 of the CPR (S.I 71-1).

In addition, the above advocate's subsequent conduct which manifested in failure to find out what had happened in Court on 15th March 2010 in respect of the suit in question or knowing what happened, but letting the applicant remain in total ignorance thereof thus causing her some delay in seeking a remedy, are all matters that ought not be blamed on the applicant.

Besides, there were frequent changes in the Family Division during the last one year, which slowed down the process of fixing cases. Those difficulties, too, in the administration of Justice ought not to be blamed on the applicant.

The other matters (i.e. res judicata and locus standi) which Mr. Muganwa Semakula raised in his submissions above were, of course, irrelevant. Those are matters of substance, which should rightly be dealt with at the time of trying High Court Civil suit No. 91 of 2008.

All in all, the applicant has shown good cause for setting aside the order in question. As a result this Court has no choice, but to make the following orders:

1. Court's order dated 15th March 2010 which dismissed High Court Civil Suit No. 91 of 2008 is hereby set aside; and the said suit is re-instated.

2. Each party to the application herein will bear his/her own costs.

E. S. Lugayizi (J)

12/12/2011

Read before: At 9.05 a.m.

Applicant

1st respondent

Mr. Omongole for the applicant

Ms. C. Nakayima c/clerk

E. S. Lugayizi (J)

12/12/2011