

by the applicant. Briefly they are that the applicant filed CA 28/2020 on 24.08.2020 and it was dismissed for non-attendance on 29.09.2021. That
30 counsel noted the adjournment date as 29.10.2021 instead of 29.09.2021 and mistake of Counsel should not be visited on the applicant.

The Applicant filed MA 153 of 2021 for reinstatement of CA 28/2020 and later filed MA 160 of 2021 for stay of execution in CA 28/2020. The 2nd respondent filed one affidavit in reply wherein he replied to both
35 applications, the same was done in respect to submissions.

In reply the 2nd respondent stated that the application lacks merit as they do not disclose any sufficient reasons or just cause for reinstatement of CA 28/2020. That the applicant was not affected by the Covid 19 Lockdown as the relevant schedules and dates of the case were not affected by the
40 Covid 19 lockdown. That neither the applicant nor counsel in personal conduct had been attending court and had they been doing so they would have got the correct date the appeal came up for hearing. That these applications are an afterthought to avoid execution and have been brought in bad faith.

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Whether the applicant has sufficient cause to warrant reinstatement of CA 28/2020?

Counsel for the applicant submitted that the application is premised on equity and fairness and the main consideration for grant of this
50 application is whether prima facie there is sufficient cause which merits serious judicial consideration for re-admission of the appeal. Counsel submitted that courts should ensure that substantive justice is administered without undue regard to technicalities. Counsel relied on

55 ***Mulindwa v Kisubika Civil Appeal No. 12 of 2014 and Article 126 of the Constitution.***

Counsel additionally submitted that a party should not suffer the penalty of not having his case determined on its merits because of a mistake. Counsel relied on ***Philip Keipto Chemwolo and another v Augustine Kubende [1986] KLR 495 and Banco Arabe Espanol v Bank of Uganda [1999] 2 EA 22.***

60 Counsel further submitted that for an application for readmission of an appeal to succeed sufficient cause must be shown and the applicant has shown that it was mistake of counsel that caused non-attendance on the date the appeal came up for hearing. Counsel relying on ***Kibuuka v Uganda Catholic Lawyers Society and 2 Ors MA 696 of 2018*** stated that mistake of counsel should not be visited on the litigant and such mistake constitutes just cause entitling the judge to use his discretion so that the matter is considered on its merits.

70 The respondent in reply submitted that the applicant does not have sufficient cause.

That the appeal and its schedule were not affected by Covid-19.

He further submitted that the applicant's contention that this application is premised on equity and fairness cannot stand as equity aids the vigilant and not the indolent.

75 That neither the applicant nor his lawyer had been attending court and did not seem interested in prosecuting the matter and this application is only an afterthought.

In making the above submissions, Counsel relied on ***Mohamed Shally Sese (Shah Sese) Vs Fulson Company Ltd and Anor [2006] KLR Civil Application No. 26 of 2016.***

Determination.

Order 43 rule 14(1) of the Civil Procedure Rules provides for dismissal of an appeal for appellant's default thus;

85 **Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the court may make an order that the appeal be dismissed.**

90 **Order 43 rule 16** provides a remedy for dismissal under rule 14. It provides that

95 **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.**

100 The prerequisite for readmission of an appeal under Order 43 rule 16 is proof that the applicant was prevented by any *sufficient cause* from appearing when the appeal was called.

Sufficient cause must relate to the inability or failure to take any particular step in time.

105 In ***Bishop Jacinto Kibuuka vs. The Uganda Catholic Lawyers Society & Anor MA 696 of 2018*** Sekaana J., aptly observed as follows;

“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.

110 ***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***
115 ***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.”

125 The applicant in this instant matter relies on mistake of counsel as sufficient cause for re-admission of the appeal.

In his affidavit he states that the application was fixed for mention on 30th June 2021 but was affected by CoVID-19 lockdown. It was then adjourned
130 to 30th August 2021 without his knowledge but that fortunately Counsel Amoro was in court on that date and held brief for Counsel Nanyonjo who was in personal conduct of the matter.

The applicant states that on 1st October, 2021 he received a dismissal order showing his matter had been dismissed on 29th September 2021 and that
135 upon his inquiry from counsel Nanyonjo, he was informed that she had been notified by Counsel Miriam Amoro that the matter had been fixed for 29th October 2021 but was further informed that counsel in personal conduct of the matter had taken leave from 13th September 2021 to 3rd October 2021.

140 The applicant attached an extract of Counsel Amoro's diary which indicates that his matter would come up on 29th October 2021 for mention and direction.

According to the applicant, it is clear that counsel got the wrong date for when the appeal would come for mention and this mistake as submitted
145 by counsel should not be visited on him as a litigant.

In Banco Arabe Espanol Vs. Bank of Uganda, SCCA No. 8 of 1998 where it was held that;

150 ***“A mistake, negligence, oversight or error on the part of counsel should not be visited on the litigant. Such mistake, or as the case may be, constitutes just cause entitling the trial judge to use his discretion so that the matter is considered on its merits.”***

In ***AG vs. AKPM Lutaaya SCCA No. 12 of 2007***, Katureebe, JSC (as he then was), held that the litigant's interests should not be defeated by
155 the mistakes and lapses of counsel.

Similarly, in ***Godfrey Mageze & Brian Mbazira vs. Sudhir Ruparelia SCC Application No. 10 of 2002, Karokora***, JSC, held that the omission, mistake or inadvertence of counsel ought not to be

60 visited on the litigant, leading to the striking out of his appeal there by denying him justice

Relying on the above decisions and taking into account that indeed it is true that the resultant dismissal of the appeal arose as a result of counsel's mistake and not of the applicant, I would find this application has been proved as the applicant has shown sufficient cause for non-attendance. In any case an applicant's constitutional rights to be heard cannot simply be swept away on the grounds of his lawyer's mistake, a person over whose actions he has no control, unless it has been shown that he was guilty.

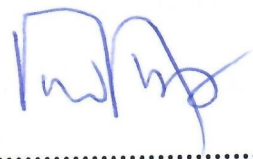
Accordingly, I am satisfied that this application has merits and is thus allowed.

170 Orders:

- Civil Appeal No. 2 of 2020 is allowed reinstated with the order dismissing it set aside.
- The order awarding the second respondent costs of the appeal is also set aside.
- 175 - The allowed Civil Appeal No. 2 of 2020 must be set for hearing within two months from today's ruling otherwise it will automatically lapse.
- The costs of this application to be in the cause.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

Judge

9th September 2022