

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUKONO
MISCELLANEOUS APPLICATION NO.146 OF 2023
ARISING FROM CIVIL SUIT NO.42 OF 2022

1. NTAMBI UMARU

2. NANYONGA AGNES DERILAR.....APPLICANTS

VERSUS

MULIMIRA MICDADI:.....DEFENDANT.

BEFORE: HON.LADY JUSTICE MWONDHA JACQUELINE.

RULING.

This application brought before me by Counsel for the applicants having been fixed in 2023 for orders that; -

- a. The order dismissing Civil Suit No.42 of 2002; Ntambi Umaru and Nanyonga Agnes Derilar VS Mulamira Micdadi be set aside and suit be reinstated and heard on its merits.

- b. Costs of the application abide the main cause.

It was brought Under 0.9 r 23 and 0.52 rr 1 and 2 of the CPR and Sections 39 of the CPA.

The notice of motion was accompanied by the affidavit of Nanyonga Agnes Derilah the second applicant and Methodius in puppet and briefly that; -

1. The applicant was not in Court at the exact time of dismissal of Civil Suit No.42 of 2022 due to sufficient reason.
2. The applicant and her lawyer were prevented from reaching Court at the right time due to traffic jam a cause beyond applicant and lawyer's control.
3. The applicant is still interested in pursuing the dismissed suit which has a high chance of success.
4. It is just fair and in the interest of Justice that this application be granted to the ends of Justice to meet.

It was further deponed that on the 15th day of August, 2023 she received copies of the notice of the motion to be poured onto respondent C/O m/s Nsubuga K. S & Co. Advocates located at plot 17, Bishop Tucker Road Pely House, first floor, Mukono town and effected service. She also deponed she found a lady at the reception who identified herself as Rebecca explained the purpose of her visit to their chambers. That she tended the copies of service to her, she received them but did not acknowledge receipt claiming that Counsel Nsubuga who is personal Counsel was not in office. That she went to

several dates but it was the same story. That on 5th day of September, 2023 she went back and found the same story that Counsel had not signed on the copy she left, she was forced to Counsel on 0701-577893 who informed him that he had not been in office for a while she further deposed that she was informed by her lawyers M/S Pecol advocates & solicitors that the matter was forwarded to the trial Judge and fixed for mention on 15th day of March, 2023 at 9:00 am, because it was coming for the first time for further management. That the hearing notices were taken out by Counsels and served on the respondent. That the matter was called for hearing on 15th day of March, 2023 at 9:00am, the respondent/defendant had not complied with the Court Order of filing necessary witness statements and trial bundles. That on the 15th day of March, 2023 when suit was called, her Counsel arrived late by 5 minutes due to heavy traffic flow and found that the matter had just been dismissed for reasons of nonattendance to Court that she personally arrived at 9:08 am due to the down pour heavy traffic flow on the Kampala-Mukono Road as a result road works.

That she and the 1st applicant are still interested in the prosecution of the matter to this Honourable Court to determine the controversy between themselves and the defendant/respondent.

That she was informed by her lawyers that on upon perusal of the Court record on dismissal date, the defendant was asking for schedules of filing evidence in Court which would allow the case to

be heard inter parties. That she is not guilty of dilatory conduct as the application has been fixed immediately and that she has been advised by her lawyers that the dismissal suit for non-attendance to Court can be reinstated and heard interparties so that Justice is served.

In such a matter there are three major issues to consider;

1. Whether the applicant had justifiable reason to be prevented to be in Court at time they were required.
2. Whether the applicant is still interested in pursuing the dismissed suit which has a high chance of success.
3. Whether it's just, fair and in the interest of Justice that this application be granted to ends of success to meet.

The issues above can be only established by evidence as per affidavits, which having perused the affidavits to dismissal for non-attendance. And from the above, the dismissal is set aside and hereby reinstate the main suit; -

1. The applicant succeeds in the dismissal of Civil Suit No.42 of 2002 and reinstates the main suit.
2. Costs shall be considered in the main suit.

J. Mwendha

22/09/2023

Jacqueline Mwendha

JUDGE

20th/09/2023

Ruling delivered

J. Mwendha

22/09/2023

Jacqueline Mwendha

JUDGE

22/09/2023