THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

MISC. APPLICATION NO. 50 OF 2022

(ARISING FROM CIVIL APPEAL NO. 44 OF 2015)

OBOTE DAVID.....APPLICANT

VERSUS

ODORA YASONI.....RESPONDENT

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

RULING

The Applicant seeks to have an Order of this Court (Mubiru, J.), dismissing Civil Appeal No. 44 of 2015 for want of prosecution, set aside, and that the said Civil Appeal be re-admitted and heard on merit. He prays that costs of the Application be costs in the cause.

The history of this Application is deducible from the Judgment that gave rise to the dismissed appeal. The appeal sprang from the Judgment given by Magistrate Grade One of Kitgum Chief Magistrates Court, His Worship Isaac Rukundo, dated 28th October, 2015. There, it is indicated that the Respondent, Odora Yasoni (the Plaintiff in the trial court) sued Obote David (the present Applicant) in the Chief Magistrates Court of Kitgum

holden at Kitgum, vide Civil Suit No. 122 of 2012. The Plaintiff had sought for a declaration that he owns land at Pagwacaba village, Ibakara Parish, Kitgum Matidi District, measuring approximately 30 acres. He sought for vacant possession thereof. The Defendant (applicant) denied the claim, contending, he was born and raised on the land for about forty-nine years without any complaint or disturbance by any one. Parties framed three issues, namely, whether or not the land belongs to the plaintiff; what is the size of the disputed land; and the remedies available to the parties. The trial Court noted that the Plaintiff's then advocates withdrew from the representation of the Plaintiff, while the then counsel for the Defendant sought to file written submission. The Judgment indicates that a preliminary objection was raised touching the competence of the suit. The Defendant contended that the suit was barred by the doctrine of *res judicata*. The Defendant argued that the Local Council I, II, and III Courts, had, respectively heard and determined the very land dispute between the parties, and respectively partially decided in favour of the Defendant. The Local Council I Court tried the matter at first instance, while the LCII and LCIII Courts, handled the first and the second appeals, respectively. The Local Council Courts consistently held that the Defendant owned two acres of the (30 acres) of the suit land. In effect, the Local Council Courts held that, the Plaintiff own twenty-eight acres while the Defendant own two acres, of the suit land.

Having partially lost (in respect of the two acres), the Plaintiff lodged the suit. On the basis of the findings by the Local Council Courts, the Learned Magistrate Grade One held that the suit was not competent before the Court (on account of being *res judicata*), but proceeded to make findings about the merit of the suit. Court found to the effect that, on the basis of the Local Council Courts' decisions, the Defendant owns two acres of land and thus the Plaintiff has no legal right over the same (the two acres). Court concluded that, its holding meant that the Defendant is encroaching on the rest of the land (28 acres). It held the Defendant to be a trespasser to the twenty-eight acres. In conclusion, the trial Court declared that the Plaintiff is entitled to vacant possession of the 28 acres of the suit land. It issued a permanent injunction against the Defendant in respect of the twenty-eight acres, and costs.

Aggrieved and dissatisfied, the Defendant lodged Civil Appeal No. 044 of 2015. The Appeal was strangely indicated to be arising from *'Civil Case'* No. 05 of 2013, Pader. At the same time, it is shown as arising from the correct Civil Suit No. 122 of 2012. The Memorandum of Appeal was filed and stamped with the High Court stamp on 9th November, 2015, although the Deputy Registrar of the Court endorsed it on 16th November, 2015. It is the latter date the parties erroneously asserted as being the date the appeal was lodged.

Be that as it may, the Memorandum of Appeal is shown to have been served on Ojul Odora C. Onesmus (heir) and son of the Plaintiff (said to be deceased as at the time the appeal was lodged), on 26th November, 2015. The date of death of the Defendant is not stated on record. Suffice to state that the Administrator has taken over the Respondent's case, although the name of the administrator has not been reflected on the Appeal documents.

The Appeal came up for hearing on 2nd March, 2017. Counsel Charles Dalton Opwonya appeared for the Appellant, while Counsel Walter Okidi Ladwar appeared for the Respondent. The Appellant was present, while the administrator of the estate of the deceased Respondent was in Court. Counsel for the Appellant sought for Court's guidance on the mode of arguing the appeal. Court noted that the Judgment of the trial Court was not signed, and directed that the Original case file be forwarded to the trial Court, so that the Learned Magistrate signs and certifies its Judgment, so that the High Court could use in hearing of the appeal. The directive was to be complied with within two weeks from the date of the Order, and the Appeal was fixed for hearing on 18th April, 2017.

There is no further record of steps taken in the matter, till 8th December, 2020, when by an Order of Court, the Appeal was dismissed for want of prosecution under Order 43 rule 2 (*sic*) of the Civil Procedure Rules (CPR)

S.I 71-1 (I think Court meant rule 31), and section 17 (2) of the Judicature Act Cap.13. The present application seeks to set aside the order of dismissal of the Appeal.

Grounds of the Application

The Application was launched by way of Notice of Motion, under Order 9 rule 18, Order 43 rules 16 and 31, and Order 52 rules 1, 2 and 3 of the CPR. It also cites section 98 of the Civil Procedure Act. I agree with the Respondent that the above procedural provisions, save for Order 52 CPR, are not applicable. I will give reasons later.

The Applicant avers that he lodged the Appeal by his former lawyers, and that being illiterate, he trusted the lawyers who never informed the Applicant about the progress of the Appeal despite the Applicant's inquiries from the lawyers. The Applicant further avers that he hired new lawyers who established and informed the Applicant that the Appeal had been dismissed for want of prosecution. The Applicant therefore pleads mistake and or negligence of former counsel in pursuing the fixing of and or following up the appeal, which caused it to be dismissed. He avers that he was not informed about the appeal hearing date. The Applicant avers that he will suffer irreparable loss if the dismissal order is not set aside, and the appeal reinstated for hearing on merit, the matter being a land

dispute. He avers that he is interested in prosecuting the appeal. The Applicant swore an affidavit in support, reiterating the grounds of the Application.

The opposition

The Application was opposed by the Administrator of the estate of the Respondent, Ojul Odora C. Onesmus. He deposed that the Application is devoid of merit, brought in bad faith, and is an abuse of Court process. He denied that there is sufficient cause for reinstating the Appeal. He contended that it was the applicant's negligence and failure to pursue the appeal that caused its dismissal. That ever since the Appellant filed the Memorandum of Appeal in November, 2015, he never took any step to pursue the appeal. He averred that as per the advice of his lawyers, the appeal having been dismissed for want of prosecution, automatically abates and cannot be reinstated. He contended that the Application is brought after delay of two years from the date the Appeal was dismissed, and will occasion a miscarriage of justice, if allowed. He prayed that the Application be dismissed.

Representation

Learned Counsel, Mr. Alfred Okello- Oryem, appeared for the Applicant, while Learned Counsel, Mr. Walter Okidi Ladwar, represented the estate of the Respondent. Both parties filed written submissions which Court has

considered, and is grateful. Counsel were also given opportunity to orally highlight on their submissions during the appearance of 27th January, 2023, during which Calvin Kilama appeared for the Applicant, holding Mr. Okello Oryem's brief.

Determination

From the perusal of the Notice Motion and the Affidavit in Reply, and submissions, three issues arise, namely,

i) Whether the Application is competent before Court,

ii) If so, whether there is sufficient ground for Court to exercise discretion to set aside the order of dismissal, and reinstate Civil Appeal No.044 of 2015 for hearing on merit, and

iii) Remedies available to the parties.

The competence of the Application

As I understood him, Learned Counsel for the Respondent, Mr. Walter Okidi Ladwar seemed to challenge the power of this Court to entertain the Application. He argued that, an appeal dismissed for want of prosecution under Order.43 rule 31 CPR, and section 17 (2) of the Judicature Act, can only be appealed, or a fresh action lodged, subject to the law of limitation. With the greatest respect, Learned Counsel appear to mix up the provisions of Order 17 rule 5 of the CPR (as amended), in 2019, which

provides for abatement of suits, and dismissal thereof, where no application is made or step is taken by either party for six months with a view to proceeding with the suit, after mandatory scheduling conference. In my view, the provision of O.43 rule 31 CPR and section 17 (2) of the Judicature Act cannot be given the same interpretation and treatment as is given to Order 17 rule 5 of the CPR. The circumstances that obtain in and the conditions for invocation of those provisions are quite different. I need not go into finer distinctions between the above legal provisions, but I will consider it briefly for completeness

The issue before me is whether a Civil Appeal dismissed for want of prosecution under O.43 rule 31 of the CPR and section 17 (2) of Judicature Act Cap. 13, ought to be appealed or whether the dismissal can be set aside, and the appeal readmitted for hearing on merit.

Learned Counsel for the respondent cited the case of Frederick Sekyaya Sebugalu Vs. Daniel Katunda, Civil Suit No. 1461 of 1977, digested in [1979] HCB 46 (Khan, J) as authority for the proposition that the Applicant ought to have appealed, instead of applying to set aside the dismissal order. With respect, the authority is not applicable. There, a suit was dismissed in the presence of the Plaintiff's counsel whereas his client was absent, having been sick in Nairobi. The Plaintiff filed for setting aside the order of dismissal. It was not clear under what Order the first Judge had

dismissed the suit. Khan, J., observed that the suit could not have been dismissed under O.9 rule 19 (now O. 9 rule 22) CPR, as the Plaintiff had appeared by his advocate. Court held that the Order of dismissal was regular and passed under Order 15 rule 4 CPR (now O.17 rule 4 CPR). Court concluded that the dismissal could only be set aside on appeal.

I am therefore of the view that the cited authority is unhelpful as it did not interpret the equivalent of O.43 rule 31 of the CPR which is in respect of dismissal of an appeal where there has been in ordinate delay in its hearing. Rule 31 of O.43 can only be properly invoked when the appeal has been listed for hearing at the session of the High Court, and notice of the listing served on the parties or their advocates, in a manner the Judge thinks fit.

Unlike O.43 rule 31, which is concerned with inordinate delay by an Appellant, the provision of O.17 rule 5 of the CPR is invoked if none of the parties to a suit has taken step either by making an application to Court or otherwise, for six months, after scheduling conference, with a view to proceeding with the suit. Proceeding with the suit here relates to trial thereof. Thus a step taken by a Defendant in fixing the suit for hearing (although the Defendant bears no such obligation) would bar the invocation of O.17 rule 5 of the CPR. This is however not the case under O.43 rule 31 CPR. A Respondent to an appeal may not save the same from being dismissed for want of prosecution, unlike a suit under O.17 rule 5

CPR where a step taken by a Defendant saves the plaintiff's suit from abating and from being dismissed. The concept of abatement of suits under O.17 rule 5 is therefore not applicable to dismissal of appeals for want of prosecution under O.43 rule 31 of the CPR.

In this regard, neither Learned Counsel addressed me on any authority that has discussed the issue of remedy available to an appellant who is aggrieved with an order dismissing an appeal under Order 43 rule 31 CPR, and section 17 (2) of the Judicature Act. On the contrary, the Applicant's Counsel, with respect, unhelpfully adverted to inapplicable provisions of the CPR. The Respondent's counsel did not help either.

For the Applicant, O.9 rule 18 of the CPR, which provides for options available to a plaintiff whose suit is dismissed under rule 16 or 17 of O.9 was cited, erroneously, in my view. It is clear that under rule 16, a dismissal is for failure to pay court fees/ charges, with the effect of making the issuance of summons, and service thereof on the defendant, invalid; while a dismissal under rule 17 is where neither party appears when the suit is called on for hearing. Thus, under either of the above two scenarios, the remedy available to a party is provided for under rule 18, which as I have observed, is not applicable here.

I note that under O.9 rule 18, a plaintiff has two options. He/she may bring a fresh suit, but subject to the limitation law. The other option is to apply for an order to set the dismissal aside. In respect of the latter option, an applicant has to prove 'sufficient' cause. If the matter relates to non-payment of court fees, he/she would have to show why he/she was unable to pay court fees/charges within the time fixed for issuance of summons. However, if the dismissal was because of non-appearance (as in O.9 rule 17), an applicant would need to prove sufficient cause for non-appearance.

In the instant case, the Applicant also relied on rule 16 of O.43 CPR. With respect, this was erroneous. Rule 16 of O.43 CPR is only relevant where an appeal is dismissed under rule 14 or 15 thereof. Under rule 14, it is dismissed where an appellant does not appear when the appeal is called on for hearing. This could be on the day fixed for hearing, or the adjourned date for hearing. Appearance by counsel or by authorized agent, as provided for under O.3 of the CPR, is appearance at law. Non appearance of an appellant may thus result in a dismissal of an appeal under O.43 rule 14. However a dismissal under rule 15 of O.43 would be in respect of where on the day for hearing of the appeal, it is established that the appeal hearing notice has not been served on the respondent because the appellant failed to deposit the sum of money required to defray costs of serving the notice, and that, as a result, the Respondent was unable to

attend Court. Where the Respondent attends Court, when not served with a hearing notice, an appeal will not be dismissed under O.43 rule 15.

As noted, therefore, the remedy available to the appellant whose appeal has suffered dismissal under O.43 rules 14 and 15, is expressly provided for in rule 16. The Appellant may apply to the High Court to have the appeal readmitted by the High Court. The Appellant has to prove that he/she was prevented by sufficient cause from appearing, or from depositing the sum required for defraying the cost of serving a notice on the Respondent.

In the present matter, the Appeal was dismissed because Court found that the Appeal had lasted for five years without being heard. It was thus not dismissed for default of appearance, or under any of the rules I have discussed.

The Applicant also relied on O.43 rule 31 CPR. It is my view that, being one of the laws under which the Appeal was dismissed, and being silent on what an aggrieved appellant ought to do in the circumstances, the rule is wrongly invoked by the Applicant. The rule cannot be relied on to resuscitate a dismissed appeal.

In this matter, although there is an apparent typographical error in the Ruling of Court, in reference to the rule under which the appeal was dismissed (it cited O.43 rule 2 (instead of rule 31), the Court was categorical that it was dismissing the appeal for want of prosecution.

O.43 rule 31 of the CPR provides,

"**Dismissal for want of prosecution**. 31 (1) where there has been undue delay in the hearing of an appeal, the registrar may obtain the directions of a judge for the listing of the appeal at the next ensuing sessions of the High Court."

Sub-rule 2 of the rule provides, " Notice of the listing shall be served in such manner as the judge may think fit upon the appellant and the respondent or their advocates, and upon the hearing thereof the court may order the dismissal of the appeal for want of prosecution or may make such other order as may seem just."

As observed, O.43 rule 31 CPR is not concerned with default in appearance, but delayed hearing of the appeal. Here, parties are notified to appear, during which the Appellant is required to show cause why its appeal should not be dismissed for want of prosecution. Whereas the head-note of the rule is written thus 'dismissal for want of prosecution', the text of the rule gives clarity as to when the rule ought to be invoked by Court. It is invoked where there has been undue delay on the part of the

Appellant, to have its appeal heard. The rule does not, unlike O.17 rule 5 CPR, provide for the right of an appellant to lodge a fresh appeal. Under O.17 rule 5, a plaintiff can, after the suit has abated, lodge a fresh suit, but subject to the law of limitation.

In light of the foregoing analysis, I now consider whether the Applicant ought to have appealed to the Court of Appeal. In so, doing, I will be able to resolve the issue of competence of the application before me.

Appeals from the High Court are provided for under Order 44 of the CPR. There are automatic rights of appeal in specified matters, and non-automatic rights in those not expressly mentioned in the Rules. Under rule 1 of O.44, an appeal which is dismissed for want of prosecution is not automatically appealable to the Court of Appeal of Uganda. Further still, it is nowhere stated in the CPR that the High Court can be moved to set aside an appeal which it has dismissed for want of prosecution, either under O.43 rule 31 CPR, or under section 17 (2) of the Judicature Act. In my view, the dismissal that happened in this case did not give rise to a decree, but to an Order, having not fully determined the rights of the parties to the appeal, as regards the matters sought to be canvassed in the appeal, embedded in the Memorandum of Appeal.

Whereas the dismissal Order of this Court could be appealable with leave, under Order 44 rule 2, I note that leave would only be considered if the Applicant filed a formal Motion, and proved that, *prima facie*, the intended appeal would raise questions of law which merit serious judicial consideration by the Court of Appeal. A substantial question of law would have to be involved in the intended appeal. That is, where the point raised is one of general principle decided for the first time or where a further argument and decision by the superior Court (in this case, the Court of Appeal) would be of public advantage. See: Sango Bay Estate Ltd & Others Vs. Dresdner Bank AG (1971) E.A 17; Charles Sempewo & Others Vs Silver Springs Hotel (1969) Ltd, Court of Appeal Civil Application No. 103 of 1993; Combine (U) Ltd Vs. AK Detergents (U) Ltd, Supreme Court Civil Application No. 23 of 1994.

In this matter therefore, it seems to me that, the route of seeking leave to appeal the ruling of this Court, with respect, would not avail to the Applicant. It is not clear what novel points of law would be canvassed on appeal to the next Court, against the Ruling of this Court.

In resolving the issue of competence of this application, therefore, I am first of all guided by principle that the Code of Civil Procedure ought to attract a liberal construction. It has been stated by very abled and revered authors of Mulla, in their commentary on the Code of Civil Procedure Act

V of 1908, which Act, I admit, largely shaped the Uganda's Civil Procedure Act, just as the Indian Civil Procedure Code shaped our CPR. The learned authors observe that, procedure is a mere machinery and its object is to facilitate and not to obstruct the administration of justice. They opine that the Code should therefore be considered liberally, and, as far as possible, technical objections should not be allowed to defeat substantial justice. Therefore a technical construction of sections (or the rules) that leaves no room for reasonable elasticity of interpretation should be guarded against. See: Mulla (*supra*), page 7.

Therefore, being a body of procedural law, the CPR is designed to facilitate justice. The CPR should not be viewed, *stricto sensu* as a law designed to provide for punishment and penalties, although some of its provisions could pass for enforcing discipline in the conduct of cases. In given circumstances, the provisions of the CPR should be construed so as to render justice, where reasonably possible.

Where there is thus no specific provision in the CPR, as it has obtained in the present matter, this Court has the power and duty to act according to justice, equity and good conscience. Thus, where there is no express remedy, Court can call to aid, section 98 of the Civil Procedure Act Cap71 (CPA). It has been held that a Court may still set aside a dismissal, in the exercise of its inherent powers, on the ground that an appeal would be

more costly or a non-efficacious remedy. However the powers under section 98 of the CPA must be exercised with great caution. See: Mulla (*supra*) p.1427; Mohanlal & Co. Vs. Golibai (1832)' 34 Bom LR 714; Bolram Ojha Vs. M/s Star Trading and Investment Co. AIR 1978 Cal. 160.

The inherent power of the High Court in section 98 of the CPA is in addition to, and complementary to the powers expressly conferred under the Civil Procedure Rules. Here, I have not found any express powers under the CPR. I would therefore restrict myself to the CPA. It should however be noted that the power under section 98 CPA will not be exercised if to do so would be inconsistent with, or comes into conflict with any of the powers expressly or by necessary implication conferred by other provisions of the CPR. To illustrate, if there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in a manner prescribed by the said provisions. Court will therefore consider the circumstances of each case, before issuing a suitable order. For example, the inherent powers of this Court under s.98 of the CPA would not include a power of revision provided for under section 83 of the CPA, where, on the facts, section 83 ought not to apply. In such a case, the Court would not purport to issue revisionary order, under its inherent power under s.98 CPA. The section cannot also be resorted to, to avoid the application of, for example, Order 1.rule 10 CPR (to add a party) when an application to add

a party has been rejected by Court. These examples should suffice to illustrate the application of section 98 of the CPA.

In the instant matter therefore, I find that, in the absence of a specific remedy to the Applicant (whose appeal was dismissed for want of prosecution under O.43 rule 31 CPR) and section 17 (2) of the Judicature Act, the High Court is enjoined to listen to the Applicant. I therefore find that the Application is competently before me, under section 98 of the CPA. I find that this is not a matter that ought to have been appealed. I find support in the persuasive decision of my brother Judge, Hon. Justice Gadenya Paul Wolimba, in Abel Belemesa Vs. Yesero Mugenyi, Misc. Application No. 126 of 2019. There, the Learned Judge noted that the CPR is silent on how an appeal dismissed for want of prosecution can be reinstated. Court then invoked section 98 of the CPA, and section 33 of the Judicature Act, *inter alia*, to hold that the application before the Court was competent, before proceeding to consider the merit. I too adopt the same approach, for it has been held that in matters of procedure, uniformity of decision is important, and if a Judge finds a principle laid down by competent authority, it is better to apply it, even if his own mind is not satisfied, than to fritter it away in its application to cases which manifestly come within it. See: Sadasivan Vs. Ramalinga (1875) 2 IA 219; Ful Kumari Vs. Ghanshyam (1903) ILR 31 Cal. 511.

In the present matter, I have no doubt in my mind, in applying the decision of this Court on a similar question. The objection to the competence of the application is certainly not well founded, and I overrule it. I therefore proceed to resolve the merit of the Application.

The Applicant's case rests chiefly on the mistake or blunders of his then counsel, in not pursuing the Appeal. The Respondent refutes this, and argues that the Applicant himself was dilatory and negligent, and not his former advocates, as the Applicant never bothered to follow up the Appeal for fixing, for over five years. Learned Counsel cited the decision by Justice Wilson Masalu Musene, J., in Matovu Charles Kidimbo Vs. Lukwata Yusuf & 2 others, Misc. Application No. 40 of 2017, where Court held that a case belongs to a litigant and not an advocate, and therefore, a litigant has the legal obligation to follow up his/ her case. Counsel then argued that there is no sufficient cause for grant of the Application. The Applicant's counsel disagreed, contending, sufficient cause exists.

I have considered the circumstances under which the Appeal was dismissed by this Court. It was dismissed on 20th December, 2020. By then, the Appeal had delayed without taking off. The record of the day does not show that the parties were present. It is not shown that they were notified by the Registrar of Court about the appeal fixture. The Court observed that, it ought to disencumber itself of case files in which the

parties appear to have lost interest. It concluded that there was inexcusable delay and dilatory conduct on the part of the appellant and his then advocates, and that, justice could no longer be done in the case due to prolonged delay on the part of the Appellant.

This Court is not sitting in an appeal against itself. The record of Court which I alluded to, while appraising the background facts, show that the case last came up on 2nd March 2017. Both parties and counsel appeared. Mr. Opwonya, for the Appellant was ready to proceed with the hearing, and sought for Court guidance on the form of submission to make. Court did not proceed, as the impugned Judgment needed first to be signed and certified by the trial Magistrate Grade One. Court gave two weeks for compliance by the trial Court. That is, by 17th March 2017. The Appeal was then fixed for hearing on 18th April, 2017. The record of Court is silent, until the 20th December, 2020, when the Appeal was dismissed for want of prosecution.

Given the above state of affairs, the delay, technically, ought to have been viewed from about 18th April, 2017, and not December, 2015 when the Appeal was filed. On record, there is a hearing notice, showing that, after the appeal lodgment, the Appellant had it fixed for hearing on 16th November, 2016. This did not take off, as the record is not indicative of any development of the day. Thus the delay from 18th April, 2017 till 20th

December, 2020, a period of about 3 years and eight months, still is inexcusable.

The Applicant has explained that, being a lay person, he entrusted the duty of following up his appeal to his then advocates. A litigant may instruct counsel to pursue all matters in court, but where counsel is negligent in executing the instruction, a litigant cannot sit back and do nothing. He/she is expected to take steps to further the progress of his/her case. I am alive to the position of the Courts that mistake of counsel, though negligent, is sufficient cause. However the client must not himself/herself be negligent. See: the decision by Musa Ssekana, J., in Bishop Jacinto Kibuuka Vs. the Uganda Catholic Lawyers Society & 2 Others, Misc. Application No. 696 of 2018.

In this case, the Applicant has explained that being an illiterate, he trusted his then counsel to follow up the appeal. The illiteracy card does not avail here. A litigant who participated in the judicial system before the Local Council I, II, and III Courts, and later in the Magistrate Grade I Court, and ultimately lodged an appeal in the High Court, cannot claim he was ignorant about the need to pursue the matter then pending in this Court. Having filed the Appeal by his Lawyers, and in time, the Appellant is presumed to know about the strict timelines for conduct of business in Court. Having appeared in Court on an earlier occasion (2nd March, 2017), the Appellant obviously appreciated his duties to pursue his appeal. The

illiteracy argument is therefore not well thought out and at best, is an afterthought.

I have however noted that after the appeal was fixed for hearing on 18th April, 2017, *vide* the proceedings of 2nd March, 2017, the matter lost position. This Court did not notify the parties that the Judgment of the trial Court which had been called for, had been certified and signed, and that the same had been received. I have seen a copy of the Judgment on record, but is neither certified nor is the last page thereof signed by the Learned trial Magistrate. The copy on record is not a valid Judgment as it is contrary to Order 21 rule 3 (1) of the CPR, which requires a Judgment to be dated and signed. Although this provision of the CPR refers to a Judge, I find that it applies to a Magistrate Grade 1 and a Chief Magistrate, by virtue of section 219 (1) of the Magistrates Courts Act Cap16 (MCA). Section 219 (1) of the MCA allows for the application of the CPR in matters filed in the Court presided over by a Magistrate Grade One, and a Chief Magistrate.

In the circumstances, when the Appeal was dismissed on 20th December, 2020, the directive of this Court had not yet been complied with by the lower Court. Since this Court had taken on the duty of calling for the signed copy of the Judgment, the Applicant (appellant then) was not expected to do anything. See: Wanume David Kitamirike Vs. Uganda

Revenue Authority, Civil Application No. 138 of 2010 (COA), which although considered the aspect of non-supply of the record of proceedings to an appellant, the *ratio* applies with equal force, where a duty is reposed on court to do something.

In the circumstances, Civil Appeal No. 44 of 2015 was not ready for hearing, when the Appeal was dismissed on 20th December, 2020. At the same time, the order of this Court, directed to the trial court to transmit signed Judgment, remains to be complied with by the lower court. Although the appeal had delayed in the system, in the circumstances, it was premature to conclude that, the delay was actuated by the Appellant. This is therefore, a proper case for this Court to invoke its inherent powers, in the interest of justice, to set aside its Orders of 20th December, 2020. Accordingly, the Order dated 20th December, 2020, dismissing Civil Appeal No. 044 of 2015 is set aside. The Civil Appeal is reinstated/ readmitted for hearing on merit.

Given that the duly signed Judgment of the trial Court is not on record, this Court modifies its Order given on 2nd March, 2017, and directs that the Applicant/ appellant shall pursue and obtain signed copy of the impugned Judgment within 30 days from the date of this Ruling, lest the Appeal shall be fixed by this Court for disposal with or without the signed Ruling.

On the issue of costs, given that the delay for the appeal take off is not squarely and strictly to blame on the applicant, but Court, in not following up the transmission to Court, the duly signed copy of the Judgment of the trial court, I would not have condemned the Applicant in costs of the application. However, considering that the Applicant delayed to file the present application, by slightly over one year and two months, thereby contributing to delay to deal with the issue of reinstatement, I am inclined to award costs, being costs thrown away, to the Respondent.

The Application is accordingly allowed, with costs, payable to the Respondent.

Delivered, dated and signed in open court this.....27th January, 2023.

George Okello
JUDGE HIGH COURT

Ruling read in court in the presence of;
Mr. Calvin Kilama holding brief for Mr. Alfred Okello Oryem, Counsel for the Applicant.
Mr. Walter Okidi Ladwar, Counsel for the Respondent
Ms. Grace Avola Court Clerk

George Okello. 27th January, 2023
JUDGE HIGH COURT