

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT – MA – NO. 054 OF 2022
(ARISING FROM HCT – 01 – CV – DC – 002 OF 2021)

5 **KABUGHO VASULENE ZUHUDI ::::::::::::::::::::::::::::::::::: APPLICANT**

VERSUS

BANJA KARIM KYAKABALE ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

10 **RULING**

Introduction:

The applicant brought this application under Order 9 rule 23 and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act seeking orders:

- 15 1. For reinstatement of Divorce Cause No. 002 of 2021.
2. For costs of taking out the application provided to the applicant.

The History:

The grounds in support of the application are contained in the affidavit of the applicant who contended as follows:

- 20 1. That she filed Civil Suit No. 002 of 2017 which was dismissed for non attendance on 4th May 2021.

2. That she was unable to attend court on the 4th of May 2021 due to sickness and misinformation between her and her Counsel Mr. Sam Musinguzi who also failed to attend court.
3. That she never intended to miss court but her health made it impossible for her to attend on the 4th of May 2021.
4. That the main case has merits with a high probability of success and it is in the interest of justice that the same is reinstated and heard on merits.

The Respondent did not oppose the application since there is no affidavit in reply on record. I will thus proceed to consider the application exparte under Order 9 rule 11(2) of the civil procedure Rules.

Representation:

The applicant was at first self-represented but later instructed the lawyers of M/s Legal Aid Project of ULS who filed the submissions in support of the application which I have considered.

Issues:

1. Whether the application raises grounds for re-instatement of HCT – 01- CV – DC 002 of 2017.
2. Remedies available to the parties.

Consideration of the application by court:

Issue one: Whether the application raises grounds for re-instatement of HCT – 01- CV – DC 002 of 2017.

Order 9 rule 22 that provides for the procedure when defendant only appears states as follows: *Where the defendant appears, and the plaintiff does not appear, when the suit is called on for hearing, the court shall make an order that the suit be*

dismissed, unless the defendant admits the claim, or part of it, in which case the court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

- 5 Under Order 9 rule 23 (1), *Where a suit is wholly or partly dismissed under Rule 22 of this Order, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he or she may apply for an order to set the dismissal aside, and, if he or she satisfies the court that there was sufficient cause for nonappearance when the suit was called on for hearing, the court shall make*
10 *an order setting aside the dismissal, upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.*

When a suit is dismissed under Order 9 rule 22 of the Civil Procedure Rules, the plaintiff may apply for the dismissal to be set aside under order 9 rule 23 of the Civil Procedure Rules upon satisfying court that he or she was prevented by
15 sufficient cause from entering appearance when the case was called for hearing.

As to what constitutes *sufficient cause*, in ***Nicholas Roussos Vs. Ghulam Hussein Habib Virani, SCCA No. 9 of 1993*** the Supreme Court stated that: ***“A mistake by an advocate though negligent may be accepted as sufficient cause.... ignorance of procedure by unrepresented defendant may amount to sufficient case.....***
20 ***illness by a party may also constitute sufficient cause..”***

In ***Bishop Jacinto Vs. The Uganda Catholic Lawyers Society and 2 others, HCMA No. 696 of 2018*** the Hon. Justice Ssekaana Musa relied on the ***Kenyan case of Gideon Mosa Ochwali Vs. Kenya Oil Co. Ltd & Anor. [2017 KLR*** where the term sufficient case was described in the following words:

“it is difficult to attempt to define the meaning of the words ‘sufficient cause’. It is generally accepted however that the words should receive a liberal construction in order to advance substantial justice. When no negligence, or inaction or want of bonafides is imputed to the appellant..

5 *Sufficient case is an expression which has been used in a large number of statutes. The meaning of the word ‘sufficient’ is adequate or enough in as much as may be necessary to answer the purposes intended. 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*
10 *circumstances existing in a case and context. Sufficient cause means that the party had not acted in a negligent manner or there was want of bonafide 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*
15 *court concerned to exercise discretion for the reason that whenever court exercises discretion, it has to be done judiciously”*

What constitutes sufficient cause depends on the facts of each case. In my view, in an appropriate case, sufficient cause may include the consideration where facts of the matter require a full trial so as to avoid further multiplicity of pleadings or to
20 ensure the ends of justice. The court retains the discretion whether to grant a reinstatement depending on the facts of each case and the justice that each case requires. The court must conduct a screening role of going through the pleadings and facts of the case to make an independent decision whether or not it is just and equitable to reinstate the case.

In this case the applicant indicated that she was sick when the case was called for trial and that she thought her lawyer would appear in court hearing but did not. That it is in the interest of justice that the case is heard on merits.

In the main suit, the applicant petition court for divorce and custody of the issue from their marriage. The case was scheduled, parties filed witness statements and the same had been fixed for hearing on 4th May 2021 for hearing of the applicant and the respondent's case. On the 4th May 2021, the applicant and her lawyer did not attend court and thus the case was dismissed for want of prosecution under Order 9 rule 22 of the Civil Procedure Rule. The applicant contended that she was sick and thought the lawyer would appear and represent her.

The medical records from Kilembe Mines Hospital attached to the application as annexure A reveal that the applicant appeared at the facility on the 1st of May 2021 and was examined. She went back on the 3rd May 2021 for review where the Doctor recommended a bed rest and she was thus admitted and later discharged on 6th May 2021. There is a discharge form bearing the stamp of the hospital. In the absence of any evidence to the contrary this court is inclined to believe that the applicant was indeed sick from 3rd May 2021 till 6th May 2021 when she was discharged. As such she was prevented by the said sickness when the case was scheduled for hearing on 4th May 2021. Sickness falls within what constitutes sufficient cause as was expounded in the **Nicholas Roussos case (supra)** as submitted by counsel for the applicant.

Secondly the application was not brought with inordinate delay. The case was dismissed on the 4th May 2021 and the applicant filed an application for reinstatement on 11th May 2021 after she was discharged from Hospital. This expresses in my view the applicant's intent and desire to have the case heard.

Therefore, the applicant in my view has presented sufficient cause warranting setting aside the dismissal order dated 4th May 2021.

This application therefore succeeds with the following orders:

(a) That the dismissal order of HCT – 01 – CV – DC 002 of 2021 dated 4th May 2021 is hereby set aside.

(b) Each party shall bear own costs.

I so order.

A handwritten signature in blue ink, appearing to read 'Vincent Wagana', with a horizontal line drawn through the middle of the signature.

Vincent Wagana

High Court Judge

FORT-PORTAL

10.01.2023