

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KIBOGA
MISCELLANEOUS APPLICATION NO.0036 OF 2024
(Formerly MA 320 OF 2023 at Mubende)

MAKASI PAUL & 13 ORS =====APPLICANTS

VERSUS

ALFRED MANDALA & 2 ORS =====RESPONDENTS

BEFORE HON.JUSTICE KAREMANI JAMSON.K

RULUNG

This is an application brought by a Notice of Motion under O.9 Rules 18, 22 and 23 and O.52 Rules 1 and 2 of the Civil Procedure Rules.

The application seeks orders of this court that:

1. The order dismissing Civil Suit No.037 of 2018 be set aside and the suit be reinstated for hearing.
2. The costs of this application be in the cause.

The application is supported by the affidavit of one Makasi Paul the 1st applicant and it contains the following grounds:

1. That the applicants are the plaintiffs in civil suit No.37 of 2018 which was dismissed on 12th April 2023.
2. That on the same day the applicants were on their way to court with their lawyer in the same car which got a mechanical problem that delayed them to reach and found the matter had dismissed.
3. That on the same day their advocate had other matters in court which he found when they had not been called and managed to enter appearance.
4. That the above mentioned suit is a land matter as the applicants reside and derive sustenance from the said suit land and are likely to suffer more if the matter is not adjudicated upon by court in full trial.

5. That the applicants were ready to appear on that day as they had even served the court process against the respondents for that day who also came.
6. That the applicants have a sufficient cause for their nonappearance on the day the matter was called.
7. That the main suit raises major issues which have a likelihood of success.
8. That the applicants are still interested in the prosecution their case as on several occasions the applicants together with their advocate have attended court ready to prosecute the same to final determination.
9. That it is just and equitable that the application be allowed.

One Alinaitwe Gideon an advocate swore an another affidavit in support of the application. He stated as follows:

1. That he an advocate who travelled with the applicants on the day in issue when the matter was dismissed.
2. That on the way with the applicants in the same car it got a mechanical problem which delayed them and reached court when the matter had been dismissed.
3. That on the same day he had other matters like Balaba Monday & Namulindwa Serina Civil Suit No.13 of 2021 which he found when it had not been called and managed to enter appearance.
4. That the applicants had a sufficient cause for non-appearance on the day the matter was called.

The 1st respondent filed an affidavit in reply opposing the application and stated as follows:

1. That the applicants/plaintiffs are his brothers and sisters.
2. That Kapisi Steven and Zakaliya Kiwinini are deceased having passed on in 2011 and 2012 respectively.
3. That they sued and have filed the application and he wondered how they could do so when dead.
4. That the application is full of falsehoods and should be dismissed with costs.

The 2nd respondent equally filed another affidavit in reply and stated as follows:

1. That the applicants suit is frivolous, vexatious, untenable both in law and facts and an abuse of court process and should be summarily dismissed.
2. That the applicants suit was dismissed having failed to appear and prosecute their case and have instead resorted to filing similar frivolous and vexatious cases.
3. That this application is brought in bad faith and belatedly and the allegation of deriving sustenance from the suit land are baseless and false.

Representation

The applicants were represented by Mr Kazungu Apollo of M/S Kazungu Kakooza Alinaitwe & Co. Advocates.

The 2nd respondent was represented by Mr. Mudhola Denis of Famm Advocates.

Submissions

The applicants counsel filed written submissions.

The 2nd respondent's sought to set aside the order for filing written submissions and was advised to file a formal application which was not done. The time to file written submissions expired before none were filed.

On 10th January 2024 counsel for the 2nd respondent was in court and disappeared as the file was being brought to court guide him on how to file his written submissions.

In his written submissions the learned counsel for the applicants emphasised that the applicants had a sufficient cause which prevented them from being in court when the matter was dismissed.

That is was a result of motor vehicle breakdown that they could not be in court in time. That they later turned up after the case had already been dismissed.

That this is confirmed by the affidavit of Counsel Alinaitwe who was travelling with the applicants and managed to find other cases he had on the day yet to be called and participated in them.

He submitted that this was sufficient cause that prevented the applicants from being in court at the time of dismissal.

He referred to the case of Edirisa Kanonya & Ors Vesus Asuman Nsubuga in which sufficient cause was defined to mean adequate or enough answer the purpose intended.

Analysis

This application is brought under **Order.9 Rules 18, 22 and 23 of the Civil Procedure.**

Rule 18 states that as follows;

“Where a suit is dismissed under rule 16 or 17 of this Order the plaintiff may subject to the law of limitation bring a fresh suit or 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 his or her or for his nonappearance as the case may be, the court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit”

Rule 22 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 courts 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”

Rule 23 provides that where a suit is dismissed under Rule 22 the plaintiff shall be barred from bringing s fresh suit.

According to the proceedings in Civil Suit No.037 of 2018 the same suit was dismissed under O.17 Rule 4 of Civil Procedure Rules and not Order 9 Rule 22 of Civil Procedure Rules as stated by the applicants in their application.

O.17 Rule 4 of Civil Procedure Rules provides as follows;

“Where a party to a suit to whom time has been granted fails to produce his or her evidence, or to cause the attendance of his or her witnesses, or to perform any other act necessary to the further progress of the suit, for which time has

been allowed, the court may, notwithstanding that default, proceed to decide the suit immediately”

Under **O.17 of Civil Procedure Rules**, with exception of a case dismissed under **Rule 6**, there is no provision of what happens if a suit is dismissed under those other Rules of the Order.

I have looked at the contents of the affidavit in support of the application the applicants made efforts to appear in court. They were however prevented by unforeseeable occurrence of the motor vehicle break down.

From the affidavit of the counsel who was supposed to appear for them in court, the motor vehicle he was travelling in with the applicants broke down. They however managed to make it to court but after the suit had been dismissed. The affidavits in reply do not dispute these facts.

I do believe the same evidence and am convinced that there was a motor vehicle break down and the applicants were therefore prevented from appearing in court by a sufficient cause when the suit was called on for hearing and dismissed.

A sufficient cause in my view is where an occurrence prevents a party from appearing when the matter is called in court and that occurrence doesn't involve negligence on the part of the party in default. It should be clearly demonstrated by that party that he or she had the will to appear in court but was prevented by an unforeseeable situation. The circumstances of this case fulfil the above principle.

This court has to take into account the intentions of the rules of dismissal of cases where parties do not appear or where parties fail to perform certain obligations directed by court. The rules serve the purpose of terminating cases which are not prioritised by the parties that initiated them to avoid the abuse of the court process and accumulating backlog.

I however must emphasize that the above has to be applied in observance of **Article 126 (2) (e) of The Constitution of Uganda 1995 as amended** to avoid terminating cases on technicalities without dispensing substantive justice.

In a situation where a party comes to court timely to seek reinstatement of a dismissed matter, court has to critically analyse the circumstances of that case with the above Article at the back of its mind.

A dismissed matter does not give a conclusive verdict to the issues raised for the court to resolve and once a party exhibits interest to have the matter conclusively resolved such an opportunity ought not be declined.

The powers of this court to ensure that ends of justice are met is set out under **Section 98 of the Civil Procedure Act** and was emphasised by this Court in the case of **Edirisa Kanonya & Another vs Asuman Nsubuga & 3 Ors MA 0373 OF 2022 at Mukono High Court (Unreported)**.

I do find this to be a proper case where the court has to exercise its discretion embedded in **Section 98 of the Civil Procedure Act** for ends of Justice to be met.

Am convinced that this application meets the requirements of reinstatement of a dismissed matter upon failure by a party to appear when a matter is called on for hearing.

I accordingly allow this application and make the following orders:

1. That the dismissal of civil suit No.37 of 2018 is set aside.
2. That civil suit No 37 of 2028 is reinstated and will be heard on merit.
3. That costs of this application will be in the cause.

I so order.

Karemani Jamson.K

AG JUDGE

02/02/2024