

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT HOIMA**

**MISC. APPLICATION NO. 009 OF 2024**

(Arising from Hoima Land Civil Suit No. 116 of 2022)  
(Formerly Masindi High Court Land Civil Suit No. 076 of 2022)

**NAJJEMMBA MARY GORRET TUMUSIIME  
& 47 OTHERS:.....:APPLICANTS**

**VERSUS**

**UGANDA NATIONAL ROADS AUTHORITY:.....: RESPONDENT**

***BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA***

**RULING**

- [1] This application is brought under **S.98 CPA, O.9 r. 23 & O.52 rr 1, 2, & 3 CPR** for order to set aside the dismissal and related orders of this court in **Land C.S. No. 116 of 2023** (formerly Masindi High Court Civil Suit No. 076 of 2022) and that the suit be set down for hearing inter parties.
- [2] The Application is based on grounds outlined in the affidavit of the 1<sup>st</sup> Applicant, **Najjemba Mary Gorret Tumusiime** as follows: -
- (a) That the Applicants filed the above suit against the Respondent for among others; orders and declarations that they are the registered owners of land, or property affected by the construction of Buhimba- Kakumiro Road Project in Kakumiro District, that the action of the Respondent to alienate the Applicants' land for the project without adequate compensation were illegal and that the Applicants have never been adequately compensated by the Respondent for the above described land/property.

- (b) That on the previous date of mention of this suit, the Assistant Registrar and the Judge were indisposed and Counsel for the Applicant also did not attend court but the matter was fixed for hearing on **30<sup>th</sup> day of October, 2023**.
- (c) That on the **30<sup>th</sup> day of October, 2023** when this matter came up for hearing, neither the Counsel for the Applicants nor his clients the Applicants were in court because they were not aware of the said hearing date and as a result the suit was dismissed for want of prosecution.
- (d) That the Applicants got to know about the dismissal of this case when they came to court to check on the status of their file with a view of getting a date and they were told by the Court Registry that the case had been dismissed.
- (e) That while the Applicants were wrong in failing to attend court, the absence was not deliberate, it was caused by reasonable/sufficient cause.

[3] In opposition of the Application, the Respondent filed an affidavit in reply deposed by **Henry Muhangi**, a Senior Legal Officer of the Respondent as follows:-

- (a) That the Applicants are guilty of dilatory conduct as the matter was adjourned for many times in the absence of Counsel but in the presence of some of the Applicant i.e. 13<sup>th</sup> June, 2023, 23<sup>rd</sup> August, 2023, 20<sup>th</sup> September, 2023 and 30<sup>th</sup> October, 2023 and that Counsel did not provide any reason for their absence on the above occasions.
- (b) That the reason given for Counsel's absence only explains his absence on 30<sup>th</sup> October, 2023 and does not attempt to explain his absence on the other occasions when the matter came up in his absence.
- (c) That it is just fair and equitable that this application be dismissed with costs.

- [4] On the 9/4/2024 when the matter came up for mention, in the presence of **Mr. Nahamya Mugisha** who held brief for Counsel **Henry Muhangi** for the Respondent, court issued to the parties timelines to file their respective submissions and have the matter for mention today and or issue out the ruling date. The Applicants' submissions were filed on 4/4/2024 but todate the Respondent has not filed any. This court is therefore proceeding to determine the application without the input of Counsel for Respondent in form of submissions.
- [5] Upon perusal of the record, it is clear that the application was dismissed for non-appearance of the Applicants to prosecute their case (under **O.9 r.22 CPR**). The Applicants can only have it reinstated under **O.9 r. 23 CPR** if they satisfy the court that there was "sufficient cause" for non-appearance when the suit was called for hearing.

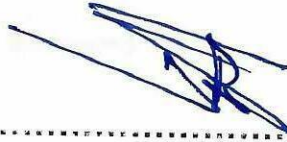
**Issue: Whether the Applicants have sufficient cause for their non-appearance in court when the Civil Suit No. 116 of 2022 was called for hearing**

- [6] Counsel for the Applicants submitted that on the 30/10/2023 when this matter came up for hearing, neither the Applicants nor their Counsel were present in court and the matter was accordingly dismissed. That the non-attendance was because the matter was fixed in the absence of the parties and their Counsel. That in the premises, that was "sufficient cause" for the court to exercise its discretion to set aside the dismissal and related orders of this court in **Land C.S. No. 116 of 2022**.
- [7] In **Crown Beverages Ltd Vs Stanbic Bank (Now merged with UCBL) H.C.M.A No.181 of 2005**, it was held that:
- "In an application for restoration of a dismissed suit..... all he needs to do is to satisfy court that there was sufficient cause for non-appearance; i.e. that he had an honest intention to attend the hearing and did his best to do so, and that he was diligent in applying".*

- [8] In the instant case, upon perusal of the record of proceedings and the dismissal order, I find that both Counsel for the parties and Applicants were last in court on 22/3/2023 when the parties were given timelines to file Joint Scheduling Memorandum, respective witness statement and trial bundles and the matter was adjourned to 13/6/2023.
- [9] On 13/6/2023, in the presence of the Plaintiffs but in absence of their counsel, the matter was adjourned to 22/8/2023 for appearance before the Registrar for mention. Again on 22.8.2023, in the presence of the 1<sup>st</sup> Plaintiff, the matter was adjourned to 20.9.2023. It is then on 20/9/2023 when the matter was called up for mention that it occurred that neither parties nor their counsel was present. Court adjourned the matter to 30/10/2023. There is however no evidence that any hearing notice to the parties was issued for mentioning of the matter on 30/10/2023. On 30/10/2023 when the suit was dismissed for non-appearance of the Applicants/Plaintiffs, it is clear that neither the Applicants or their advocate was aware of the adjournment to the hearing date of 30/10/2023. In the premises, I find that there was sufficient cause for non-appearance of the Applicants on 30/10/2023 and therefore it would be fair and just that the dismissal of the main suit be set aside and the suit be reinstated for hearing inter parties.
- [10] I therefore in the premises allow the application, set aside the dismissal of **C.S. No. 116 of 2022** (formerly **MSD C.S. No. 076 of 2022**). The suit would accordingly be set down for hearing inter parties. The costs of this application are granted to the Respondent since it is the Applicants who abandoned the management of their suit by nonappearance in court on the date that was fixed for hearing.

Order accordingly.

Dated at Hoima this 14<sup>th</sup> day of May, 2024.



.....  
**Byaruhanga Jesse Rukyema**  
**JUDGE**