THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-MA-0003-2023
(Arising from HCT-05-CV-CA-00029-2018)

1. NUWAMANYA MARIA
2. TUMUHIMBISE DINAVENCE :::::::::::::::::: APPLICANT

VERSUS

1. VENERANDA BAKIIBONA
2. MWEBESA EVAN :::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

RULING

Introduction.

[1] By a notice of motion dated **3rd January 2023**, the Applicants, sought for orders that this court reinstates HCT-05-CV-CA-00029-2018. The application was supported by an affidavit deposed to by the second Applicant and opposed by an affidavit deposed by the 1st Respondent. Both counsel addressed this court by way of written submissions. I have taken into consideration the pleadings and submissions by both parties in making this ruling.

Facts.

[2] The factual background of the instant application as can be drawn from the record was that;

The Applicants filed HCT-05-CV-CA-00029-2018 before this court on **9th May 2018**. The hearing in the matter commenced on **15th October 2019** on which date it got adjourned to **5th December 2019**. On **5th December 2019**, the 2nd Applicant was in court with her counsel while

the Respondents were duly represented. The matter did not proceed that day and it was further adjourned to **16th April 2020.**

The matter came up again, approximately two years later on **20th April 2022** for weed-out. This court noted that a cause list had been duly communicated and counsel in the matter informed on phone but none of them turned up. This court moving under **Order 9 Rule 17** of the Civil Procedure Rules dismissed HCT-05-CV-CA-00029-2018.

[3] The gravamen of the instant application as can be deduced from the supporting affidavit of the 2nd Applicant was having kept in touch with their lawyers during the whole period of lockdown who assured them that they were working on their matter, only got to find out in **October 2023** that their appeal had been dismissed. That it was their lawyers to blame for said dismissal.

In opposition, the 1st Respondent deposed that HCT-05-CV-CA-00029-2018 was properly dismissed because at the time of dismissal, there was no lockdown. She contended that the Appellants never bothered to follow up their appeal and that was why it got dismissed and the application was brought with inordinate delay.

Representation.

[4] The Applicants were represented by M/s Mwene-Kahima, Mwebesa & Co. while the Respondents were represented by M/s Rukabura-Ruhome Advocates.

Preliminary points of law.

[5] Counsel for the Applicant raised a preliminary objection in their final submissions relating to the time within which the 2nd Respondent filed their affidavit in reply. According to counsel, it was filed late, albeit ten months after service of the instant application without seeking for extension of time. For this submission reliance was placed to this court's decision in **Ramgarhia Sikh Society and Ors vs Ramgarhia Sikh Education Society Limited and Ors HCMA no. 352 of 2015**).

I response, counsel for the Respondent submitted that neither them nor their clients were served with the instant application but found out about it on their own initiative. That this was the reason the affidavit was filed on **22nd November 2023**.

[6] The law on timelines within which to file affidavits is now settled. Unlike a written statement of defence which only serves one purpose of disclosing the case of a Defendant, an affidavit can be used for many important purposes most importantly it contains evidence on oath in support or opposition of an application intended to allow a case run more quicky and efficiently as all parties know the evidence before court. Therefore, time constraints as applied to defences may be misplaced in relation to affidavits. (**See Dr. Lam Lagoro James vs Muni University Misc. cause no. 0007 of 2016**). Where special time is limited for filing an affidavit, then an affidavit filed after the expiry of that time should not be allowed except with leave of court.

In the instant matter, no timelines were imposed either in law or the by this court for filing the reply. The Respondents filed their affidavit in reply, though belatedly but before the hearing.

This court has discretion in the circumstances, in the interest of justice, to act with flexibility and hear the application on its merit and not heed to a technical irregularity since in the view of this court, no prejudice will be occasioned to the Applicants by the acceptance of the said affidavit.

This objection is therefore overruled.

The merits of the application.

[7] Counsel for the Applicants submitted that owing to the lockdown which affected this country until 2021, HCT-05-CV-CA-00029-2018 lost position and there was a breakdown in communication from the Applicants with their counsel. That this resulted in the hearing of HCT-05-CV-CA-00029-2018 and its eventual dismissal.

On the other hand, counsel for the Respondents submitted that the Applicants as instigators of HCT-05-CV-CA-00029-2018 had the duty to ensure that it moved forward and not clog the court system. That the Applicants were merely using the Covid-19 lockdown as a scapegoat because it is judicial notice that the lockdown took effect until March 2021. That the Applicants were negligent in their actions in following up the appeal and the filing of the instant application eight months after the dismissal of HCT-05-CV-CA-00029-2018 amounted to inordinate delay.

[8] Applications of this nature are provided for under **Order 9 rule 18** of the Civil Procedure Rules. According to that **Order**, this court has the discretion to readmit a dismissed suit upon application to it in which the Applicant proves that there was sufficient cause for his or her nonappearance.The onus to show that 'sufficient cause' exists lies squarely upon the Applicant.

As to what entails '*sufficient cause*' depends entirely upon the discretion of the court as weighed against the facts of each case before it. (**See Shanti vs Hindocha and others [1973] EA 207**). As such, it would be futile to lay down precisely as to what considerations must constitute '*sufficient cause*' in such circumstances.

However, in exercising it discretion, the court must do so judiciously, remembering that the relation of rules of practice to the administration of justice is intended to be that of a handmaid rather than a mistress, and that the court should not be so far bound and tied by the Rules, which are intended as general rules of procedure, as to be compelled to do that which will cause injustice in a particular case. (**See Githere vs Kimungu [1976-1985] 1 EA 101**).

[9] The discretion of court is a free one. The only question the court has to ask itself is whether on the facts before it, that discretion should be exercised in favor of the Applicant.

The expression '*sufficient cause*' implies the presence of legal and adequate reasons as drawn from the meaning of the word 'sufficient'. The English word 'sufficient' means adequate; of such quality, number,

force, or value as is necessary for a given purpose intended. (**See Garner, B.A., & Black, H.C. (2009). Black's Law Dictionary. 9th ed. St. Paul, MN, West at page 571**).

'*Sufficient cause*' therefore embraces no more than that which provides a plenitude which, when done, suffices to accomplish the purpose intended in the light of existing circumstances and when viewed from the reasonable standard of practical and cautious men. (**See for example Balwant Singh vs Jagdish Singh and Ors (Indian Supreme Court Civil Appeal No. 1166 of 2006**).

[10] I have stressed in a number of previous decisions the duty of a litigant in furtherance of their cases before court. The litigant owes a duty to himself or herself to be vigilant of his or her own rights and is expected to be equally vigilant about the judicial proceedings which were initiated at his or her instance. (See **Marumba Ranching Co-operative vs Attorney General HCT-05-CV-MA-0030-2022 (unreported)**)

The litigant, therefore, ought not to be permitted to throw the entire blame on the head of an advocate and thereby disown him or her at any time just to seek a relief from court. The litigant ought to ensure to personally appear in court or ensure the appearance of his or her duly instructed counsel when their case is called on by the court.

A litigant is expected to remain vigilant during the proceedings of his or her case and this duty is not extinguished merely by entrusting his or her case to an advocate. The litigant ought to keep abreast and updated

about the proceedings in their case and cannot be expected to take a backseat.

Once a litigant files a suit through their advocates in court, it is the litigant's duty to prosecute the suit diligently and not negligently. Where they fail to do so, no one else can be blamed for this. The court system has greatly improved of late to a point that a litigant if he or she is a little vigilant he or she can enquire about the status of their case from court staff at the court registry without having to rely on the advocate.

[11] I take judicial notice of the fact that indeed Uganda experienced a series of lockdown responses to the Covid 19 pandemic. The first Covid 19 lockdown was imposed on **18th March 2020** (**See https://covid19.gou.go.ug/timelines.html**). However, by **26th May, 2020**, the restrictions had been eased and courts were functional. By the time that HCT-05-CV-CA-00029-2018 was dismissed on **20th April 2022** it was close to **1 year, 10 months, 3 weeks, 4 days** after. And by the time that the instant application was filed, it was **2 years, 7 months, 2 weeks, 4 days** after **26th May, 2020**.

Within the aforementioned periods, there was inaction from the Applicants in regards to HCT-05-CV-CA-00029-2018 which they deposed under **paragraph 8** of their affidavit in support of this application that they were interested in pursuing to its logical conclusion.

[12] The Applicants in the instant matter were not only guilty of dilatory conduct in prosecuting HCT-05-CV-CA-00029-2018 but also delayed in bringing the instant application.

An Applicant who would like to rely on the court's discretion for reinstatement as it was in the instant application ought to bring the application at the earliest.

There should not be inordinate delay attributable to the Applicant. It is settled that *"Vigilantibus non dormientibus aequitas subvenit"* equity aids the vigilant and not the indolent. (**See James Semusambwa vs Rebecca Mulira (Court of Appeal Civil Appeal no. 1 of 1999)**).

It has been the practice of this court to look at short excusable delays with favour than inordinate, inexcusable, intentional and contumelious delays. (**See for example in Lucas Marisa vs UBL (1988-90) HCB 131**). In that case, an unexplained delay of a period of one year and seven months was not excused by the court.

The Applicants in the instant matter as rightly submitted by counsel for the Respondent could not ably explain the delay of almost **2 years, 7 months, 2 weeks, 4 days** to the satisfaction of this court.

[13] The reckoning of time to determine if a delay is unreasonable begins at the time the decree or order is sealed and becomes enforceable. (**See Junaco (T) Limited Junaco (T) Limited and 2 Ors vs DFCU Bank Limited (HCMA no. 0027 of 2023)**.

When the delay is prolonged and inexcusable, and is such as to do grave injustice to one side or the other or to both, the court may in its

discretion dismiss the action straightaway. Delays that are so long turn justice sour. (**See Allen vs Sir Alfred McAlpine & Sons [1968] 2 QB 229**).

[14] This court is enjoined by **Section 17 (2)** of the Judicature Act Cap. 13 to curtail delays by preventing abuse of its processes by curtailing delays. This power also includes the power to limit and stay delayed prosecutions as it did in the instant case as may be necessary for achieving the ends of justice.

It should however be noted that inexcusable delays will not automatically lead to dismissal of a suit. The court must be ready to decide whether or not on a balance of doing substantial justice an action delayed ought to be dismissed. (**See Allen vs Sir Alfred McAlpine & Sons Ltd (supra)**).

[15] From the facts of the instant case as I have laid them hereinabove, this is a matter where this court would not ordinarily exercise its discretion to reinstate the matter given the tardiness of the Applicants. That notwithstanding, this being a land matter concerning a dispute in regards an estate, this court is more persuaded to give the Applicants a hearing on merit.

[16] In the case of **Fredrick Kabugo Sebugulu vs The Administrator General CACA No. 69 of 2010**, the Court of Appeal while citing the Supreme Court case of **Al Haji Yahya Balyejusa vs Development Finance Company Limited Civil Appeal No. 34 of 2000** held that it was a cardinal principle that as far as possible litigation on land matters should be resolved on merit.

Courts should always guard the right to a fair hearing most especially in land matters as the instant one and should only in exceptional cases close out from court defaulting parties. This is because land matters have far reaching implications on society, far from the parties involved in the litigation.

In the upshot therefore, this application succeeds. HCT-05-CV-CA-00029-2018 is hereby reinstated. Each party shall bear their own costs of the application.

Further, to curtail any more delays in the matter, the appeal shall be mentioned on **27th November 2024.**

I so order.

Dated, delivered and signed at Mbarara this **28th** day of **June 2024.**

Joyce Kavuma
Judge