

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

MISC APP NO. 518 OF 2017

(ARISING OUT OF MISC. APP NO. 64 OF 2014)

(ALSO ARISING FROM HCCS NO. 233 OF 2013)

M/S. WAMELI & CO. ADVOCATES ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

UGANDA PRINTING & PUBLISHING CORPORATION::::::::::::::::: RESPONDENT

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

1. The Applicant brought this application under sections 14 & 33 of the Judicature Act and order 52 rules 1, 2 and 3 of the Civil Procedure Rules seeking orders that :
 - i. The dismissal order of 23rd June 2017 in HCMA No. 64 of 2014 be set aside.
 - ii. HCMA No. 64 of 2014 be reinstated and heard on its merits.
 - iii. Costs of this application.
2. Mr. Senkeezi Stephen Ssali of M/s. Senkeezi - Ssali Advocates represents the Applicant and the Respondent is represented by Ms. Katuutu Charlotte of M/s. Kibeedi & Co. Advocates.

3. The application is supported by the affidavit of Mr. Muniafu Mukhembo Phillip, an advocate practicing law with the Applicant. The grounds for the application are briefly that the Applicant had a valid reason for not attending court as the hearing dates were fixed at the instance of court and never brought to the Applicant's attention, the Applicant is ready, willing and interested in prosecuting the application and that it is just, fair, equitable and in the interest of justice that the application be reinstated, heard and decided on its merits.
4. The application was opposed by the Respondent. Ms. Irene Wasike Muwanguzi the Managing Director of the Respondent swore the affidavit in reply on its behalf. She deponed that the application is incompetent as it was served on the Respondent on 8th November 2017 which was out of time stipulated by law, the affidavit of Mr. Muniafu is full of falsehoods, the Applicant is guilty of dilatory conduct, abuse of court processes and is not entitled to the reliefs sought and that this application does not serve any useful purpose and no injustice will be suffered by the Applicant if this court does not allow this application.
5. In rejoinder Mr. Muniafu deponed that the Respondent was served with this application five months before the date fixed for hearing of the application, the Respondent was served the very day the application was picked from court after the Registrar's endorsement, all subsequent fixings for hearing were at the instance of court in the absence of the Applicant and they were never brought to the attention of the Applicant, this application will go along way in enabling the Applicant realize payment for professional work executed on the instructions of the Respondent and that the Respondent will not in any way be prejudiced when this application is granted.
6. Section 14 of the Judicature Act provides for the inherent powers of the High court and section 33 of the Judicature Act provides that "the High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be

completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.”

7. On 22nd April 2016, the Applicants filed ML 05 of 2016 in this court. The same was fixed for hearing for 19th December 2016. None of the parties appeared and the case was adjourned to 22nd May 2017. Again none of the parties appeared and the case was adjourned to 23rd June 2017. When none of the parties appeared on this third occasion, this court dismissed the case for want of prosecution.
8. On 24th July 2017, the Applicants filed the instant application seeking to reinstate their case claiming that the court fixed the hearing on its own instance and they were not informed. Of course once a case is filed, the court is duty bound to fix it for hearing. It is then incumbent on the Applicant to pick up this pleadings after a hearing date is fixed in order to prepare accordingly and also serve the Respondents. In this case the Applicant filed in April 2016, this court fixed it for hearing on 19th December of the same year but the Applicant never returned to court on this date and other two dates when the hearing was adjourned. However he quickly returned to have this case reinstated.
9. From the record all the pleadings that the Applicant filed are still on record. This means that once they filed the application, the Applicant never bothered to follow up or pick the pleadings with the hearing date to serve the Respondent. The due diligence and speed he exercised in applying for the instant application should have been the same diligence he exercised to extract the pleadings and filing to serve the Respondent but he did not.
10. When courts fix hearing dates especially for the first time, the party filing in this case the Applicant are duty bound to follow up, pick up the pleadings with dates and serve them on the other party. Moreover I am fully aware that these hearing dates are listed on the courts notice board every week and are received by the law society members on their mailing list. Counsel cannot blame the Applicant’s ineptness on the court.

11. I have also looked at the substance of the appeal being sought to be reinstated. I am not satisfied that the Applicant has a good case because he had received Ug. Shs. 10,000,000 (Uganda Shillings Ten Million) from the Respondent for work done so far and there is a big contention by the Respondent that the Applicant's instructions had not been properly procured under the PPDA rules. Overall I am therefore disinclined to set aside the dismissal and reinstate the appeal. This application is dismissed with costs for the Respondent.

I so order

Lydia Mugamde
Judge
7th December 2018