

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**HCT – 01 – CV – MA – 0011 OF 2016**

**(Arising from HCT – 01 – CV – LD – CA – 0044 OF 2014)**

5 **(Arising from Civil Suit No. 012 of 2012)**

**ETERNAL CHURCH OF GOD.....APPLICANT**

**VERSUS**

**SUNDAY KASOKE JOSEPH.....RESPONDENT**

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**BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE**

**Ruling**

This is an application by Notice of Motion under **Section 98** of the Civil Procedure Act for orders that; the dismissal of the appeal be set aside and the Civil appeal 0044 of 2014 be  
15 reinstated and be heard inter parties and on its merits and costs of the application be provided.  
However, Counsel for the Applicant cited the wrong law and put **Section 89** as opposed to **98**  
of the Civil Procedure Act.

The application is supported by the affidavit sworn by Bishop Atugonza Syrus Mufumu and the grounds briefly are;

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1. That the appeal of the Applicant was dismissed because of non-appearance of the former Advocate on reasons that he was ill.
  2. That the mistake of Counsel should not be visited upon the Applicant.
  3. That this issue should be heard on its own merit.
  4. That the application for reinstatement of the appeal be granted in the interest of  
25 justice.

The application was opposed by Sunday Kasoke Joseph through his sworn affidavit in reply and a rejoinder was made by the Applicant thereto.

**Representation:**

M/s Ngaruye Ruhindi, Spencer & Co. Advocates represented the Applicant and M/s Ahabwe  
5 James & Co. Advocates represented the Respondent.

Counsel for the Applicant submitted that the issue at hand is land which concerns many  
people and the matter was dismissed for want of prosecution due to the absence of Counsel  
who was sick and the Applicant did not know the hearing date. That the mistake of Counsel  
cannot be visited on the Applicant and the appeal should therefore be reinstated and heard on  
10 its merits.

That the Respondent is only concerned that execution was carried out which the Applicant  
disputes and this does not stop the matter from being heard on its merits.

Counsel for the Respondent on the other hand submitted that the instant application was filed  
4 months after the dismissal of the appeal and under **Order 43 Rule 16** of the Civil  
15 Procedure Rules the Appellant is supposed to prove that he or she was prevented by sufficient  
cause. That in the instant application the Applicant does not give reasons as to why he failed  
to attend Court nor is there any evidence to show that his former Counsel failed to attend  
Court because he was sick. No medical documents were attached to the application.

Further, that it was also observed by the trial Magistrate that the Applicant did not respect the  
20 Court process and would keep dodging Court. That execution was already effected on the  
13/5/2016 and the Respondent already developed the disputed land.

The submissions of both parties have been put into consideration and the Court record  
perused. It is true that indeed the Appellant was very poor at attending Court in that the case  
first proceeded ex parte and had reached judgment only for the Applicant to make an  
25 application to be allowed to defend itself which Court allowed. Even then the Applicant and  
its advocates would still miss attending Court.

The Applicant did not adduce any proof to show that indeed the previous advocate was sick  
on the day the appeal was dismissed for want of prosecution.

The issue of not visiting the negligence of Counsel on the litigant in my view is a mere excuse by new advocates to get themselves clients, the litigant just as his advocate needs to know the hearing dates of his case. Equity aids the vigilant as the maxim states. It is not only the duty of the advocate to show up in Court but the litigant too. Litigants ought to be vigilant and follow up on their cases. Besides execution was already effected in this case and a return made on the 20<sup>th</sup> May 2016. That is 2 years ago. Litigation must come to an end.

In the instant case I find there was no sufficient reason adduced by the Applicant to warrant reinstatement of the appeal and the Application has no merit and is therefore dismissed. Since, the Applicant has lost the case, I exercise this Court's discretion and powers under **Section 98** of the Civil Procedure Act and **Section 33** of the Judicature Act to absolve him from costs. Each party will therefore meet their own costs.

19<sup>th</sup> December 2018

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**WILSON MASALU MUSENE**

15 **JUDGE**