THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

MISCELLANEOUS APPLICATION NO. 166 OF 2019

(Arising from Civil Miscellaneous Application No. 0172 of 2018 & Civil Suit No. 057 of 2012)

1. SSEMANDA EDWARD
2. WASSWA PETER
3. KATO PAUL
4. KIZZA MUTEBI DEO
5. NSUBUGA YOWAKIMU
6. NANSUBUGA IMMACULATE
   (Suing through their Lawful Attorney Ssemanda) :::::::::::::::::::::::::::: APPLICANTS

VERSUS

1. NAKKU TEREZA
2. NABUNYA JANE :: RESPONDENTS

Before; Her Lordship Justice Victoria Nakintu Nkwanga Katamba

RULING

This is an application brought under Sections 82 and 98 of the Civil Procedure Act Cap 71, Order 46 Rules 1, 2, and 8 of the Civil Procedure Rules SI 71-1, & Section 207 of the Magistrates Courts Act Cap 16, seeking Orders that;

1. The Ruling and Order made in Misc. Application No. 0172 of 2018 delivered by Her Lordship Hon. Lady Justice Winfred Nabisinde on the 05th day of December 2019 be reviewed and the dismissal of the same be set aside;
2. A consequential order be issued that Misc. Application No. 0172 of 2018 be granted extending time within which the Applicants are to appeal against the order of the Learned Assistant Registrar dismissing Civil Suit No. 057 of 2012.
3. Each party bears its own costs.

The grounds of the application as contained in the affidavit of the 1st Applicant Ssemanda Edward, are briefly that the Applicants are aggrieved by the ruling and orders of this court in Misc. Application No. 0172 of 2018 which had been filed seeking for an extension of

time within which to appeal against the order dismissing Civil Suit No. 57 of 2012, and not an order to set aside the order of dismissal of the suit. There are errors of law and fact apparent on the face of record which are prejudicial to the Applicants. There is sufficient cause for this court to review its orders and ruling.

The 2nd Respondent opposed the application in her affidavit in reply and stated as follows:

That the application should be dismissed.

That the Respondents intend to raise a preliminary objection that the civil suit from which this application arises is defective as it was instituted against a non-existent party Masaka Land Office.

Civil suit No. 57 of 2012 was dismissed under Order 17 of the CPR for failing to take any step in two years, and the only remedy is to bring a fresh suit.

Misc. Application sought to set aside the dismissal of the suit and not to extend time for filing an appeal as alleged by the Applicants.

The trial Judge was right in her decision and the errors like number of the application are so minor and cannot change the decision of the court through the review process.

Both parties were directed to file written submissions but the Respondents did not file as directed.

Counsel for the Applicants raised two issues for determination by this court;

1. Whether the applicants have proved grounds for review of the ruling in Misc. Application No. 0172 of 2018
2. What remedies are available to the applicants

Counsel for the Applicants submitted that the Applicants are aggrieved with the orders of this court in Misc. Application No. 0172 of 2018. This court rendered a ruling and order in Misc. Application No. 0172 of 2018 while laboring under an error or mistake that the

application sought an order for reinstatement of a suit that was dismissed under Order 17 Rule 6 of the CPR which was not the position as the application sought an order for extension of time within which to appeal and not for reinstatement of a suit dismissed as the trial judge ruled. The learned judge cited Order 17 Rule 6 which had nothing to do with the orders cited in the applicant`s submissions in support of the application and the matters relied upon in the ruling never surfaced in the applicants and respondent`s submissions in support. The grounds upon which the trial judge dismissed Misc. Application No. 0172 of 2018 were not set out in the pleadings for both parties. Sufficient cause exists in this case where there is an error apparent on the face of record and the present case is a proper case for review. This court be pleased to determine Misc. Application No 0172 of 2018 and see whether the applicants had proved sufficient cause warranting the grant of the orders sought therein. This application be granted and a further consequential order extending time within which to appeal against the orders in Civil Suit No. 057 of 2012.

Determination of the Application;

Section 82 of the CPA establishes court`s jurisdiction to review its own decrees or orders. It provides that:-

"*Any person considering him/her self-aggrieved by a decree or order from which an appeal is allowed by this Act but from which no appeal has been preferred or by a decree or order from which no appeal is allowed by this Act, may appeal for review of the judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit."*

Section 82 CPA has been enlarged by **Order 46 rule 1 of the CPR** which provides that:-

"Any person considering him/her self-aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or by a decree or order from which no appeal is hereby allowed and who from the discovery of new and important matter of evidence which after the exercise of due diligence was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed

or order was made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason desires to obtain a review of the decree passed or order made against him or her may apply for a review of the judgment to the court which passed the decree or made the order."

The grounds for review are clearly provided for and were outlined in ***FX Mubuuke vs UEB High court Misc. Application No. 98 of 2005;***

1. That there is a mistake manifest or error apparent on the face of the record.
2. That there is discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made.
3. That any other sufficient reason exists.

In this application, Counsel relied mainly on ground one, which is; "a mistake or an error apparent on the face of the record", and sufficient cause.

An error apparent on the face of the record was defined in ***Batuk K. Vyas vs Surart Borough Municipality &Ors (1953) Bom 133*** that:

"***No error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it…"***

The Applicants claim that there is an error apparent on the face of record of the Ruling of this court is based on the submission that the decision of the trial Judge given was for dismissal of orders not prayed for by the Applicants and the grounds relied on were also not raised by any of the parties.

I have carefully perused the record and the Applicants in Misc. Application No. 0172 of 2018 sought orders that they be granted an extension of time within which to file and lodge their appeal against the order dismissing Civil Suit No. 057 of 2012 under Order 17 Rule 6 CPR. The grounds of the application were briefly that the Applicants were not represented

in the suit and when they finally got representation, it was discovered that their suit had been dismissed under Order 17 Rule 6 CPR. The time for lodging an appeal had already expired, and the applicants filed Misc. Application seeking an extension of time.

In her Ruling, the trial Judge cited the provisions of Order 17 Rule 6 CPR which provide for suits dismissed for failing to take any step for two years. She observed that a matter dismissed under the Order cannot be reinstated since the law does not provide for it, and that bringing an application for reinstatement is bad in law and cannot stand. The trial Judge further observed that the Applicant was guilty of dilatory conduct and that the application was brought under wrong law. The application was dismissed with costs.

It is clear from the judgment that the learned Judge decided the application like it was an application seeking orders for reinstatement of Civil Suit No. 57 of 2012, which was not the position of the case as the Applicants sought orders for extension of time within which to file an appeal. That is an error apparent on the face of the record in accordance with the definition in the case of ***Nyamogo & Nyamogo Advocates v. Kago [2001] 2 EA 173*** *which* defined an error apparent on the face record, to mean:

"An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal"

By referring to an order of reinstatement and considering grounds for the same in an application for extension of time, this was an error that does not require any admission of evidence and consideration of the extrinsic evidence to understand the same. Therefore, the ground that there is an error apparent on the face of the record has been sufficiently proved as it is clear from the record and the Ruling of the court.

It was an error for the trial Judge to determine the application based on grounds that were not adduced by the parties, and considering orders that were not prayed for by the Parties.

Consideration of the Application (Misc. Application No. 0172 of 2018);

Miscellaneous application No. 172 of 2018 was filed in this court seeking orders that the applicants be granted an extension of time within which to file and or lodge their Appeal in this Honorable court against the order of the learned Assistant Registrar His Worship Baker Rwatooro dismissing the Applicant's Civil Suit No. 057 of 2012 under order 17 rule 6 of the Civil Procedure Rules dated the 18th day of May 201, and Costs of the Application be provided for.

The grounds in support of the application were contained in the affidavit of Edward Semanda which was to the effect he didn't get to know that the suit had been dismissed and only got to know after time within which to appeal had lapsed.

In reply Nabunya Jane opposed the application in her affidavit in reply stating that the Applicants are careless who do not follow their matter and are guilty of dilatory conduct.

Section **98 of the CPA provides for inherent powers of court.**
Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Section 79 of the CPA provides for Limitation for appeals.
(1) Except as otherwise specifically provided in any other law, every appeal shall be entered—

(a) Within thirty days of the date of the decree or order of the court; or
(b) Within seven days of the date of the order of a registrar, as the case may be, appealed against; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.
This court for sufficient case can grant the order sought.

The phrase "sufficient cause" has no particular definition under the rules or even in the statues where it appears. However, ***Black's Law Dictionary 8th Edition at Page 231*** defines "sufficient cause" to be analogous to "good cause" or "just cause", which simply means "legally sufficient reason." Sufficient cause is often the burden placed on a litigant by court rules or order to show why a request should be granted or action or inaction excused.
In the cases of: ***Mugo v Wanjiri [1970] EA 481 at page 483. Njagi v Munyiri [1975] EA 179 at page 180*** *and* ***Rosette Kizito v Administrator General and Others [Supreme Court Civil Application No. 9/86*** *reported in* ***Kampala Law Report Volume 5 of 1993 at page 4]*** it was held that sufficient reason must relate to the inability or failure to take the particular step in time.

In ***Nicholas Roussos vs Gulam Hussein Habib Virani & Another, Civil Appeal No.9 of 1993 (SC) (unreported),*** the Supreme Court attempted to lay down some of the grounds or circumstances which may amount to sufficient cause. They include mistake by an advocate though negligent, ignorance of procedure by an unrepresented defendant and illness by a party.

In the instant case, the Applicants filed Civil Suit No. 57 of 2012 in November 2012 and the same was pending until 18th May 2016 when it was dismissed by the Deputy Registrar. After the dismissal of the said suit it took the Applicants over two years to file an application for extension of time within which to file an appeal.

I agree with the Respondent that the Applicants are guilty of dilatory conduct and are simply wasting court's time.

The Applicants try to blame the transfer of Judges for their dilatory conduct yet they were never bothered nor took any step to prosecute their case hence its dismissal. Therefore, the Applicants did not prove sufficient cause for the grant of Misc. Application No. 0172 of 2018.

In the instant application, the Applicants further prayed for a consequential order allowing the Applicants to file the appeal out of time.

I have not had the opportunity to look at the Registrar`s decision but the powers of the Registrar are clearly set down in ***Order 50 of the Civil Procedure Rules,*** and Registrars have powers to enter consent judgments and also for uncontested matters. Civil Suit No. 57 of 2017 was filed in 2012, the Defendants did not respond and the Plaintiff did not take any step for over two years. In ***Prof. Oloka Onyango & Ors Vs Attorney General (Constitutional Petition No. 6 of 2014***, the Learned Justices while considering ***Order 8 Rule 3 CPR*** found that every allegation in a Plaint, if not specifically or by necessary implication denied in a pleading by an opposite party, shall be taken to be admitted. I would therefore find such a matter to be uncontested in the sense that the contents of the Plaint were not challenged or disputed, hence they were admitted. The Registrar would therefore have powers to enter judgment for such a case or dismiss the same.

Having failed to prosecute the matter for over two years, the Registrar dismissed suit.

Civil Suit No. 057 of 2012 was dismissed under Order 17 Rule 6 (1) of the Civil Procedure Rules SI 71-1. For suits dismissed under that Order, the only remedy available to an aggrieved litigant is to file a fresh suit subject to the law of limitation. By filing an application for extension of time within which to file the Appeal, the Application was incompetent and inconceivable before the court.

I accordingly find that although the trial judge made an error of resolving Miscellaneous Application No. 0172 as if the same sought an Order for re-instatement, the Application was incompetent and could not be maintained in as far as the Applicants sought a remedy that was not available to them in law.

In the final result, the Ruling of this Court in Misc. Application No. 0172 of 2012 is hereby reviewed and set aside.

However, the Applicant's consequential order for filing the Appeal out of time is not granted as the same cannot be maintained. The Applicants should follow the right procedure provided under Order 17 Rule 6 (2) of the Civil Procedure Rules and file a fresh suit subject to the laws of limitation.

Each party shall bear their own costs.

I so Order

Dated at Masaka this 24th day of March, 2021.

Victoria Nakintu Nkwanga Katamba

Judge