

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MASINDI**  
**MISC. APPLICATION NO. 54 OF 2020**  
(Arising from Civil Suit No.244 of 2019)

**1. KABHIRWA JOHN**  
**2. KAG PROPERTIES & GENERAL SUPPLIES LTD ::::::::::: APPLICANTS**

**VERSUS**

**1. UGANDA NATIONAL ROADS AUTHORITY**  
**2. THE ATTORNEY GENERAL OF UGANDA ::::::::::: RESPONDENTS**

**RULING**

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

- [1] This is an application under **SS.82 (b)** and **98 CPA** and **O.46 r.1 (b)** and **O.52 rr.1, 2 & 3 CPR** for orders that;
- a) The Honourable court reviews and/or sets aside its order issued on the 16<sup>th</sup> day of January, 2020 wherein **High Court Civil Suit No.20 of 2017** was dismissed for want of prosecution.
  - b) High Court **Civil Suit No.20 of 2017** be reinstated and heard on its merit and that the costs of this application be provided for.
- [2] The Applicants/plaintiffs sued the Respondents/defendants in **H.C.C.S. No.20 of 2017** for recovery and payment of the monetary equivalent of the plaintiffs' properties seized, detained and/or converted by the defendants, general damages for illegal and unlawful arrest and detention, compensatory and general damages and costs of the suit. Upon being duly served with the summons to file a defence, both Respondents filed their respective Written Statements of Defence and

upon closure of pleadings and mediation, the matter was subsequently fixed for hearing before the judge.

- [3] The suit suffered several adjournments until on 16/1/2020, in the absence of the plaintiffs but in the presence of both counsel for the Respondent/defendants, the suit was dismissed for want of prosecution.
- [4] It is the applicants' case that on 16/1/2020, on the due dates for hearing of the suit, he was at court by 10:00am but only to be told by the trial judge's clerk that the suit was called earlier and was dismissed for want of prosecution.
- [5] Upon being aggrieved by the dismissal order, the Applicants filed the present application for review and or/set aside the said orders dismissing **H.C.C.S No.20 of 2017** and that the same be reinstated and heard on merits on the grounds that the applicant has always been diligent and willing to prosecute his case and is not guilty of dilatory conduct.

### **Counsel Legal Representation**

- [6] The Applicants were represented by Counsel **Kaddu Denis** of **M/s Nyanzi Kiboneka & Mbabazi Advocates, Kampala** while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were represented by **Susanne Aisia** and **Imelda Adongo** respectively. Both counsel filed their respective Written Submissions as permitted by this court.

### **Determination of the Application**

**Issue No.1: Whether the application discloses grounds upon which this court may review and set aside the order dismissing H.C.C.S No.20 of 2017.**

[7] **S.82 CPA** provides that a person considering himself or herself aggrieved by a decree or order from which an appeal is allowed but from which an appeal has not been preferred; or from which no appeal is allowed may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order or the decree as it thinks fit. **O.46 (1) (b) CPR** enables such a person considering himself or herself aggrieved by the decree or order or who on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, to obtain a review of the decree passed or order made against him or her, to apply for a review of judgment to the court which passed the decree or made the order.

[9] Counsel for the Applicant submitted that from the above provisions, the applicants in this case must prove to court that;

- (a) They are aggrieved by a decree or order; or
- (b) There is mistake or error apparent on the face of the record or;
- (c) There is some other sufficient reason

**(a) Aggrieved by a decree or order**

Counsel submitted that in **Re Nakivubo Chemists [1979] HCB P.12**

*“...the words “person aggrieved” do not really mean a man who is disappointed by a benefit which he must have received if no other order had been made; A person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been*

*pronounced which has wrongfully deprived him of something, or wrongfully affected his title.”*

Counsel argued that from the above observation, an aggrieved person is that person against whom a decision has been pronounced which wrongfully deprived him of something or wrongly affected his title.

[10] In the instant case, I find that the Respondents, in their affidavit in reply and joint written submissions do not contest the applicant’s considering himself aggrieved by the dismissal order in question. The fact that the dismissal order denied the Applicant’s right to have his claim in **H.C.C.S No.20 of 2017** heard and fairly determined on merit rendered the applicant aggrieved, he suffered a legal grievance for which he seeks redress in this application.

**(b) There is a mistake or error apparent on the face of the record.**

[11] Counsel for the Appellants submitted that **H.C.C.S No.20/17** was on 16/1/2020 dismissed by this court for want of prosecution. That the law on dismissal for want of prosecution was **O.17 r.5 CPR** as amended. He argued that by the time **H.C.C.S No. 20/17** was dismissed by this court, mandatory joint scheduling was not yet complete, a requirement before a suit abates or is dismissed under **O.17 r.5 CPR** as amended thus, this was an error apparent on the face of the record.

[12] With due respect to both counsel for the Applicants and the Respondents, it is my view that the suit in question was not dismissed under **O.17 r.5 CPR** as amended but rather, the suit was dismissed under **O.9 r.22 CPR** which provides thus;

*“where the defendant appears and the plaintiff does*

*not appear when the suit is called for a hearing, the court shall make an order that the suit be dismissed ...”*

In the instant case, court issued a hearing notice for the hearing of the suit on the 16<sup>th</sup> day of January 2021. As per the affidavit in reply, **para 4 of Lucy Namuleme** for the 1<sup>st</sup> Respondent, parties were served but on the due date of the hearing, neither the Applicants nor their counsel were present in court and in the presence of both counsel for the respondents respectively who were present, the suit was dismissed for want of prosecution.

[13] The order dismissing **H.C.C.S. No. 20/17** was in the following terms;

*“This application coming up for final disposal this 16<sup>th</sup> day of January, 2020 before Hon Mr. Justice Gadenya Paul Wolimbwa in the presence of Ms. Adonyo Emelda, counsel for the 2<sup>nd</sup> defendant Ms, Asia Susan, counsel for the 1<sup>st</sup> defendant and in the absence of the plaintiff and his counsel.*

*IT IS HEREBY ORDERED THAT:*

*The case is dismissed for want of prosecution.”*

It is immaterial that the dismissal order included the word “for want of prosecution” when the suit was being dismissed under **O.9 r.22 CPR**. It does not amount to an error apparent on the face of record for it is not an error on a substantive point of law. It is just a mere error or wrong view which certainly is no ground for a review although it may be a ground for an appeal; **NYAMOGO & NYAMOGO ADVOCATES VS KAGO [2001] 2 E.A 173**.

**(c) Other sufficient reason**

[14] Under **para.10** of the affidavit in support of the application, the 1<sup>st</sup> Applicant deponed thus;

*“That on the 16<sup>th</sup> day of January, 2020 I travelled alone to attend court for fixing purposes having been informed on the previous day that the trial judge was indisposed.”*

**Para 11,**

*“That when I arrived at court on the said date at 10:00am I was informed by the trial judge’s clerk that the suit was called earlier and was dismissed for want of prosecution.”*

The foregoing is clear that the plaintiffs had been duly served with hearing notices for the 16/1/20. The deponent does not reveal the source of information to the effect that the trial judge would be indisposed on the 16/1/20. There is also no evidence that the deponent/1<sup>st</sup> plaintiff came to court on the said date of 16/1/20. He must have learnt of the dismissal some time after and not on the very day of 16/1/20. If it were true that he heard of the dismissal on the very day of 16/1/20, then the present application would not have been filed inordinately on 29/7/20, period of six months thereafter!

[15] In the premises, I do find that the applicants have not disclosed any sufficient grounds for review. The applicants are not therefore entitled to any of the remedies sought. The application is accordingly dismissed with costs.

**Dated at Masindi this 23<sup>rd</sup> day of March, 2022.**

**Byaruhanga Jesse Ruyema**  
**JUDGE.**