

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MUKONO
MISCELLANEOUS APPLICATION NO. 474 OF 2022
(ARISING CIVIL SUIT 0047 OF 2017)

1. HENRY SEMUGOOMA
2. CLEMENT BABIRYE
3. CATHERINE NAMUSOKE.....:APPLICANTS

VERSUS

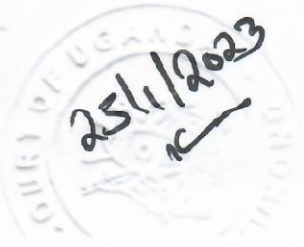
1. ROBERT KISOLO
2. CAIRO INTERNATIONAL BANK LTD.....:RESPONDENTS

BEFORE HON. LADY JUSTICE CHRISTINE KAAHWA

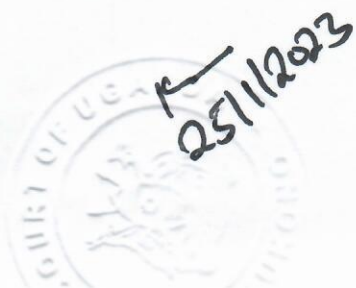
RULING

Background.

1. This is an Application brought by way of Notice of Motion under the provisions of Articles 28 (1), 44 (c), and 126 (2) (e) of the Constitution of the Republic of Uganda 1995 as amended, Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71, Order 9 rule 18 and Order 52 rules 1 and 3 of the Civil Procedure Rules (CPR) SI 71-1 as amended seeking the following Orders;
 - a. That the default Order for dismissal in Civil Suit 47 of 2017 be set aside.
 - b. That Civil Suit 47 of 2017 is reinstated, heard and determined on merit.
 - c. That the Court makes any other consequential orders that it deems fit.



- d. That the costs of the application be in the cause.
2. The grounds of the application stated in the Notice of Motion filed on 25th October 2022 and the supporting affidavit of the Kaweesa Chris John, an advocate, are summarized as follows:
3. That Civil suit No. 47 of 2017 was filed on 14th March 2017 by the Applicants against the Respondents inter alia for fraud together with MA 51 and 52 of 2017 upon which a conservatory interim Order of injunction were issued on 16th October 2018 against the Respondents; the Applicants were waiting for the allocation and fixing of a hearing date when the entire world was hit by Covid 19 pandemic and a nationwide lockdown was imposed in Uganda which lead to suspension of court hearings; that the matter was allocated to Justice David Batema however, in 2022 he was transferred to another station.
4. Further, that the Applicants' Counsel stayed in touch with the Court Clerk Ms. Apil who later informed them that the matter had been cause listed; that however the information from the clerk was relayed at about 10.00am when Counsel in conduct was appearing in another matter; that upon perusal of the cause list for that week Counsel found that the matter was never cause listed; that they could therefore not come to Court on a day that they were aware of.



5. The affidavit in support reechoes the contents of the motion and I shall not repeat the averments made therein.
6. The Respondents did not file any affidavit in reply even though they were served, the 1st Respondent, albeit by substituted service.

Representation

7. The Applicant was represented by Innocent Taremwa who appeared together with Kaweesa Chris John. During the course of the hearing it transpired that the said Kaweesa had deposed the affidavit in support of the application, having done so, he could not appear as counsel and I duly struck him off the record as counsel.

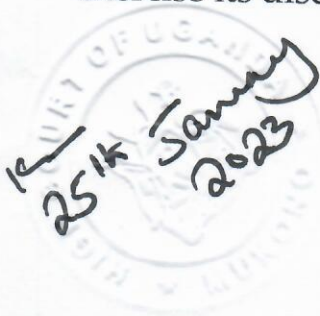
The Respondents were not represented.

Issues:

8. The issues herein are;
 1. Whether the Applicants have shown sufficient cause for the order of dismissal to be set aside?
 2. What remedies are available to the parties?

Analysis and determination

9. Counsel for the Applicant presented the reasons why this court should exercise its discretion in the favour of his client. He enumerated the



grounds as stated in the application and pointed the Court to the efforts done by the Applicant in the various annexures to the affidavit.

10. The Applicant showed this Court that they were not aware of the date that was given by the Court as no hearing Notice was served on them, the matter was not cause listed and the matter was brought to their attention when it was only a few minutes to the hearing of the case. Review of the record of this Court indicates that Counsel for the Applicant is well premised since the Court, omitted to communicate the hearing of this matter. This is represented

11. The Court on the 24th day of October 2022, dismissed the matter for want of prosecution and not nonappearance of the parties. The application before me was brought under Order 9 rule 18 which provides;

"18. Plaintiff may bring fresh suit or court may restore suit to file.

Where a suit is dismissed under rule 16 or 17 of this Order, the plaintiff may, subject to the law of limitation, bring a fresh suit or he or she may apply for an order to set the dismissal aside; and if he or she satisfies the court that there was sufficient cause for his or her not paying the court fee and charges, if any, required within the time fixed before the issue of the summons or for his or her nonappearance, as the case may be, the court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit."

