

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT HOIMA**  
**MISC. APPLICATION NO. 007 OF 2022**  
**(ARISING FROM MASINDI H.C. MISC. APPLICATION NO. 58 OF 2019)**  
**(ARISING FROM MASINDI H.C. CIVIL APPEAL NO. 049 OF 2017)**  
**(ARISING FROM HOIMA CHIEF MAGISTRATES COURT CIVIL SUIT NO.**  
**07 OF 2011)**

1. ASIIMWE DENIS  
2. TINKA. B. CHARLES :::APPLICANTS

**VERSUS**

**NTEGEKA GODFREY S/O WILLIAM KUTAGA::::::::::::::::::::: RESPONDENT**

*Before: Hon. Justice Byaruhanga Jesse Rugyema*

**RULING**

**Introduction**

- [1] This is an application filed under the provisions of **Articles 28 (1) & 126 of the Constitution of the Republic of Uganda 1995, Ss 82 & 98 of the CPA Cap 71, O.22 r.23 (1) & 26, O.43 r. 4(1) & 6, O.46 r. 1, O.51 r. 7 and O.52 r.1 of the CPR SI 71-1** seeking for the following orders:
- a) The order dismissing **Misc. Application No. 58 of 2019** be reviewed and set aside.
  - b) The honorable court re-admits **Civil Appeal No. 49 of 2017** and set aside its order dismissing it dated 21<sup>st</sup> May 2019.
  - c) Time within which to file and serve the memorandum of appeal be extended.
  - d) Execution in respect of **Civil Appeal No. 49 of 2017** and **Misc. Application No. 58 of 2019** be stayed.

e) The costs related to this application abide the result of the intended appeal.

[2] The application is by way of Notice of Motion supported by the affidavit of the 1<sup>st</sup> applicant, **Asimwe Denis** also sworn on behalf of the 2<sup>nd</sup> applicant. The Application is strongly contested through an affidavit in reply sworn by **Ntegeka Godfrey**, the respondent herein. The Applicants also filed a rejoinder.

### **Background to this Application.**

[3] The Applicants were Plaintiffs in the lower Chief Magistrate's court of Hoima at Hoima in **Civil Suit No. 7 of 2011** commenced against the Respondent in trespass. The said suit was dismissed with costs and judgment entered on the counter claim decreeing the suit land to the Respondent/Counter Claimant by his **Worship Sayekwo Emmy Geoffrey on 17.6.2017**. The Applicants filed a notice of appeal in Masindi High court vide **Civil Appeal No. 49 of 2017** on **17.7.2017**. The said Appeal was dismissed by Justice Masalu Musene on **21.5.2019** for want of prosecution upon failure by the Applicants to file a memorandum of appeal in time as prescribed by law.

[4] On **10.7.2019** the Applicants filed **Misc. Application No. 58 of 2019** seeking to set aside the dismissal order entered in Masindi High Court **Civil Appeal No. 49 of 2017** on the ground of non-service of the hearing notice of the Appeal. This application was also dismissed by this court at Masindi on **21.3.2022** for want of prosecution.

[5] The Applicants then filed the instant application seeking review of the order dismissing **Misc.Application No. 58 of 2019** by setting it aside, re-admission of **Civil Appeal No. 49 of 2017**, extension of time and leave to file and serve a memorandum of appeal out of time, stay of execution and stay of the orders entered in **Civil Appeal No. 49 of 2017** and **Misc. Application No. 58 of 2019**. The applicants also prayed that the costs of this application abide the outcome of the appeal.

## Representation

[6] **Counsel Mwebaza Christopher** of **M/S Mwebaza & Co Advocates, Hoima** appeared for the Applicants while **Counsel Simon Kasangaki** of **M/S Kasangaki & Co. Advocates, Masindi** appeared for the Respondent. Both counsel filed written submissions which I have had the benefit of reading and considered in the determination of this application.

## Determination of the Application

[7] This is an application seeking for setting aside of the order dismissing **Masindi H. C. Misc. Application No. 58 of 2019** which sought to reinstate **Civil Appeal No. 49 of 2017** which was dismissed **21.5.2019** for want of prosecution.

[8] The Appeal was dismissed for the Appellants' failure to file and serve a memorandum of Appeal. In **Lubega Robert Smith & 2 Others v Walonze Malaki H.C.C.A No. 36 of 2016**, it was observed that,

*"A Respondent has the constitutional and ordinary right to have knowledge of any proceedings against him which means that they are entitled to be served with the memorandum of Appeal just as much as a defendant or Respondent in any other type of civil proceedings would."*

See also **Katsigazi Benson v Lorna Musanyusa Kamau H.C.M.A No. 21 of 2021 [2022] UGHCLD 40**.

[9] In the instant case, I note that the judgment of the lower court was entered on **29.6.2017** and the Applicants filed a Notice of appeal on **17.7.2017** in the high court at Masindi. They did not take any other step until their appeal was dismissed by His Lordship Justice Masalu Musene on **21.5.2019** for want of prosecution and failure to file and serve a memorandum of appeal. The applicants then filed **Misc. Application No. 58 of 2019** which this court also dismissed on **21.3.2022** for want of prosecution. The Applicants then filed the instant application seeking omnibus orders to set aside the orders dismissing **Misc. Application No. 58 of 2019** and **Civil Appeal No. 49**

of 2017 dated 21.3.2022 and 21.5.2019 respectively. The Applicants have never filed a memorandum of appeal but attached a draft one to this application.

[10] For any suit or appeal which is or has been dismissed for want of prosecution or failure of service of court process to be reinstated, it must be for sufficient reason. In **Hikima Kyamanywa vs Sajjaji Chris C.A.C.A No. 1 of 2006**, it was held that

*“Sufficient reason or cause depends on the circumstances of each case and must relate to inability or failure to take a particular step in time”*

[11] In the case of **Hadondi Daniel v Yolam Egondi C.A.C.A No. 67 of 2003**, court held that time can only be extended if sufficient cause is shown. The sufficient cause or reason must relate to inability or failure to take necessary steps within the prescribed time, it does not involve taking a wrong decision. If the applicant is found to be guilty of dilatory conduct, the time will not be extended.

[12] It is the finding of this court that the Applicants did not intend to prosecute their appeal and application for reinstatement of their appeal. First, they left their appeal to be a responsibility of the court and as fate would have it, on the date it was fixed for hearing, the appeal suffered dismissal. Secondly, I find that the Applicants’ failure to file and serve a memorandum of appeal was a clear lack of interest in the appeal. Therefore, no sufficient cause or reason for reinstatement of the Appeal in the circumstances of this case has been proved. See **Magode James Ikuya v Waniaye Magidu HCMA No 225 of 2015**.

[13] In **Fitz Patrick Vs Bartger & Co. Ltd [1967] 2 ALLER 657**, in a matter which had gone to sleep for nearly two years. **Denning Mr.** (as he then) was stated that;

*“It is the duty of the plaintiff’s advisor to get on with the case. Public policy demands that the business of courts should be conducted with expedition. The action has gone to sleep for nearly two years. It should now be dismissed for want of prosecution.”*

- [14] Clearly, a litigant who sleeps on his rights cannot wake up later and upon dismissal plead disability. This is the spirit of the holding in **Victory Construction Company V Duggal [1962] EA 697**, that:
- “Courts are provided with administrative machinery aimed at helping it to disencumber itself of case records in which the parties appear to have lost interest.”*
- [15] The Applicants claim to have been constrained by the effects of COVID 19 and the lock down restrictions in the country. I have not found evidence showing from 2017 when the applicants’ Appeal was filed to 2022 when their application for reinstatement of the Appeal was dismissed, Uganda was consistently under a lockdown. There is no explanation from the Applicant what steps he took after the lifting of the lock down. There is also no evidence provided by the Applicant regarding the alleged disappearance of the Appeal or **M.A No.58/2019** file in form of either a complaint or subsequent minutes of the proceedings. The same apply to the alleged delayed furnishing of the typed record by the lower court. The Applicant did not attach any form of communication seeking for the record and there was any delay in response.
- [16] It is my finding that the Applicants are guilty of being lax and failing to prosecute their own appeal and their application to reinstate their appeal when they were dismissed. Therefore, since the appeal was dismissed for non-filing and service of the memorandum of appeal on the Respondent in time, failure to serve the Applicants the hearing notice for the hearing of the appeal on **21/5/2019** when the appeal was dismissed does not amount to sufficient cause or reasons for its reinstatement in the circumstances of this case.
- [17] In the instant matter, no sufficient reason has been advanced by the Applicants to explain and or show why they did not prosecute both **Misc. Application No. 58 of 2019** and **Civil Appeal No. 49 of 2017** resulting into their dismissal for want of prosecution. In the result, I find no merit in this application. See **Erasto Mburawabwiko V Balamu Kiiza HCMA No 51 of 2021 (Masindi)**.

- [18] No sufficient case or reason exists on record to move this court to reinstate the appeal. A reinstatement would greatly occasion injustice to the respondent who has shown by affidavit evidence that the applicants have engaged him in endless fruitless litigation.
- [19] For the reasons above, I decline to grant this application. It is dismissed with costs to the Respondent.

Dated at Hoima this 15<sup>th</sup> day of **May, 2023**.

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**Justice Byaruhanga Jesse Ruyema**