

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

**MISC. APPLICATION NO. 925 OF 2013
(ARISING OUT OF CS.NO.186/2006)**

MARY MASEMBE

(suing through her Attorney Sepiriya Ssebunjo)

..... **APPLICANT**

VERSUS

1. THE ADMINISTRATOR GENERAL

2. NANSIKOMBI MARY

3. KISAWUZI S. NUWA

4. VICTORIA MWAGALE

5. RHODA NANKUMBI

6. SUPUYA WILSON

7. NABYO NGA H. MARGARET

..... **RESPONDENTS**

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

Order 9 Rule 18 CPR permits an applicant to move court to set aside dismissal of their suit where such applicant gives sufficient reasons for their absence.

The reasons advanced by the applicant are briefly enumerated in the application and substantiated by the affidavit of Geoffrey Kiwanuka (brother to Ssebunjo the applicant's attorney) sworn on 25/9/2013

Briefly, Kiwanuka claims that he was present in the premises of court on 25/9/2013 when the case was called up for hearing. That he was present outside the chambers of the Judge together with Arthur Murangira his counsel and Zelda Settimba his sister. He was eventually joined by the 2nd respondent and her advocate. He went on to state that he was requested by the Judge's security

guard to remain outside the court; that by the time they entered the Judge's chambers his lawyer was informed that the matter had just been dismissed.

There was no serious contest to the application. The affidavit in reply by Mary Nansikombi mainly attacked the merits of the main suit. She did in fact support Mr. Kiwanuka's testimony that at court, she and her lawyer remained outside the Judge's chambers. She then states that the applicant never appeared in court which would further corroborate Mr. Kiwanuka's statement who says he was present with the applicant's lawyer and his sister. On the other hand, I find Mr. Kiwanuka's averments clear and in my mind credible. His testimony is further strengthened by the fact that his counsel expeditiously moved to correct the situation by filing this application.

The rule is that court should be satisfied that the applicant had all intention to be present at the hearing and made all reasonable effort to do.

I am aware that this court has security detail, but there is no sufficient evidence that she was to blame for the applicant's absence. This is because the security guard is not part of the proceedings. That notwithstanding, the facts of this case as portrayed, seem to point strongly to the fact that the applicant had the positive intention of being present at the hearing of her case and made effort to do so through her agents.

I am therefore persuaded that this is a case that merits the protection provided by the Rules. I accordingly allow the application and hereby issue an order to set aside the ex parte proceedings and order of dismissal.

Civil suit No. 186 of 2006 is thereby reinstated. The applicant shall bear the costs of the application.

I so order.

EVA K. LUSWATA
JUDGE
23/1/2014