

the Chief Magistrate's Court Mbale, and this led to the file being sent back to the lower court for trial. He argued that the matter is not *res judicata*. He relied on the case of ***Motor Mart Uganda Ltd V Yona Kanyomozi SCCA 6/99***, as cited in ***KLR 1999 at page 503*** where court was of the view that locking out a litigant will cause an injustice then such an appeal should be heard on its merits. He prayed that this case be reinstated.

In reply **Mutembuli** for respondents opposed the application. He argued that no injustice will be caused to applicant because he transferred his interest in the suit property to his brother-in-law **Mr. Wobujje Gomei**.

He argued that these parties have litigated under several cases which the applicant kept on losing.

Applicant filed the appeal and he abandoned it. He referred to the chronology of the cases and noted that there was connivance in that applicant abandoned the appeal and instead filed CS 68/2014. This was dismissed in favour of respondent and it was after losing that suit that the current applicant moved to court to reinstate the dismissed appeal. He noted that the appeal was dismissed on 8th April 2015 and filed the application to reinstate in September 2015. He also noted that the Misc. Application 2/ 2013 in the lower court was dismissed on 13th November 2014. He noted that the alleged letter requesting for the file to the time of dismissal, and alleged application for reinstatement on 8/4/2015 is a period of over 1 year of no action. This shows that he was not interested in prosecuting the case since the record was available.

Applicant's Counsel in rejoinder re-echoed his earlier submissions.

Having carefully considered the submissions and evidence before court, the law is that in the interest of justice court process should not be abused by filing matters and leaving them to drag on for years.

I have noted from the pleadings on record that the matter was dismissed on 8/4/2015. It is also true that there was MSC. 002/2013 before the Chief Magistrate between Wobuye Gomeyi and Magidu Waniaye and Magode James Ikuya. From paragraphs 6,7,8,9, the applicant shows that the delay to prosecute was because the file was in the High Court containing lower court proceedings, was forwarded back to the lower court (Chief Magistrate) to try the Misc. Application .

The Respondents in reply by affidavit of **Waniaye Magidu** paragraph 5 and 14,15,16,17, avers that the said delay in prosecuting the appeal was occasioned by applicant himself who kept on processing unnecessary matters in court including Misc. Application 002/ 2013.

He argues that after finalization of hearing of Misc 002/2013 in 2014 the applicant took no step to move the file back to court.

All in all it is clear from the set of pleadings above that applicant did not come to court with clean hands. As shown in the detailed analysis of the history of this matter by **Counsel Mutembuli**, basing on the affidavit of **Waniaye Magidu**. The applicant was responsible together with **Wobujje Gomeyi** for the calling of the file back by **Counsel Dagira** as per annex “A” (Paragraph 5,6 & 7 of the applicant’s affidavit).

Applicant was aware that the matter in the High Court was dependent on that lower court file. However even after completion of the hearing of Misc Application 002/2013 by the Chief Magistrate by 13th November 2014, there was no step taken up to 8th April 2015 when the appeal was dismissed. For close to 6 months after determining Misc. Application 002/ 2013, still the appellant was sleeping on his right to appeal! This is deponed in paragraph 4 of the respondent’s affidavit in reply and it is not rebutted by applicant in his affidavit in rejoinder. It is an admission.

In *Fitz Patrick V 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. Police 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.”

This case informs our case that a litigant who sleeps on his rights by going to sleep 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.”

It is my finding that the facts revealed by the affidavit in reply by the respondent, and annexures, when checked out on the court record, confirm the fact that applicant is guilty of being lax and failing to prosecute his own appeal. No sufficient case 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 that applicant has engaged him in endless fruitless litigations. I do not find merit in this application. It is dismissed with costs to Respondents.

Henry I. Kawesa

JUDGE

23.03.2017