

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

MISC APPLICATION NO. 859 OF 2021

(Arising out of HCCS NO. 401 OF 2017)

EDWARD MUWANGA :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

STEPHEN SENDAGIRE MUTEKANYA ::::::::::::::::::::::::::: RESPONDENT

RULING

1. This application arose as a result of this court's permission of the respondent to proceed with the hearing in absence of the defendants on 15/02/2021. On that day as shown in the affidavit in reply by Irene Nakasi Sekagya paragraph 9 two witnesses who made their statement oath on record had testified. Later learned Counsel magellan Kazibwe called two more witnesses, closed the plaintiff case and sought leave to file written argument at the end of his case
2. It was at that point that learned Counsel Semuganyi Fred indicated to court that he failed to attend court on the date fixed for a sufficient cause and would file an application in that direction, hence this matter.
3. The present application is commenced by way of Notice of motion under S. 33 of the Judicature Act, S. 98 of the Civil Procedure Act, O.9 r. 2 and O. 52 rr 1, 2 and 3 of the Civil Procedure Rules for orders that the ex-parte proceedings in HCCS No. 401 of 2017 be set aside and the suit proceed interparty

4. It is supported by the affidavit of Semuganyi Fred who was the counsel involved in the suit. In that affidavit he deponed under paragraph, 7, 8, 9 and 10 to the effect that “one of the defendants was critically ill that he was urgently called by the family. That he attended to the call that required him to find the defendant at Nsambya Hospital and make his last a will. That he informed his learned friend of the above development.”
5. He concluded in submission that the above events constitute a sufficient cause for him not to be in court on the 15/02/2021. He cited the decision of **William Odoi Nyandusi Vs. Jackson Oyuko Kasendi C.A. Civil Application No. 32 of 2018**, where the court of Appeal held that sufficient cause has no statutory definition and **Rosette Kizito Vs. Administrator General and Ors Supreme Court Civil Application No. 91 of 1980** to reason that the position of the law is that the sufficient cause must relate to the inability or failure to take any particular step in time. He finally prayed the application be allowed
6. In reply learned counsel Magellan Kazibwe relied on the affidavit of Irene Nakasi to contest the contents of the affidavit in her paragraphs 3, 4, 5, 6, 7, 8, and 9
7. The respondent’s counsel cited to this court the case of **Erisa Kafuga Kajunge & another V. Hadija Nabiryo HCCA No. 001 of 2008 (Land Division) un reported** to support his argument that the applicant was aware of the date and he failed to attend court without sufficient cause.
8. The issue before this court has nothing to do with whether or not the applicant was aware of court proceedings of 15/02/2021. The deponent in the affidavit in support of the motion proves that he was aware. That way he called the

fellow counsel to tell him he would not attend. Counsel of the other side admit he was informed but no such details as are alleged in the affidavit were given to him. In my view that would be over demanding on the part of the respondent counsel that he must have been given the details. One must be aware that there are such situations when the counsel of the other side is not at all informed of the event preventing his learned friend from attending.

9. The above does not mean that an application for setting aside ex-parte hearing will fail for the reason that the other side was not informed. In any event it is more common that when a lawyer fails to attend court usually the other side does not know why.
10. The issue here is whether the contents of paragraph 4 of this ruling constitute a sufficient cause. In my view they do. The advocate went to attend to a party to this suit in a critical situation requiring his legal service. I am of the opinion that the deceased's litigant urgently needed his advocate at Nsambya Hospital to write his will was more important to him then representing him in court. It would be purposeless to do so as is now deceased.
11. The decision of the Supreme Court in **Rosette Kizito (supra)** is applicable here. The very reason given why the applicant counsel did not attend court, is the very reason he failed. The sickness of the defendant was on the same date and time like the hearing. As sufficient cause has no limitive definition, I find the above to be sufficient cause.
12. I have found no connection between this application and the defaults the applicant made in filing witness statements in the main suit. The same can be handled in the main suit and not here.

13.The affidavit in reply by Irene Nakasi places unknown evidential burden on the applicant to prove a number of things but I find that the same are not legal requirements. What is important here is that the applicant had a sufficient cause for failing to attend court.

14.I have found the decision by the learned brother Dr. Joseph Murangira in **Erisa Kajuga and Another** (supra) distinguishable and not applicable here. In the quoted paragraph the judge blamed the 1st applicant and stated “..... *does not show or state any reason whatsoever as to why the appellant failed to appear in court on 28/06/2007 when the main suit had been fixed for hearing.*”

15.Contrary to the above, the affidavit of the applicant here in detail explains why and how he failed to attend court on the date fixed for hearing.

16.In the result of the above consideration I allow the application. The ex-parte hearing of the main suit is set aside. All the witness whose witness statement were received as evidence in-chief, will appear for cross- examination on the next hearing of the main suit.

17.I award no costs to the applicant

18.I so order

Given under my hand and seal of court this **14th** day of **September**, 2021


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NYANZI YASIN
JUDGE