

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

CIVIL APPEAL NO. 121 OF 2018
(ARISING FROM ENTEBBE CIVIL SUIT NO. 26 OF 2015)

NATENDA MONICA MIREMBEAPPELLANT

VERSUS

1. SITENDA MOSES
2. SUUBI RICHARD
3. NAKKU FLORENCE
4. NABASITU JARAH
5. NAMUDDU POLINE RESPONDENTS

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGEMENT

This is an appeal against the order of dismissal of Civil Suit No. 26 of 2015 at Entebbe Chief Magistrates Court. The Appellant is dissatisfied with the orders of Her Worship Mary Kaitesi Lukwago.

The Appellant raised four grounds on the memorandum of appeal, where both Counsel for the Appellant and the Respondent filed written submissions.

I will resolve all issues together since they are interrelated to the question whether the Magistrate erred in law and fact when she dismissed the Appellant's case.

Resolution

In answer to all the four grounds in this appeal, this Court has referred to the record of appeal and taken judicial notice of the fact that the Appellant herein has been diligent in attending to the Court proceedings.

I notice from the record that from the first date when Court set down the suits for hearing

On 2nd October 2015- Plaintiff and Counsel were present.

On 14th April 2016- Plaintiff was in Court and Counsel for the Plaintiff was also in Court.

On 31st/05/2016- Plaintiff and Counsel were present, and were ready to proceed

On 18th/10/2016- Plaintiff and Counsel were present

On 17th January 2017-Plantiff was present and Counsel was absent

On 07th February 2017- Counsel was present

On 07th March 2017 – Plaintiff was present but Counsel was absent

It is unfortunate to note that on 07th February 2017, the matter was in Court and the adjournment to the following day was requested for by Counsel Kakeeto for the Plaintiff built on 07th March 2017, he didn't attend Court claiming to be before the however, High Court in another matter according to the Plaintiff . This problem led the Court to dismiss the suit. Therefore the question is, did the Court act unfairly as alleged by the Appellant?

I have read the arguments that were raised by both Counsel. The answer to these issues in my view rests in the doctrine of law that; *'the mistake of Counsel shouldn't be visited upon the litigant'*. See the case of **Re Christine Namatovu Tibajjukira (1992-93) HCB -** Court held that; *'errors and lapses should not debar a litigant from the pursuant of her/his rights'*.

The lawyer is an agent who holds the mandate to conduct the trial and adequately represent the interests of the client. It is of course the duty of Court to ensure a balance between proper representation and rowdy behavior that amounts to delay or outright failure to prosecute.

The Court ought to be fair in trying to balance delay with the dictates of justice as pointed out the case referred to of **Mande P Elia versus AG in Civil Appeal No. 02 of 2002.**

I do not think the trial Magistrate was impatient since she had also scheduled the same matter for 9th May 2017 between 9.00 am and 10.00 am, which were still available.

If they had failed to proceed on that day, then Court would have exhausted all the available avenues to accord the Plaintiff /Appellant a chance to be heard.

Whereas I do not condone the practice of the Advocates who behave as Mr. Kakeeto did in this case, the rights of the litigant who comes

to Court, persistently without fail as in this case, ought to be given a chance to have their day in Court.

The grounds raised to justify a meritis consideration in view of the above findings.

I therefore hold that this appeal succeeds on all grounds raised. The appeal is granted and the dismissal set aside.

It is ordered that the suit be reinstated and be heard on merit by another Chief Magistrate at Entebbe.

Costs to the Appellant.

I so order

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Henry I. Kawesa

JUDGE

12/08/2021

12/08/2021

Luyimbazi Peter holding brief for Ojambo for the 1st and 2nd
Respondent.

Court: Ruling delivered to the parties above.

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Henry I. Kawesa

JUDGE

12/08/2021