THE REPUBLIC OF UGANDA
IN THE HIGH OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS CAUSE NO. 2158 OF 2021
[ARISING FROM CIVIL SUIT NO.0549 OF 2016]

MUJULIZI JAMES:::APPLICANT

VERSUS

KYEYUNE BIROMBA:::RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Applicant brought this application for setting aside an *ex-parte judgment/proceedings in Civil Suit No. 549 of 2016*.

The grounds are that the Applicant only got to know that the application had been fixed and heard *ex-parte* when the decree was extracted.

The affidavits of Mujurizi James and Anamaria Basimwa contains the grounds of the application.

The Respondent's affidavits in reply on record is dated 23rd March 2022. The application was served on the Respondent on 22 December 2022.

The Applicant's Counsel raised a preliminary objection on the above irregularity citing earlier decisions of this Court in similar scenarios in case of ***Patrick Senyondwa & Anor versus Lucy Nakitto; Misc. Application No. 1103 of 2018***, following ***Stop & See & 5 Others versus Tropical Bank Ltd; HCMA No.333 of 2010*** and ***Nakibira Agnes & 5 Others versus Kalemera Edward & Anor; HCMA No.403 of 2018***.

The position in those cases was and is trite law that filing an application or serving it outside the statutory period of 10 days *(fifteen*) without leave of Court is irregular and renders the service *a nullity*.

In this matter, I do agree with Counsel that a period of two months and 9 months is the extreme exercise of dilatory conduct and the arguments by counsel for the Respondents on this point, do not offer any legal remedy to him.

The affidavit of service is therefore irregularly on record and offends the timelines provided for filing and service of process in the Civil Procedure Rules. The affidavit in reply is struck off for being irregularly served and is out of time.

The application will therefore be decided on merit as prayed by Counsel for the Applicant. In his submissions on the merits of the application, counsel referred this court to O.9 r27 of the Civil Procedure Rules which provides that the Applicant has to prove before Court that. The catch word is that; '*he/she must satisfy the*

court that he/she was prevented by sufficient cause from appearing when the suit came up for hearing'.

I notice from the affidavit in support and submissions of Counsel for the Applicant that the sufficient cause being reached on is old age. (Paragraph 6) (Paragraph 14); denial of one having been served (paragraph 16,17,18,19 and 23). In he said amendments, denials are made of Court process, which is on record and was the basis of the *ex-parte* proceedings by Court.

In his submissions in rejoinder, it brought to the attention of this court to the affidavit in support of the chairman of Kyambalattaka as attached documents marked as 'A' and 'B' in proof of his signatures as reflecting a difference in the signatures on both documents, which brings a conclusion that he has more than one signature. I have looked at these documents and found the discrepancies counsel refers to as vital.

Counsel therefore argues that Counsel for the Applicant's reference to forgery, requires the opinion of an expert.

Counsel for the Respondent also points out that in sufficient reason is proved, does not show whether there was an oversight, mistake, negligence or error on the side of the Applicant or his legal advisers. He referred to the case o ***Rosette Kizito versus the Administrator General*** and as ***SCCA No. 09 OF 1986; KLR Vol.5/199***, which held that;

> *"sufficient reason must relate to the inability or failure to take the particular step in time caused also pointed out that that in the case of* ***Musa S. Betty &Anor versus Akello Joan; HCCS***

> ***No.173 of 2013***, *the Court point out the grounds or circumstances which may amount to 'sufficient reason which include a mistake by an Advocate through negligence, ignorance of procedure by un represented defendant and illness by a party"*

Counsel pointed out that the Applicant had a burden to prove the cases of his failure to attend Court and why he should be exercised.

I have examined the affidavits in support and the record of the court in Civil Suit No. 549/2016. The Applicant acknowledges that he was shed in 2016. That he promptly, within timelines filed a defence (paragraph 8).

The defence, according to court record, was filed on 25th February 2014 by Kanduho & Co. Advocates in Civil Suit 03 of 2014 (Family Division). Since then the record shows that there were several sittings of court, but in all of them, neither counsel for the defendant nor defendant ever attended. There is nothing on the court file to explain either the absence of counsel or the Applicant. The affidavit deponed simply tells court explanations that counsel Moogi gave the Applicant upon pursuing the file (paragraph 10-14). The explanations I paragraphs 15, 16 – 23 as shown), have information to court, but in view of the holding in ***Nicholas Virani & Anor; CA No.09 of 1992, (SC)***.

The Applicant has a heavy burden to prove sufficient cause. This requires evidence, not mere allegations that proof is before court that he was indeed sick as he alleges.

No medical forms or evidence of sickness is attached. What evidence is there that he is of advanced age? What evidence of Anamaria Bisimwa, as pointed out by counsel for the Respondents, his own attachments; 'A' 'B1' and 'B2', in proof of his identity and signature contain differences in signature used.

They do not prove beyond doubt that his truthful and I do agree with counsel for the Respondents therefore that Applicant has not brought sufficient evidence before court to prove his application. The application is not proved.

It is dismissed with costs to the Respondent.

I so order.

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Henry I. Kawesa
JUDGE
27/04/2022

27/04/2022:

Bukenya Fred (Attorney of the Respondent and Counsel) present.

Court:

Ruling delivered to Bukenya Fred (Attorney of the Respondent and Counsel) and in the absence of the Applicant's Counsel.

Sgd:

Ayo Miriam Okello

27/04/2022