

THE REPUBLIC OF UGANDA

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

MISCELLANEOUS APPLICATION NO. 514 OF 2022
ARISING FROM CIVIL SUIT NO. 487 OF 2018

LUVUTU PAUL KAMYA SALONGO (Suing Through His Lawful
Attorneys Ssemugwe Mandela Isreal & Nazziwa
Sarah):..... APPLICANT

VERSUS

1. MUKWAYA JOSEPH
2. KULE DORIS SIRIWAYO
3. BILL & PAUL AGENCIES LTD:..... RESPONDENTS

BEFORE: HON JUSTICE JOHN EUDES KEITIRIMA

RULING


This is an application brought by Notice of Motion under *Order 52 Rule 1 and 3 of the Civil Procedure Rules SI-71-1 as amended, Section 33 of the Judicature Act Cap 13 and Section 4(2) (c) of the Judicature Amendment Act 2002.*

The Applicant is seeking for orders;

(a) That leave be granted to the Plaintiff to re-open his case and be allowed to tender in all his evidence and call all his witnesses in this suit.

(b) That this Court be pleased to vacate the order closing the Plaintiff's case which was reached prematurely.

(c) That this Court recalls the Defendants and their witnesses for cross examination.


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(d) That this Court does grant any further or consequential order(s) it may deem fit in the circumstances.

(e) Costs of this Application be provided for.

The application is supported by the affidavit of **Ssemugwe Mandela Isreal** the lawful attorney of the applicant in this matter who deposes inter alia;

1. That he filed **Civil Suit No. 487 of 2018** against the respondents/Defendants for trespass and fraud on his land comprised in **Block 82, plots 1096, 3643, 3644 and 3645 land at Kilyamuli.**

2. That he is a kibanja holder on the suit land having been born thereon as well as his parents and that they never entered any agreement with the registered owner to sell the land to the defendants.

3. That court closed his case having only presented one witness during examination in chief though on record over four witnesses intended to give evidence in this matter.

4. That his first lawyer had told him that all would be well but he would never inform him of the status of the case.

5. That his lawyer then informed him that courts were closed because of Covid-19 and that he would inform him when they would resume.

6. That later on he told him that the hearing had started where one witness tendered in his evidence and was accordingly cross-examined. That his lawyer never told him anything again until court informed him to get another lawyer.

7. That another lawyer he got never turned up on the day of hearing and consequently his case was closed on the prayer of the respondents' counsel which was accordingly granted.

8. That by the time his case was closed, his lawyer was not there and he did not tell him what to do.


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9. That the court informed him that his lawyer was no longer representing him and when he went and talked to him he promised to attend on the next hearing day which he never did.


10. That he then rushed to Uganda Law Society for assistance since he could not afford paying for a lawyer and they allocated the case to this present lawyer who advised him to institute this application so as to get the opportunity to have his case fully heard. That this would also include cross examining the Defendants and their witnesses which is a fundamental process in ensuring a fair trial.

11. That the closure of his case deprived him from calling substantial witnesses like Nakato Prossy Nampima and Nakungu Olivia who were all born on the suit land and also the area LC 1 Chairman Fred Banadawa and Galiwango Henry, who are on the ground and others who are willing to come and testify.

12. That it is in the interest of justice and equity that this application is allowed to reopen the Plaintiff's case and present the remaining witnesses and to recall the Defendants for cross examination so as to allow substantive justice to be administered without undue regard to technicalities.

The 1st and 2nd Respondents opposed the application through their affidavits in reply where they deposed inter alia that;

1. On the **22nd day of October 2021**, the head suit giving rise to this application came up for hearing of the defendants case.
2. That Counsel Twesigye Amon who had just filed a notice of change of advocates represented the applicant/Plaintiff and informed court that since he had just joined the conduct of the case, he needed a short adjournment to enable him cross examine the Defendants. That the Court adjourned the head suit to the **13th of December, 2021**.
3. That on the **13th day of December, 2021**, the head suit came up for cross examination of the Defendants witness and the plaintiff was represented by Counsel Jackson Biboneire who informed Court that he was holding brief for Counsel Twesigwe who had gone for the burial of his father. Counsel representing the Plaintiff also informed Court that the Plaintiff/Applicant had filed **Miscellaneous Application No.2233 of 2021** seeking to reopen the


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Plaintiff's case in order to enable the Plaintiff call other witnesses as this would afford justice to his client.

4. That in the interest of saving court's time, the Defendants/Respondents conceded to this Application despite the fact that the same was not yet served on them. That this Court granted leave for the Applicant/Plaintiff to call other witnesses and adjourned the matter to the **24th February, 2022 at 9:00am** to enable the hearing of the Plaintiff's additional witnesses. That this court further ordered the Plaintiff to avail the witness statements to the defendants by the **31st January, 2021**.
5. That by the set deadline the applicant/plaintiff had not availed to the defendants his witness statements as ordered by this Court on the **13th December, 2021**.
6. That on the **24th of February, 2022**, the head suit came for hearing of the Applicants/Plaintiff case. That the Plaintiff and his counsel were not present in Court and the respondents moved court to have the Plaintiff/Applicant's case closed for failure to utilize the opportunity that was granted to him by this Court.

Counsel for the applicant and counsel for the respondents then filed written submissions the details of which are on record and which I have considered in determining this application.

Decision of Court.

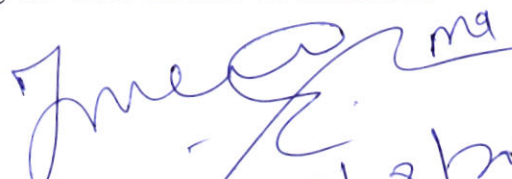
This application raises two issues for consideration which are:

- 1. Whether the main suit should be reopened.**
- 2. Whether there are any remedies available.**

I will resolve both issues concurrently.

The applicant attributes his non-attendance in Court to mistake of his counsel. He cited many authorities to buttress his submission and contended that the mistake of his Counsel should not be visited on him.

In applications of this nature, the court must consider whether taken as a whole, the justice of the case favors the grant of leave to reopen the case and any prejudice in reopening the case should be minimal.


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It was held in the case of *Bank Arabe Espanol versus Bank of Uganda – [1999] 2 E.A 22* that the administration of justice should normally that the substance of all disputes should be investigated and decided on their merits and that errors or lapses should not necessarily debar a litigant from the pursuit of his or her rights and unless a lack of adherence to the rules renders the litigation process difficult and inoperative, it would seem that the main purpose of litigation namely the hearing and determination of disputes should be fostered rather than hindered.

It is true that the applicant and his counsel caused this case to be adjourned on several occasions until the court ordered the closure of the Plaintiff's case under **Order 17 Rule 4 of the CPR.**

Section 98 of the Civil Procedure Act Cap 71 provides that *“Nothing in this shall be deemed to limit or otherwise affect the inherent power of court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”*

In the interest of substantive justice, I will allow this application on condition that the applicant pays the costs of this application to the respondents before the next hearing date.

The hearing of the main case will be on the **28th October 2022 at 10:00 a.m.** The Plaintiff will produce all his witnesses on that day without fail. He should also avail Counsel for the respondents the witnesses' statements by the **31st August 2022.**



Hon. Justice John Eudes Keitirima
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