

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

**MISCELLANEOUS APPLICATION NO. 1516 OF 2022
(Arising out of Civil Appeal No. 106 of 2018)
(Arising from Civil Suit No. 064 of 2016, of Chief Magistrate's
Court of Makindye at Makindye)**

KIGOZI ANDREW ::: APPLICANT

VERSUS

MUKASA RONALD ::: RESPONDENT

BEFORE: HON. JUSTICE NAMANYA BERNARD

RULING

1. This Ruling is in respect of an application brought under **Section 33** of the **Judicature Act (Cap 13)**; **Section 98** of the **Civil Procedure Act (Cap 71)** ("**CPA**"); and **Order 52 rules 1 & 3** of the **Civil Procedure Rules, S.I 71-1** ("**CPR**").
2. The applicant is seeking for orders that:
 - a) The Order dismissing Civil Appeal No. 106 of 2018 be set aside.
 - b) Civil Appeal No. 106 of 2018 be reinstated and heard on its merits.
 - c) Costs of this application be provided for.

3. The application is supported by the affidavit of *Kigozi Andrew*, in which he deponed, *inter alia* that:
- a) The applicant has always been vigilant in prosecuting the appeal and has a good case.
 - b) Neither the applicant nor his Advocates were served with the hearing notice of the appeal.
 - c) The non-appearance of the applicant in Court when the appeal was called for hearing was due to not being aware of the date set by Court as no hearing notice was served.
 - d) It is in the interest of justice that the said dismissal of Civil Appeal No. 106 of 2018 be set aside, and the applicant's appeal be heard on its merits.
4. In his affidavit in opposition to the application sworn by *Mukasa Ronald*, the respondent deponed *inter alia* that:
- a) The application is brought in bad faith only intended to delay justice by prolonging the delivery of the judgment by the Chief Magistrate's Court of Makindye at Makindye.
 - b) The applicant failed to take essential steps to prosecute the appeal.
 - c) The applicant was aware that the appeal was fixed for hearing on the 22nd June 2022.
 - d) The appeal was dismissed for want of prosecution and not for non-appearance of the applicant.
 - e) Should Court be inclined to grant the application, the applicant should be ordered to deposit security in Court.

5. The applicant was represented by Mr. Segamwenge Hudson. The respondent was represented by Ms. Muwanguzi Patience. Counsel for both parties appeared before me on the 29th September 2022 at 10:12am – 11:07am, and made oral submissions which I have considered in determining this application.

Consideration and resolution:

6. The main issue for determination is whether the order dismissing Civil Appeal No. 106 of 2018 should be set aside, and the appeal reinstated, and heard on its merits.
7. **Order 43 rule 31** of the **CPR** governs the dismissal of appeals for want of prosecution, and it provides that:

“Dismissal for want of prosecution.

(1) Where there has been undue delay in the hearing of an appeal, the registrar may obtain the directions of a judge for the listing of the appeal at the next ensuing sessions of the High Court.

(2) Notice of the listing shall be served in such manner as the judge may think fit upon the appellant and respondent or their advocates, and upon the hearing thereof the court may order the dismissal of the appeal for want of prosecution or may make such other order as may seem just.”

8. Civil Appeal No. 106 of 2018 was called for hearing on the 22nd June 2022 before my learned brother, *Justice Nyanzi Yasin*. The applicant and his lawyers were absent, and the Court dismissed the appeal for want of prosecution. The dismissal order reads as follows:

“IT IS HEREBY ORDERED that:-

a) Civil Appeal No. 106 of 2018 is dismissed under Order 43 Rule 31 of the Civil Procedure Rules for want of prosecution.

b) The Chief Magistrate’s Court of Makindye at Makindye is directed under Section 17 of the Judicature Act to deliver judgment in Civil Suit No. 064 of 2016, Mukasa Ronald v. Lwanga Sarah.

c) The Appellant shall pay the costs of the appeal [...]”

9. In the case of ***Gold Beverages (U) Ltd v. Muhangura Kenneth and Anor, M.A No 674 of 2019***, it was held that:

“The dismissal for want of prosecution seals the matter for the plaintiff in the same court which issued the dismissal order, and recourse can only be had by the plaintiff to an appeal or commencement of a fresh action subject to the limitation period imposed by law.”

10. My understanding of the law is that once an appeal is dismissed for want of prosecution under the provisions of **Order 43 Rule 31** of the **CPR**, the aggrieved party is cannot apply to the same

Court for reinstatement of the appeal, unless there are special circumstances, warranting Court to exercise its inherent power under **Section 98** of the **CPA**, and **Section 33** of the **Judicature Act (Cap 13)** to reinstate an appeal dismissed for want of prosecution (*see Gold Beverages (U) Ltd (supra)*; and *Rawal v. The Mombasa Hardware Ltd [1968] EA 392*).

11. The question that I have to consider is whether special circumstances exist for Court to exercise its inherent power under the aforesaid provisions of the law, to reinstate an appeal dismissed for want of prosecution.
12. This is the chronology of events leading to the dismissal of the appeal. *Civil Suit No. 064 of 2016, Mukasa Ronald v. Lwanga Sarah* is currently pending hearing/delivery of judgment before the *Chief Magistrate's Court of Makindye at Makindye*. The applicant applied to be added as a defendant to the suit in the lower court, and his application was dismissed. The applicant then filed a memorandum of appeal in this Court on the 8th October 2018. The Court record shows that after filing the appeal on the 8th October 2018, the applicant failed to take the necessary steps to have it prosecuted. Counsel for the respondent first applied for the dismissal of the appeal on the 14th April 2021 but Court declined to dismiss the appeal to enable the Deputy Registrar of the Court to call for the file from the lower court. The learned Trial Judge stopped short of

dismissing the appeal stating that *"It is only for that reason that this matter survives the application to dismiss it."* The appeal was again called on the 11th February 2022, but hearing did not take place, and it was adjourned to the 17th March 2022 in the presence of counsel for the applicant. On the 17th March 2022, both parties and their lawyers were absent when the matter was called. The appeal was then adjourned to the 22nd June 2022. On the 22nd June 2022, the applicant and his lawyer were absent, whereupon the Court dismissed the appeal for want of prosecution.

13. Counsel for the applicant argued that he wrote several letters to Court following up the appeal as set out in annexures "A", "B" and "C" to the notice of motion. I have considered the said letters but I am not satisfied that the applicant was vigilant enough in prosecuting the appeal.
14. Given the events leading to the dismissal of the appeal for want of prosecution, I do not agree with counsel for the applicant that he has always been vigilant in prosecuting the appeal. My observation is that the applicant has failed to take essential steps to prosecute the appeal. Counsel for the applicant was present in Court when the appeal was adjourned to 17th March 2022. On the 17th March 2022, both parties were absent and the appeal was adjourned to 22nd June 2022. Counsel for the respondent took the initiative to find out what had transpired

in Court on the 17th March 2022, and that is why she was present in Court on the 22nd June 2022 when the appeal was dismissed. The applicant and his lawyer never bothered to check the Court record for the proceedings of 17th March 2022. The Court was therefore, correct, to consider the history of the appeal from the time it was filed on the 8th October 2018, and taking into consideration of all the relevant circumstances, the learned Trial Judge went ahead to dismiss the appeal for want of prosecution.

15. It is my decision that there are no special circumstances warranting the Court to exercise its inherent power to reinstate an appeal dismissed for want of prosecution.
16. Accordingly, this application is dismissed. The applicant shall pay the costs of the application.

I SO ORDER.



NAMANYA BERNARD

Ag. JUDGE

29th September 2022