

the owner of the suit land, a permanent injunction restraining the Applicants from further acts of trespass over the suit land, an eviction order and damages for trespass. On **23rd day of October 2015**, Judgment was entered in favour of the Respondent with orders inter alia, for eviction, payment of general damages of **Ugx 3,000,000/=** and costs of the suit.

- [4] The Applicants being dissatisfied with the judgment of the trial court, filed in High Court **Civil Appeal No.071 of 2015**. The Appeal was dismissed for want of prosecution.
- [5] As a result, the Applicants felt aggrieved by the dismissal of **Civil Appeal No.017 of 2015** and filed the present application for inter alia, setting aside the dismissal order, reinstatement of **Civil Appeal No. 071 of 2015** and stay of execution of the judgment and decree in **Hoima Chief Magistrate's Court, Civil Suit No.45 of 2009**.

Counsel legal representation

- [6] The Applicants were represented by **Mr. Mr. Kasangaki Simon** of **M/s Kasangaki & Co. Advocates, Masindi** while the Respondent was represented by **Mr. Mwebaza Christopher** of **M/s Mwebaza & Co. Advocates, Hoima**. Both counsel filed their respective submissions for consideration in the determination of this application as permitted by this court.

Determination of the Application

[7] Issues

1. Whether there is conflict of interest in regard to the applicants' former counsel Simon Kasangaki.
2. Whether Civil Appeal No. 071 can be reinstated.
3. Whether the execution in respect of Civil Appeal No.071 of 2015 and Hoima Chief Magistrate's, Court Civil Suit No.45 of 2009 can be stayed.
4. What remedies are available to the parties.

Issue No.1: Whether there is conflict of interest in regard to the applicants' former counsel, Simon Kasangaki.

- [10] Conflict of interest was defined as real or seeming compatibility between interests of two of the lawyer's clients such that a lawyer is disqualified from representing both clients, if the dual representation adversely affects either client or if the clients do not consent; **M/s Quality Uganda Ltd T/A Quality Supermarket Vs Uganda Performing Rights & 4 Ors, HCCS No.444 of 2019.**
- [11] It is the submission of counsel for the Respondent that when Civil Appeal came up for hearing on the **24th day of April 2019**, Counsel **Simon Kasangaki** who was representing the Respondent, moved this court to have **Civil Appeal No. 017 of 2015** dismissed for want of prosecution. Indeed, this court dismissed the appeal for want of prosecution. Counsel further submitted that Counsel **Simon Kasangaki** having represented the Respondent cannot go ahead to represent/advise the Applicants in the same matter. He prayed that the application be dismissed as it was filed by a lawyer who is professionally conflicted.
- [12] Counsel for the Applicants on the other hand submitted in rejoinder that he was holding brief for counsel for the Respondent then and that mere holding brief does not give instructions to an advocate to conduct **Civil Appeal No. 071 of 2015** from the Respondent hence no conflict of interest. That he never interviewed the Respondent on any issue pertaining the appeal but only appeared that day with specific instructions from counsel for the Respondent. He relied on the authority of **Excel High School Ltd & 4 Ors Vs John Paul Baingana, Misc. Application No. 1019 of 2014, Section 14A the Advocates Act (as amended) and Regulation 4 of the Advocates (Professional Conduct) regulations.** He concluded that that the pleadings cannot be invalidated as there was not conflict of interest.
- [13] This court's record of the **30th day of September, 2022**, reveal that **Mr. Simon Kasangaki** was found to had appeared for the Respondent when he successfully applied for the dismissal of the **Civil Appeal No.071 of 2015** for want of prosecution in favour of the Respondent, which he now seeks to reinstate, in favour of the Applicants. This court directed counsel to stand down from representing the Applicants for avoidance of conflict of interest which he obliged but informed court that he would communicate to the Applicants to find another advocate.

- [14] By attempting to represent the Applicants in this application for reinstatement of **Civil Appeal No.071 of 2015**, where he (counsel Kasangaki) appeared for the Respondent and he successfully applied for dismissal of the same, amount to conflict of interest. This is dual representation which is likely to adversely affect the Respondent who obtained a dismissal of the said appeal at his instance in the first place, See **M/s Quality Uganda Ltd T/A Quality Supermarket Vs Uganda Performing Rights & 4 Ors (Supra)**. In the interest of justice, this court therefore rejects pleadings filed by **counsel Kasangaki** for reinstatement of the Applicants' appeal which was dismissed at his instance. I therefore disagree with the submission of the Applicants, that the Applicants' pleadings filed by **Kasangaki** cannot be invalidated for there was no conflict of interest as counsel was only holding brief for the Respondent's lawyer when the appeal was dismissed. The record show that **Mr. Kasangaki** presented himself as counsel for the Respondent and not holding brief for counsel for the Respondent.
- [18] As a result, I find the 1st issue in the affirmative. The new lawyers therefore, ought to had filed a notice of change of advocates and amend the pleadings and/or application to reflect the necessary changes. This was not done, instead, the new lawyers maintained the original application filed by **counsel Kasangaki** and only filed their submissions.
- [19] Having found that the applicants' former counsel was professionally conflicted, it follows therefore, the former counsel's pleadings cannot be relied upon by the applicants for reinstatement and stay of execution of **Civil Appeal No.071 of 2015** and **Hoima Chief Magistrate's, Court Civil Suit No.45 of 2009** respectively.

Merits of the Application

- [20] In case I am wrong on the 1st issue, it is the law that an appeal cannot be reinstated if the Applicant does not prove he was prevented by sufficient cause; **Eternal Church of God Vs Sunday Kasoke, HCMA No.001/2016**.
- [21] In the instant case, it was the Applicants/appellants' duty to prosecute their appeal, **Civil Appeal No.071/2015**. The Appeal record of

19/3/2019 show that both counsel for the parties were present when court gave directions as regards filing of respective written submissions. The Appellants were to file their respective submissions by 26/3/2019 and the matter was fixed for judgment on 23/4/2019.

[22] When court reconvened on 23/4/2019, neither the Applicants/Appellants nor their counsel was present. Submissions had not been filed as directed by court. As a result, as it were, the Respondent through the counsel was present, successfully moved court to dismiss the appeal under **O.43 r.14 CPR**.

[23] The record of Appeal further show that from the time the Appeal was filed in November 2015, the Applicants/Appellants have neither ever taken any step with the view to proceed with the appeal nor appear in court. The conduct of the Applicants/Appellants in my view portrayed lack of interest in the Appeal. The failure of their counsel to comply with the directions of court which the Applicants refer to as “mistake of counsel”, cannot benefit the Appellants in view of their indolence.

[24] Besides, the Appeal was dismissed on **23/4/2019**. The Applicants brought this Application to have it reinstated on **15/8/22**, after a period of 3 years and 4 months. I find the Applicants/Appellants guilty of dilatory conduct in filing this application for reinstatement of **Civil Appeal No.071/15**.

[19] In the premises, I find that the Appeal was rightly and lawfully dismissed for want of prosecution and the Applicants have not advanced any cause for its reinstatement. I would still dismiss the application and it is accordingly dismissed with costs.

Signed, dated and delivered at Hoima this **22nd** day of **December, 2022**.

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Byaruhanga Jesse Rugyema
JUDGE.