

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MPIGI  
HCT-15-LD-MA-0120-2021

*[Arising from High Court Civil Suit No. 0086 of 2016]*

GEORGE KATAABU & 2 OTHERS=====APPLICANTS

VERSUS

1. FUNDI HARDWARE AND CONSTRUCTION CO. LTD

2. AIDA GWOKYAYE

3. NANTALE D/O MIKAIRI MUKASA

10 4. YUNUSU SEMAMBA

5. LUMU MAZUUKU=====RESPONDENTS

6. THE COMMISSIONER LAND REGISTRATION

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

**RULING**

The applicant brought the instant application under **Order 9 Rule 23** of the Civil Procedure Rules, **Section 98** of the Civil Procedure Act and **Order 52 Rules 1-3** of the Civil Procedure Rules against the respondents seeking for orders that:

- 20      a) The dismissal order of Civil Suit No. 086 of 2016 be set side.  
         b) That Civil Suit No. 086 of 2016 be reinstated and heard on its merits.  
         c) Costs of this application be provided for.

The application was supported by the affidavit sworn by 1<sup>st</sup> Applicant **George Kataabu**. I will however, not reproduce the grounds here.

The Respondent filed an affidavit in reply opposing the application which I will not reproduce.

## Representation:

The Applicant was represented by **M/s Mugarura , Kwarisiima & Co. Advocates** and the 1<sup>st</sup> Respondent was represented by **M/s Lukwago & Co. Advocates**. Both counsel made oral submissions.

## Submissions:

10 Counsel for the Applicant submitted that the Applicant was out of the country due to sickness. He added that it was the mistake of first counsel, Mr. Sserwadda that apart from drafting and filing the pleadings, he never prosecuted the matter. He prayed that this court finds that there was sufficient cause and reinstates the suit.

Counsel for the Respondent on the other hand in regard to the 1<sup>st</sup> Applicant being out of the country submitted that **Order 19 rule 3 (1)** of the Civil Procedure Rules provides that contents of an affidavit are that which is within the knowledge of the deponent. Counsel added that the affidavit in support of the application was made by the 1<sup>st</sup> applicant who did not have authority from the rest of the Applicants to swear the affidavit on their behalf. He went on to submit that where there is no authority given such affidavit is defective and the application itself should be dismissed.

20 Counsel further submitted that even if the 1<sup>st</sup> applicant was out of the country, the 2<sup>nd</sup> and 3<sup>rd</sup> applicants were not in Court. All of the Applicants came for mediation but after that, they slept on their rights. He further submitted that even if counsel was not appearing in court, the Applicants would have come to court and followed up their case; the period between 2016 to 2022 is very long. That the applicants did not have interest in pursuing their case. He prayed that the application be dismissed with costs.

30 In rejoinder Counsel for the Applicant raised a preliminary objection and contended that the Application was served to the Respondents on the 30<sup>th</sup> day of March, 2022 , and they filed their reply on the 27<sup>th</sup> April 2022 that was after 32 days and yet the reply was supposed to be filed by the 15<sup>th</sup> April, 2022 that is 15 days. He referred court to **Order 5 rule 1 (2)** of the Civil Procedure Rules.

He further submitted that no extension of time was sought. He prayed that the affidavit in reply be expunged from the record and matter proceeds, as though the Respondents did not put in a reply.

### Analysis of court:

I have perused the court record looked at, the affidavits, authorities provided and submissions by both counsel for and against.

10 It is trite that for the court to reinstate any matter dismissed, counsel or the applicant must give sufficient cause. Sufficient cause has been defined in the case of **James Bwogi & sons Enterprises Ltd v. Kampala City Council and Kampala district Land Board** and the case of **Bonny Katatumba v. Mohamed Karim S.C.C Application No. 27 of 2007**, where it was stated that what constitutes sufficient reason is left to the court's unfettered discretion.

In this regard court looks at the reasons advanced by the party for failure to take essential steps in time or other reasons that may be convincing. The instant case is a case of 2015 and now we are in 2022, the applicant gave reasons of being out of the country, sickness and mistake of counsel, all not backed by evidence.

On 20/1/2022 Court served the parties but none appeared and court dismissed the case.

20 This matter involves three applicants but all did not take any steps to follow up their case. Indeed this Court is faced with a case backlog challenge that needs to be cleared and as such I would set a bad precedent if I am to reinstate this case when there are no sufficient reason(s) advanced with evidential backing. Much as this is a land matter, my hands are tied. I disregard the preliminary objection raised by the applicants as this serves as kicks of a dying horse. The applicants knowing they were not vigilant have now come up to buy time.

I therefore dismiss this application, each party bears its own costs.

Right of appeal explained.

Oyuko Anthony Ojok

Judge

27/04/2022.