

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1531 OF 2022

(Arising from Civil Suit No.566 of 2021)

HAJJI BUKENYA

SULAIT:.....APPLICANT

VERSUS

1. LUTWAMA GYAGENDA DAVID

2. WALUGEMBE EMMANUEL

:.....RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

This is an application seeking orders to set aside the order dismissing **Civil Suit No.566 of 2021**; and reinstatement of the suit so that it can be heard and determined on its merits.

It is brought under the provisions of **Article 126 (2) (e) of the Constitution of the Republic of Uganda, Section 98 of the Civil Procedure Act cap.98 and Order 52 rules 1 & 3 of the Civil Procedure Rules SI 71-1**. It also seeks that the costs of the application be provided for.

Grounds of the application:

The grounds in support of the application are contained in the affidavit in support of the application deposed by Counsel Nakyeeyune Berna, an advocate practicing with **M/s Magna Advocates**, and counsel in personal conduct of the matter.

She states that the land which is the subject of litigation in **Civil Suit No.566 of 2021** is part of the land comprised in **Kibuga Block 21 plot 1339 at Busega Kampala District measuring approximately 20 by 10 feet**, and that when the matter last came up for hearing before **His Worship Kintu Zirintusa**, he informed the parties that he would forward the matter to the trial judge for further management.

That although counsel diligently followed up on the matter so as to have the same fixed for hearing, she registered no success as she was always told that the file was missing, and that when the file was found, it was discovered that the matter had been called on 8th July 2022 in the presence of counsel for the defendants and their counsel, in the absence of both the plaintiff and his counsel and the same was dismissed for non-appearance of the plaintiff.

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That upon further perusal of the file, counsel discovered that while this court had fixed 8th July, 2022 as the hearing date and hearing notices in respect of the same had been served at counsel's chambers to the receptionist, upon inquiry with all the advocates of the firm, counsel found that none of the advocates had either received the said hearing notices, or entered the dates in their diaries.

Additionally, that when counsel inquired from the receptionist, she found that upon receiving the hearing notices, she had kept them to herself without notifying either counsel in personal conduct of the matter or any other advocate in the firm thus there was a miscommunication between the staff and the lawyers in that regard, to which the applicant was a victim, and that the applicant was shocked to find that the matter had been dismissed yet he was waiting for the matter to be fixed.

That not only does the applicant have a meritorious suit, but he has at all times done everything in his ability to ensure that the matter is fixed for hearing and that both the applicant and his counsel were genuinely unaware of the fact that the matter had been fixed for hearing on 8th July, 2022 when the matter was dismissed.

Further, that the applicant was prevented by sufficient cause from attending court when the matter was called for hearing, as the grounds advanced in this application constitute such sufficient cause to warrant setting aside of the dismissal order, and reinstatement of the same. According to her therefore, this is a fit and proper case where this court can exercise its inherent power, in the interest of justice to set aside the order dismissing, **Civil Suit No.566 of 2021**.

The application is unopposed by the respondent despite the fact that the application had been duly served, as per the affidavit of service of Mr. Kamukama Alex.

The applicant through his lawyers **M/s Magna Advocates** filed written submissions in support of the application as directed by this court.

Consideration of the application.

I have carefully read the pleadings, evidence and submissions of both counsel, the details of which are on the court record, and which I have taken into account in considering whether or not this application discloses sufficient cause warranting the grant of the prayers sought.

In her submissions. Counsel for the applicant argued that the fact that there was miscommunication between the applicant's lawyer's staff to wit; the receptionist who received the hearing notices in **Civil Suit No.566 of 2021** and failed to notify counsel in personal conduct of the same amounts to sufficient cause for the non-attendance of court, and that the applicant is an innocent victim of the circumstances as he was not notified of the hearing date, thus the omission of his counsel should not be visited on him.

In **Hikima Kyamanywa vs Sajjabi Chris C.A.C.A No. 1 of 2006** it was held that

"Sufficient reason or cause depends the circumstances of each case and must relate to inability or failure to take a particular step in time"

In considering whether or not there was sufficient cause why either the applicant, or his
5 counsel did not appear in court on the date that a matter was dismissed, this court is guided
by the reasoning and judgement of court in the case of **National Insurance Corporation vs
Mugenyi & Co. Advocates [1987] HCB 28** wherein court observed that;

***"...the test to be applied in cases of that nature was whether under the
circumstances the party applying honestly intended to be present at the
10 hearing and did his best to attend. It was also important for the litigant to
show due diligence in the matter."***

Counsel for the applicant in her affidavit in support states that upon perusal of the file,
counsel discovered that while this court had fixed 8th July, 2022 as the hearing date and
hearing notices in respect of the same had been served at counsel's chambers to the
15 receptionist, upon inquiry with all the advocates of the firm, counsel found that none of the
advocates had either received the said hearing notices, or entered the dates in their diaries.

She further states that when she inquired from the receptionist, she found that upon
receiving the hearing notices, she had kept them to herself without notifying either counsel
in personal conduct of the matter or any other advocate in the firm thus there was a
20 miscommunication between the staff and the lawyers in that regard, to which the applicant
was a victim, and that the applicant was shocked to find that the matter had been dismissed
yet he was waiting for the matter to be fixed.

It is the finding of this court that the applicant was effectively served through her advocates,
a fact that is not disputed by either counsel or the applicant himself. The claim that counsel
25 for the applicant was prevented from attending court because the hearing notices were not
brought to her attention is insufficient in view of the fact that no proof has been led to
convince this court that the applicant followed up on the matter.

Be that as it may, I am persuaded by the decision of court in the case of Nicholas **Roussos
Vs Gulamhussein Habib Virann and Anor SCCA No.9 of 1993(unreported)** wherein court
30 noted that mistake by an advocate though negligent, may be accepted as a sufficient cause.

It is evident from the evidence adduced that there was a clear miscommunication in counsel
for the applicant's chambers which caused the applicant not to appear before this court when
the matter came up for hearing.

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Section 98 gives court power to make a decision to meet the ends of justice for all parties involved. Accordingly, the order of dismissal is set aside, so as to enable the applicant prosecute his case. Consequently this application is granted and orders made as follows:

1. **The dismissal order in Civil Suit No. 0566 of 2021 is hereby set aside.**
2. **Civil Suit No. 0566 of 2021 is re-instated and shall be heard and determined on its merits.**
3. **No order is made as to costs.**

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Alexandra Nkonge Rugadya
Judge
25th January 2023.

Delivered by email
25/1/2023