

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**[LAND DIVISION]**  
**MISC. APPLIC. NO. 1607 OF 2022**  
**ARISING FROM HCCS NO. 544 OF 2020.**

**NORAH NAGAWA**

**APPLICANT**

**V**

- 1. STELLAH NAKATE
- 2. NAKASAGGA MARGARET
- 3. KIGOZI SPIRE

**RESPONDENTS**

**BEFORE: HON LADY JUSTICE P. BASAZA - WASSWA**

**R U L I N G**

**Representation:**

Ms. Birungi Monica for the Applicant

Mr. Mukisa Brian for all the Respondents.

**Introduction:**

[1] This Ruling is in respect of an application filed by Ms. Nagawa; the Applicant, by which she seeks that the dismissal of her suit vide HCCS 544 of 2020 on September 19, 2022 be set aside, re-instated and heard on its merits.

[2] The application is brought under **section 33 of the Judicature Act & sec. 98 of the Civil Procedure Act, and Order 9 Rules 23, 27 & 29** of the Civil Procedure Rules.

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[3] The grounds relied on by the Applicant are;

- i) That she appeared in court at 10:10 am, together with her Counsel, just as Court was recording its Ruling dismissing the Head Suit for non-appearance, and non-filing of documents as directed by Court.
- ii) That the heavy rain on that day had hampered her appearance.
- iii) That it was the first time she was not in court when the file was called for hearing, and had never been late nor failed to appear.
- iv) That she is interested in prosecuting the Head suit and was only prevented by reasonable cause from being able to file her witness statement
- v) That there were some challenges with *ECCMIS* that prevented her lawyer from completing the registration of her witness statement and it could not fully reflect at the time of hearing.
- vi) That she will be greatly prejudiced if the Head suit is not re-instated and decided on its merits.

[4] In his affidavit in reply, Mr. Kisozi Spire; the 3<sup>rd</sup> Respondent; answered in rebuttal as follows;

- i) That during the pendency of the suit the Applicant was in the habit of missing court appearances and that her lawyer also shunned away from attending court on several occasions, without sufficient reason.

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- ii) That despite the flimsy and lame excuse that it rained on that day; 19/09/2022, the Defendants and their Advocate were able to attend court.
- iii) That the defendants were able to file their witness statements on April 7, 2022 within the prescribed time, and that is yet another baseless, lame excuse for the Applicant to say that she was prevented by ECCMIS from filing her witness statement
- iv) That the Application raises no reasonable grounds for the non-appearance of the Plaintiff / Applicant in court and her failure to comply with the court's Orders and directives.

Analysis by Court:

[5] The Head suit No. 544 of 2020 for which the Applicant seeks to be re-instated, was dismissed under the provisions of **Order 9 Rule 22 of the Civil Procedure Rules<sup>1</sup> (the CPR)**. Under the next Rule; **Order 9 Rule 23 of the CPR**, it is provided that where a suit is dismissed under the preceding Rule Order 9 Rule 22, the Plaintiff may apply for an order to set aside the dismissal **if she satisfies court that there was sufficient cause for non-appearance when the suit was called on for hearing'**. Also see **National Insurance Corporation v Mugenyi & Company Advocates<sup>2</sup>**

[6] Learned Counsel for the Applicant argued in his written submissions that it was due to his negligence that the Applicant's suit was dismissed, and that the rights

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<sup>1</sup> S.I No. 71-1

<sup>2</sup> [1987] HCB page 28

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of the Plaintiff should not be blocked due to her lawyer's negligence. That the Applicant was always vigilant in attending court, that it was only unfortunate that her lawyer *always appeared late and even failed to file a witness statement*. That there has not been inordinate delay in filing this application.

[7] In reply, learned Counsel for the Respondents argued that the mistake of Counsel claimed in the Applicant's rejoinder substantially contradicts and is inconsistent to the reasons given in the Applicants' affidavit in support. He implored Court not to take that lightly. That the Applicant did not bother to officially write to court explaining why her witness statements were not filed on time. That no sufficient cause has been demonstrated by the Applicant as to why she failed to appear in court on September 19, 2022.

[8] I have looked at the court record and I note that indeed the Applicant / Plaintiff has been appearing in court at all the times the Head suit was called for hearing, save for the date that the same was dismissed. I therefore agree with the Applicant's Counsel that the Applicant has always been vigilant about prosecuting her case. In which circumstances, I also agree with him that his omissions to comply with the Court's orders and directives should not be visited on his client.

[9] By reason whereof, I will allow this application, but I am however constrained to penalize the Applicant's lawyer; **Mr. Senkeezi Steven** to pay the costs of this application. I will do so on the basis of his own admission or that of his Client, that he was negligent.

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Decision of Court:

[10] In the result, this application is allowed in the following terms;

1. The Applicant's lawyer; **Mr. Senkezi Steven** shall personally pay the costs of this application to the Respondents. **(Section 27 (1) of the Civil Procedure Act, applied).**
2. The Head Suit No. 544 of 2020 is set down for scheduling on June 15, 2023 at 10am.

I so Order,

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**P. BASAZA - WASSWA**

**JUDGE**

February 28, 2023

Ruling delivered electronically on the Judiciary ECCMIS system and via email to the parties.