

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO.1371 OF 2022**

5 **(Arising from Civil Suit No.0659 of 1998)**

**PATRICK MULONDO (suing as the  
surviving Legal Representative of the late  
EMMANUEL WASAJJA):.....APPLICANT**

**VERSUS**

10 **FREIGHT FOWARDERS (U) LTD:.....RESPONDENT**

**Before: Lady Justice Alexandra Nkonge Rugadya.**

**Ruling.**

15 This application brought under the provisions of **Section 33 of the Judicature Act cap.13, Section 98 of the Civil Procedure Rules Cap.71, and Order 9 rule 18, & Order 52 rules 1, 2, & 3 of the Civil Procedure Rules SI 71-1** seeks orders that **Civil Suit No.659 of 1998** be restored for hearing on its merits, and that costs of the application be provided for.

**Grounds of the application:**

20 The grounds of the application are contained in the affidavit in support the applicant, **Mr. Patrick Mulondo** the applicant herein who stated *inter alia* that while the order of dismissing **Civil Suit No.0659 of 2018** for want of prosecution was made on 16<sup>th</sup> August 2018, the applicant was not aware of the hearing date since his former lawyers never informed him which is why he made no appearance in court.

25 That because the applicant is still interested in prosecuting the suit, he filed **Miscellaneous Application No.1720 of 2019** on 7<sup>th</sup> November 2019 seeking to have the same restored but the same was dismissed on a technicality on grounds that that the applicant had no attached any authority appointing him as the deceased's legal representative, hence this application.

30 In addition, that the applicant being the son, and legal representative of the late Emmanuel Wasajja who was the plaintiff in the main suit brings this application in



that capacity as that the holder of the grant of letters of administration of the deceased, and that he had taken steps to have his case heard and determined in this court as the same is not only in its advanced stages but also has high chances of success.

- 5 Further, the applicant prayed that the dismissal order be set aside so as to enable the applicant pursue his matter because the dismissal thereof was occasioned by the applicant's former lawyers yet the applicant is still much interested in prosecuting the suit thus the dismissal order should be set aside.

10 That it is not only fair but also just and in the interest of justice that the dismissal order in the main suit be set aside and the case be heard once and for all as it has stayed long in the system owing to the applicant's former lawyers' fault.

The application was to the respondent's known Managing Director, Mr. Katende. It was not opposed.

**Consideration by court.**

- 15 I have carefully read and considered the evidence and submissions of counsel the details of which are on court record.

The issue for determination is whether the application shows sufficient cause to warrant the re-instatement of **Civil Suit No. 0659 of 1998**. It is trite law that powers to set aside dismissal order are in the discretion of the court, however, the applicant  
20 should furnish sufficient reasons to enable the court exercise its discretionary power.

The courts have established various tests as to what amounts to good or sufficient cause to warrant the setting aside of a dismissal and reinstatement of a suit dismissed for want of prosecution.

- 25 In the case of **Felix Tumbo Kisima vs TTCL Limited & Anor Civil Application No.1 of 1997**, the High court of Tanzania noted that the term 'sufficient cause' should not be interpreted narrowly, but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence, resulting in delay in taking any necessary step.

- 30 In **Captain Phillip Ongom vs Catherine Nyero Owoto, SCCA No. 14 of 2001** it was held that what amounts to sufficient cause includes a mistake by an advocate, illness of a party or advocate and ignorance of filing procedure by the party or their advocate.





In the case before me, the applicant states that avers that the dismissal of **Civil Suit No.695 of 1998** was occasioned by the mistake, and negligence of the applicant's counsel who did not inform him of the date of hearing that had been scheduled by court.

- 5 From the record of proceedings attached to the applicant's affidavit in support of the application, when **Civil Suit No.659 of 1998** came up for hearing on 27<sup>th</sup> October 2017, it was scheduled to come up for mention on 23<sup>rd</sup> April 2018. There is however no record of what transpired on that day.

- 10 When the matter next came up for hearing on 16<sup>th</sup> August 2018, it was dismissed for want of prosecution. It appears that no action had been taken by either counsel or the applicant herein in further prosecution of the matter.

- 15 The applicant then filed **Miscellaneous Application No.1720 of 2019** seeking to set aside the said dismissal but the same was dismissed on 2<sup>nd</sup> March 2021 on grounds that the applicant had not attached proof that he had authority to file the same on behalf of the deceased.

A litigant's right to a fair hearing in the determination of civil rights and obligations is enshrined in **Article 28 of the Constitution** and the same should not be defeated on the ground of his or her lawyer's mistakes. (*See: Captian Phillip Ongom case (supra)*)

- 20 In that case, court emphasized that the applicant should not be condemned for counsel's mistake and negligence given that she had duly instructed her lawyers and it was the lawyers that did not enter appearance.

Court in the case of **Yowasi Kabiguruka versus Samuel Byarufu, Court of Appeal, Civil appeal No. 18 2008**, that;

- 25 ***"It is axiomatic that a party instructs Counsel, he assumes control over the case to conduct it throughout, the party cannot share the conduct of the case with his Counsel. He must elect both to conduct it entirely in person or to entrust it to his Counsel."***

- 30 It was the applicant's unopposed evidence that because his former lawyers did not inform him of the hearing dates that had been scheduled by court, and that counsel did not also enter appearance or follow up on the matter so as to extract hearing notices and also have the same served on the defendants.



It is therefore tempting to believe that the series of events as laid out prompted the applicant to engage new lawyers.

5 **Section 33 of the Judicature Act *supra***, enjoins this court to grant all such remedies to enable the final determination of all matters of controversy between the parties.

It is noteworthy that this matter was filed over 2 decades ago, and from the record, the case was part heard and the plaintiff/applicant had one more witness. It is without a doubt that the same was in the advanced stages of hearing when it was dismissed.

10 The respondent did not file any objection to this application. On account of counsel's mistake to make the follow up on this case, court finds that there is cause sufficient to justify the setting aside of the order dismissing **Civil Suit No.659 of 1998**.

The matter is hereby reinstated and shall be cause listed for the next available session.

15 No orders as to costs.

.....

**Alexandra Nkonge Rugadya**

**Judge**

20 **11<sup>th</sup> October, 2023**

*Delivered by mail  
A. Nkonge  
G  
11/10/2023*