

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION No.333 of 2023
ARISING FROM CIVIL SUIT NO. 552 OF 2016

KIBAALYA WILLIAMAPPLICANT

VERSUS

KAMPALA CAPITAL CITY AUTHORITY RESPONDENT

BEFORE: HON. JUSTICE FLAVIA NASSUNA MATOVU

RULING

Introduction:

1. This application was brought under the provisions of, S. 98 of the Civil Procedure Act, O.9 r 23 &, and O. 52 rr 1& 2 of the Civil Procedure Rules. It was seeking for orders that;
 - a. The order dismissing HCCS No.552 of 2016 be set aside,
 - b. HCCS No. 552 of 2016 be reinstated and heard on its merits; and
 - c. Costs of this application be provided for.

It was brought by notice of motion which was supported by an affidavit sworn by Kibaalya William, the applicant. Grounds of the application were laid in the notice of motion and affidavit in support. Briefly the grounds were that;

- a) The applicant's advocate Mr. Eric Kiingi abandoned the case without informing him.

- b) The applicant called his advocate several times to know about the status of the case, but the advocate's phone was off and he was not at his chambers.
 - c) When the applicant went to court to check on the court file, he found that the suit was dismissed for want of prosecution due to non-appearance of the applicant and his lawyers.
 - d) The applicant was still interested in the suit and if not reinstated, he would suffer irreparable damage.
2. The respondent filed an affidavit in reply which was sworn by one David Oyo an advocate working with the respondent by which he called upon court to dismiss the application with costs. He maintained inter alia that;
- a) The application was irregular, incompetent before court and an abuse of court process for the reasons that the applicant had inordinately delayed in making the same and the affidavit of the applicant was full of falsehoods.
 - b) The applicant was negligent in not attending court in person on 7th May 2021 when the case was called for hearing.
 - c) Failure by the applicant to constantly keep track of the progress of his case to avoid its dismissal showed that he was not interested in the same.
 - d) Reinstating the case would prejudice the respondent by subjecting it to unnecessary length court process and litigation costs.
3. Both parties filed written submissions which this court has carefully studied together with all the pleadings and record of proceedings.

4. The issue to be decided by court is whether HCS. NO. 552 of 2016 should be reinstated.

Counsel for the applicant submitted inter alia that the applicant had shown that there was sufficient reason for reinstatement of the said suit. That O.9.r.23 of the Civil Procedure Rules empowers court to set aside dismissal order once sufficient cause has been shown. That the applicant was never informed of the hearing date of 7th May 2021 when the case was dismissed. He tried to get in touch with his advocate but with no success until he decided to inquire from court, where he was told that the case had been dismissed. He cited several authorities in support of his case that explain what amounts to sufficient cause which I have carefully studied.

Counsel for the Respondent on the other hand submitted inter alia that the case having been dismissed for want of prosecution, the only appropriate remedy for the applicant was either to appeal or file a fresh suit. He further submitted that the applicant had not shown sufficient cause for nonappearance when the case was called for hearing. The applicant did not exercise due diligence in following up his case with his lawyers. He also cited several authorities in support of these submissions which I have carefully studied.

After carefully studying the record of proceedings and submissions of both parties I established as follows:

- a) Civil Suit No. 552 of 2016 was filed at court on 31st August 2016.

- b) The case was called on several occasions i.e., 5/12/2017, 28/05/2018, 31/8/2018, 28/9/2018, 9/1/2020, and finally on 7/5/2021.
- c) On all these occasions the plaintiff was not ready to prosecute his case.
- d) On 7/5/2021, when the case was called, only counsel for the defendant was present and the matter was dismissed for want of prosecution. The record shows that it is not counsel for the defendant who moved court to dismiss the case but the court on its own decided to dismiss the case for want of prosecution.

Dismissal for want of prosecution presupposes that the judge has carefully and critically studied and analysed the casefile and come to the conclusion that the plaintiff has failed to prosecute his case and therefore dismisses the same.

Perusal of the record shows that the case was filed on 31/8/2016 and was dismissed on 7/5/2021. For a period of 4 years and 8 months the plaintiff had failed to prosecute his case.

In the case of Gold Beverages (U) ltd. Vs. Muhangura Kenneth, Segonga Godwin T/A Platinum Associates Land Division M/A No. 674 of 2019 it was held that the dismissal for want of prosecution seals the matter for the plaintiff in the same court which issued the dismissal order, and recourse can only be had by the plaintiff to an appeal or commencement of a fresh action subject to the law of limitation.

The applicant stated in his affidavit in support of the application that he called his advocate several times to know about the status of the case but his phone was off and he was not in his

chambers. However, he did not avail any evidence to prove this fact. S.101 of the evidence Act requires that one must not merely allege facts, but avail proof of the same. Proof of some form of correspondence or telephone call records under these circumstances would suffice.

Courts have overtime held that litigants have a duty to diligently follow up with their counsel during the conduct of any matter. In the supreme court case of Kananura vs. Kaijuka (CR 15 of 2016), their Lordships observed thus

“we note that whereas Kananura as a non-lawyer is a lay man in as far as matters of court processes are concerned, it is also true that the lawyer is only an agent of a litigant and or intended appellant. It therefore follows that it is the duty of the intended appellant to follow up and inquire from his advocate on the status of his case. In the instant case, Kananura’s conduct shows that he did not exercise any vigilance or diligence in pursuit of his intended appeal. Such conduct, in the circumstances amounted to dilatory conduct and negligence on his part.”

The court record shows that out of the 6 occasions that the case was called, the plaintiff attended only once i.e. on 28/9/2018.

The applicant had a duty to follow up with his previous advocate on the progress of the case in reasonable time. The matter was dismissed on 7th May 2021. The applicant did not elaborate as to when he came to learn of the dismissal but it is clear that he filed the instant application on 23/01/2023 which is about 20

months later. This was dilatory conduct on his part. Equity aids the vigilant

Counsel for the applicant called upon this court to invoke its inherent powers under S. 98 of the Civil Procedure Act and S. 33 of the Judicature Act.

I have however not found any special circumstances that would warrant this court to invoke its inherent powers. As a matter of fact, the plaintiff had failed to prosecute his case and the matter was rightly dismissed. The plaintiff is at liberty either to appeal or file a fresh suit as and when she is ready to prosecute the same.

This application therefore hereby fails and the same is accordingly hereby dismissed with costs to the Respondent.

DATED at Kampala this 27th day of September 2023


HON. LADY JUSTICE FLAVIA NASSUNA MATOVU
JUDGE.