

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISC. APPLICATION NO. 3351 OF 2023
ARISING FROM CIVIL SUIT NO.527 OF 2020

1.MAYANJA YAKOBO

2.BASEKE LUMU MUHAMAD ::::::::::::::::::::::::::::::: APPLICANTS

3.NAKATUDE GERTRUDE (Suing through their lawful Attorney
Serunkuma Vinali)

VERSUS

1. KAYONDO JAMES SSENDI

2. DLIRAJ SUMMIT CALASANZ (Administrator of the Estate of
the late Aloysius Kongoli)

3. NAIGABAABDALLAH

4. BOOZA BUGERA FREDRICK ::::::::::::::::::::::::::::::: RESPONDENTS

5. DAMULIRARONALD

6. SSENDIJJA JAMES

7. MAGIDU SSENTONGO

8. LWETUTEJOSEPH

9. AMALI JANE

10. KASULEBUYINZIKAKENNETH

11. THE COMMISSIONER LAND REGISTRATION

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING

Introduction;

1. This an application by Notice of Motion brought under Section 98 of the CPA, Order 9 r 22,23, Order 52 r 1 & 3 of the Civil Procedure Rules for orders that;
 - i) The order dismissing Civil Suit No. 527 of 2020 be set aside and Civil Suit No. 527 of 2020 be reinstated.
 - ii) Costs of the Application be provided for.

Background;

2. The Applicants filed Civil Suit No. 527 of 2020 against the Respondents for declarations including but not limited to ownership of the suit land and fraud on the part of the Respondents. That the Applicants donned powers of Attorney to a one Serunkuma Vinali to take conduct of the suit who appointed lawyers that applied for and obtained a temporary injunction.
3. That due to a break in communication, the Applicants revoked the said powers and started attending court whenever the matter was called. That on 16th June 2023, the Applicants instructed M/S Crane Associated Advocates and through Mr. Kigula Muhamood made an application to amend the Plaint which the court allowed and gave timelines within which to file

the necessary amendments. That when the order was made, the Applicant's new lawyers informed them that their presence was not necessary on the scheduled date since it was for purposes of mentioning the status of the amendments thus the Applicants never came to court.

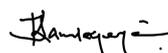
4. That Applicants were not informed of the next hearing date until the 30th day of October 2023 in the morning when the case was coming up for hearing. Mr Kigula Mahr informed the Applicants that he was indisposed but had instructed a colleague to hold his brief and have the matter mentioned.
5. That, unfortunately, the lawyer to hold brief came in court while the matter was pending a ruling on the application by the Respondent's lawyer to dismiss the matter under Order 9 rule 22. The court therefore dismissed Civil Suit No 527 OF 2020 under the said order thus this Application to have the same set aside.

Applicant's evidence;

6. The grounds of the application are contained in the application and supporting affidavit of the 2nd applicant which are briefly are;



- i) The Applicants filed Civil Suit No. 527 of 2020 against the Respondents for declarations including but not limited to ownership of the suit land and fraud on the part of the Respondents. That the Applicants donned powers of Attorney to a one Serunkuma Vinali to take conduct of the suit who appointed lawyers that applied for and obtained a temporary injunction.
- ii) That due to a break in communication, the Applicants revoked the said powers and started attending court whenever the matter was called.
- iii) That on 16th June 2023, the Applicants instructed M/S Crane Associated Advocates and through Mr. Kigula Muhamood made an application to amend the Plaint which the court allowed and gave timelines within which to file the necessary amendments.
- iv) That when the order was made, the Applicant's new lawyers informed them that their presence was not necessary on the scheduled date since it was for purposes of mentioning the status of the amendments thus the Applicants never came to court.



- v) That the Applicants were not informed of the next hearing date until the 30th day of October 2023 in the morning when the case was coming up for hearing.
- vi) That Mr Kigula Mahr informed the Applicants that he was indisposed but had instructed a colleague to hold his brief and have the matter mentioned.
- vii) That, unfortunately, the lawyer to hold brief came in court while the matter was pending a ruling on the application by the Respondent's lawyer to dismiss the matter under Order 9 rule 22.
- viii) The court therefore dismissed Civil Suit No 527 OF 2020 under the said order thus this Application to have the same set aside.
- ix) There is sufficient cause to support the setting aside the dismissal and reinstatement of C.S 527 of 2023.

Representation;

7. The applicant was represented by Mr. Kilibwa Simon Peter M/S CCAKS Advocates where as the 1st respondent was represented by Mr. Mukama Sanyu of M/S Crane Advocates there was no representation from the other respondents despite being served.



Counsel for the applicants filed written submissions which are to be relied on in the determination of this application.

Issues for determination;

8. The only issue for determination herein is ***whether the Applicant has proved sufficient cause for the reinstatement of Civil Suit No 527 of 2023.***

Resolution and determination of the issue;

9. The powers of this court to exercise its discretion to set aside and reinstate a dismissed application are not in dispute. Such powers are set out in Section 98 of the Civil Procedure Act cap 71 which empowers court to make such orders as may be necessary for the ends of justice. Order 9 rule 23 of the Civil Procedure Rules, S.1 71-1, also vests courts with powers to set aside the dismissal where sufficient cause has been shown.

10. In his written submissions, counsel for the applicant cited the Kenyan case of **Gideon Mosa Onchwati Vs Kenya Oil Co. Ltd & Anor[2017] KLR 650**, described what constitutes sufficient cause as follows: **“It is difficult to attempt to define the meaning of the words 'sufficient cause'. It is generally accepted, however, that the words should receive a liberal**



construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the Appellant”

11. The court further observed that; "Sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended.

12. Therefore, the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man.

13. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously"

- 14.** For the Applicant as demonstrated in paragraphs 1 of the affidavit in support of the Application, the applicants filed civil suit No 527 of 2020 against the respondents for recovery of land and fraud among other declarations.
- 15.** In paragraph 4-7 of the applicant's affidavit in support of the Application, the lawyer informed the Applicants that when the matter was coming up for mention on the status of the amendment, their Presence was irrelevant.
- 16.** When the matter came up for mention, the Applicants' lawyer was not in court and neither was any of the Applicants. That the Respondents' then fixed the matter for mention again effected service upon the Applicant's counsel in personal conduct of the matter Mr. Kigula Mahr who was in disposed on the scheduled date. That counsel gave instructions to fellow counsel to hold his brief who got at court late leading to the dismissal of Civil Suit No. 527 of 2020.
- 17.** Counsel submitted in the applicant's written submissions that It is trite law that parties are not visited with punishment arising from the mistake or inadvertence or negligence of counsel when the mistake, inadvertence or negligence is in respect to procedural matters in which case, the court would

lean towards accommodating the parties' interests without allowing mere procedural irregularities, brought about by counsel, to preclude the determination of a case on the merits.

18. The court must however be satisfied that the allegation of inadvertence of counsel is true and genuine' he further referred to the case of **Banco Arabe Espanol vs Bank of Uganda' SCCA No. I of 1998**, it was held that; "A mistake, negligence, oversight or error on the part of counsel should not be visited on the litigant. Such mistake, or as the case may be, constitutes just cause entitling the trial judge to use his discretion so that the matter is considered on its merits."

19. Another submission by counsel exhibited in the case of **Shabin Din v. Ram Parkash Anand (19551 22 EAC.A at 48**, it was held that: "The mistake or misunderstanding of the Plaintiffs legal advisor, even though negligent, may be accepted as a proper ground for granting relief under the equivalent of Order 19 rule 20, of the Civil Procedure Rules, the discretion of the court being perfectly free and the words "sufficient cause" not being comparable or anonymous with "special ground."

20. He therefore submitted that that the misadvise and miscommunication by counsel should not be interpreted as



inadvertent conduct or failure by the Applicants to pursue their land case.

21. I have considered both the pleadings and submissions of the Applicants. I will consider both the Applicant's Affidavit and written submissions about the application. I have also noted that the Respondents did not file any reply to the Applicant's Application.

22. The law applicable to this application is set under Order 9 Rule 23 (1) of the Civil Procedure Rules which provides as follows: "***Where a suit is wholly or partly dismissed under Rule 22 of this Order, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he or she may apply for an order to set the dismissal aside, and, if he or she satisfies the court that there was sufficient cause for nonappearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.*** "

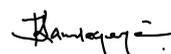
23. The case of **Florence Nabatanzi vs Naome Binsobedde Supreme Court Civil Application No.6 of 1987**, laid down the

guiding principles to be followed by courts when faced with situations like the instant case. These principles are;

- i) First and foremost, the application must show sufficient reason which relates to the inability or failure to take some particular step within the prescribed time. The general requirement notwithstanding each case must be decided on facts;
- ii) The administration of justice normally requires that substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from pursuit of his rights.
- iii) Whilst mistakes of counsel sometimes may amount to an error of judgement but not inordinate delay negligence to observe or ascertain plain requirements of the law;
- iv) Where an applicant instructed a lawyer in time, his rights should not be blocked on the grounds of his lawyer's negligence or omission to comply with the requirement of the law;
- v) A vigilant applicant should not be penalized for the fault of his counsel on whose actions he has no control.



24. From the Affidavit of the Applicant in support of the Application, the lawyer informed the Applicants when the matter was coming up for mention on the status of the amendment and that their presence was irrelevant. That when the matter came up for mention, the Applicants' lawyer was not in court and neither was any of the Applicants.
25. That the Respondents then fixed the matter for mention again, effected service upon the Applicant's counsel in personal conduct of the matter Mr. Kigula Mahr who was indisposed on the scheduled date who gave instructions to fellow counsel to hold his brief who got at court late leading to the dismissal of Civil Suit No. 527 of 2020.
26. This court is very aware that mistake of counsel through negligence may be accepted as a sufficient cause. In the present case, the error of the Counsel is failing to appear for the matters in court as well as misleading the applicants that their presence is not needed in court. Further he sent a fellow counsel to hold brief who arrived late after the matter had been dismissed.
27. I have therefore proved that that the applicants had intentions to prosecute the matter.



28. This court finds no genuine reason to deny the Applicants the orders sought for in their application putting into consideration that the Respondents did not file a reply to the Applicants Application

29. Therefore, the application is allowed and the dismissal order of Civil Suit No 527 of 2020 is hereby set aside, an order for reinstatement of Civil Suit No 527 of 2020 is hereby granted, Costs of the application are provided for.

I SO ORDER.



.....

NALUZZE AISHA BATALA

JUDGE

17th /01/2024