

**THE REPUBLIC OF UGANDA**

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

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO.1189 OF 2022**

**(Arising from civil suit no.3030 of 2016)**

**1. JOHN W KATENDE**

**2. FREDRICK E SEMPEBWA :::::::::::::::::::: APPLICANTS**

**VERSUS**

**1. SSENDAGIRE NSIBIRWA**

**2. DAMBA SUSAN**

**3. REGISTRAR OF TITLES :::::::::::::::::::: RESPONDENTS**

**BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING**

**Introduction;**

1. John W Katende and Fredrick E Sempebwa herein after referred to as the applicants brought this application against Ssendagire Nsibirwa, Damba Suzan and the Registrar of titles herein after referred to as the respondents under Section 98 of the Civil Procedure Act , Order 9 rule 18 and 29 of the Civil Procedure Rules ,

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Section 33 of the Judicature Act for orders that;

- i) An order setting aside the dismissal in Civil Suit No. 3030 of 2016 formerly Civil Suit No. 15 of 2010 be granted and the main suit be re-instated.
- ii) Costs of this Application.

**Background;**

2. The applicants filed Civil Suit No 15 of 2010 which is currently registered as Civil Suit No 3030 of 2016 against the respondents for fraudulently and illegally subdividing Kyadondo Block 200 Plot 220 at Kawempe. On the 17th day of December of 2022, the main suit was scheduled for hearing on the same day as the Pro Bono day. As a result of a circular allowing adjournment of cases on the pro bono day, the applicants and their lawyer did not appear in court. The matter was fixed on 11th March 2023 and dismissed on the same day for non-appearance of the parties.

**Applicant's evidence;**

3. The grounds on which the application is based are contained in the notice of motion and the affidavit deposed by Fredrick Sempebwa the 1st applicant. In a nutshell the

grounds are as follows;

- i) That the Applicants filed Civil Suit No. 15 of 2010 which is currently registered as Civil Suit No. 3030 of 2016 against the Respondents for fraudulently and without any colour of right or title unlawfully and illegally sub-dividing land comprised of Kyadondo Block 200 Plot 220 at Kawempe into two plots that is Plot 498 and Plot 499 obtained two certificates of title for the same plots as the registered proprietors.
- ii) On the 17th December 2022, when the main suit had been scheduled for hearing, unfortunately it was a pro bono day and Counsel for the Applicants together with the Applicants did not attend Court due to the circular allowing adjournment of cases scheduled on the pro bono day.
- iii) That the applicants were not served with the next hearing date of 11th March 2023 and were surprised to learn that their suit had been dismissed and the temporary injunction vacated.

iv) That I have sufficient cause for setting aside the order dismissing the main suit.

**Representation;**

4. The applicant was represented by Mr. Solom Sebowa of M/S Katende, Sempbwa & Co. Advocates there was no representation from the respondent. The applicants filed their affidavit in support of the application which I have considered in the determination of this application.

**Issues for determination;**

Issue 1; ***Whether there is sufficient cause to reinstate Civil suit No 3030 of 2016?***

**Resolution and determination of the issue;**

Issue 1; **Whether there is sufficient cause to reinstate Civil Suit No. 3030 of 2016 ?**

5. Counsel for the applicants submitted that on dismissal for non-appearance of the parties, the law gives a litigant a right to apply to set aside the dismissal of a suit and have the same reinstated where he or she can show that there is sufficient cause for their non-appearance. Counsel cited Order 9 Rule 18 of the Civil Procedure rules to support the

position.

6. Counsel further submitted that an application for restoration of a dismissed suit requires the applicant to satisfy court that there was sufficient cause for nonappearance i.e he had an honest intention to attend the hearing and he did his best to do so. Counsel relied on **Crown Beverages Limited V Stanbic Uganda Limited MA No.0181 of 2005**
7. In addition, Counsel also submitted that the applicants have persistently attended court save for the day the suit was dismissed and this is because the applicants were not served with a hearing notice.
8. Counsel for the applicants also submitted that it is just and equitable that the dismissal is set aside and the suit is reinstated to allow the determination of the same on its merits.
9. I will proceed and determine the application in light of the above and the evidence before this court.
10. Order 9 rule 18 provides thereof that; ***Where a suit is dismissed under rule 16 and 17, the plaintiff may subject to the law of limitation , bring a fresh suit or he she may for an order to set aside the dismissal and***

***if he or she satisfies court that there was sufficient cause for his or her non-appearance.....”***

**11.** In the case of **The Registered Trustees of the Archdiocese of Dar-es-Salaam v The Chairman Bunju Village Government & Ors Civil Appeal No 147 of 2006**

it was stated that;“***sufficient cause is proven if a party and his advocate show that he and his lawyer did not act in a negligent manner but more importantly there was want of bonafide on their part in view of the facts and circumstances of a case and the applicant cannot be aligned to have been “not acting negligently” or “remaining inactive”.***

**12.** In **National Insurance Corporation Vs Mugenyi and Co Advocates [1987] HCB 28** court observed that;“In

considering whether there was sufficient cause why Counsel for the applicant did not appear in court on the date the application was dismissed, 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 hearing and did his best to attend.”

**13.** I have carefully perused the affidavit in support of the application deponed by Mr Fredrick Sempebwa.

14. According to paragraphs 2.5, 2.6, 2.7, 2.8, 2.9 of the affidavit in support of the application, the applicants have continuously attended court save for the day the case was dismissed and even then it was because they were never served with a hearing notice.
15. The applicants could not be expected to know about the hearing of the suit without ever being served with hearing notice notifying them the date of the hearing of the suit. Their non-appearance cannot be out of their own making, it was as a result of them never being served with the hearing notice.
16. I have carefully reviewed the record and it suggests that Counsel for the Plaintiff has appeared at all times the parties were required to appear in Court save for the day the suit was dismissed. This conduct suggests that the applicants had an honest intention to attend the hearing and their only non-appearance was because they were not served with a hearing notice.
17. In the premises, I find the foregoing to be sufficient cause to reinstate Civil Suit No 3030 of 2016.
18. In consideration of the foregoing, the application succeeds with the following orders;

- i) The dismissal order in Civil Suit No 3030 of 2016 is hereby set aside
- ii) Civil Suit No 3030 of 2016 be and is hereby reinstated to be determined on its merits.
- iii) No orders as to costs.

**I SO ORDER.**



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**NALUZZE AISHA BATALA**

**JUDGE**

**17<sup>th</sup> /01/2024**