

**THE REPUBLIC OF UGANDA**  
**IN THE INDUSTRIAL COURT OF UGANDA AT KAMPALA**  
**MISCELLANEOUS APPLICATION No.25 OF 2020**  
**ARISING FROM LABOUR DISPUTE REFERENCE NO: 240 PF 2019**  
**ARISING FROM LABOUR DISPUTE NO: 41 OF 2018.**

**GIDEON AMBASISA**

**..... APPLICANT**

**VERSUS**

**ROOFINGS ROLLINGS MILLS LIMITED**

**..... RESPONDENT**

**BEFORE:**

- 1. THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE**
- 2. THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA**

**PANELISTS**

**1.MS. ROSE GIDONGO**

**2.MS. HARRIET MUGAMBWA NGANZI**

**3. MR. JACK RWOMUSHANA**

**RULING**

This application is brought under Order 9 rules 18 and Order 52 rules 1 and 3 of the Civil Procedure Rules (CPR) and section 98 of the Civil Procedure Act(CPA), seeking orders that:

- 1. The dismissal of Labour Dispute Reference No. 24 of 2019 be set aside and suit be reinstated.**
- 2. Costs of the application be in the cause.**

## BACKGROUND

The Applicant was employed by the Respondent on 5/11/2014. On 1/02/2018, he was summarily dismissed on allegations of theft. He instituted Labour Dispute Claim No. 41 of 2018, before the labour officer who subsequently referred the matter to the Industrial Court on 19/2/2019 vide Labour Dispute Reference No. 24 of 2019. According to the Applicant, he engaged Mr. Patrick Mugalula of **Katende Sempebwa and Co. Advocates**, to litigate the labour dispute on his behalf. Thereafter, he traveled abroad to pursue a certificate, in India and returned on 22/11/2019.

His case was scheduled for pre-session hearing in this Court on 23/09/2019 but on that day none of the parties appeared. In the absence of a reason for their non-appearance, the court proceeded to hear and determine it by dismissing it for want of prosecution.

### The Applicants case:

The Applicant's case, as contained in the notice of motion and supporting Affidavit deposed by the Applicant, himself is summarised as follows:

1. That there is sufficient cause for reinstatement of the suit.
2. That the Applicant honestly intended to prosecute this matter in Court but was unable to because of the negligence, error of judgment, mistake and omission of his former Counsel.
3. That he has a prima facie claim against the Respondent.
4. That it is Just and equitable that the labour dispute reference No. 24 of 2019 is reinstated and heard on its merits.

### The Respondents Case

The Respondents case as set out in the Affidavit reply deposed by Nsubuga John Bosco, the Respondent's Human Resource Manager is summarised as follows:

1. That he read and understood the Applicant's affidavit and as advised by his lawyers' **M/S Lukwago Co. Advocates**, contends that this application is vexatious, misconceived an abuse of court process and it is brought in bad faith, therefore Court should dismiss it with costs.
2. He admitted that, the Applicant was employed by the Respondent as a materials Officer from 5/11/2014 to 1/02/2018 and that, the Applicant was not a trained lawyer
3. He also admitted that on 26/06/2019, the Applicant engaged the services of a one Patrick Mugalula of **Katende Sempebwa and Co Advocates**, to litigate his case on his behalf.
4. He further admitted that, the Applicant traveled to India for a training Course at the National Institute of Wind Energy (NIWE) as evidenced by annexures "A", "B" and "C" attached his Affidavit in support.
5. That, the Applicant filed LDR No. 24 of 2019 on 19/02/2019, the Respondent filed its reply in court on 29/03/2019 and served it onto the Applicant on 03/04/2019.
6. That his lawyers informed him that, this court effected service of a hearing notice both his lawyers and the Applicant's lawyers, on 15<sup>th</sup> and 16<sup>th</sup> August respectively, directing the parties to compile their respective pretrial documents by 30/08/2019, in preparation for a pre-session hearing on 23/9/2019.
7. The Applicant or his lawyers, did not contact the Respondent or her lawyers for their input into the Joint Scheduling Memorandum, nor did they serve onto the Respondent any of their pretrial documents as directed by Court. Yet he believes that, between 16/08/2019 and

21/10/2019, the Applicant was still within the country. Therefore, he was not vigilant in pursuing LDR No. 24 of 2019.

8. That the Applicant has not he shown sufficient cause for the reinstatement of LDR No. 24 of 2019, therefore the Application should be dismissed with costs.

#### Rejoinder

1. The Applicant insisted that he was vigilant in prosecuting Labour Dispute Reference No. 24 of 2019 and the suit was dismissed because of the negligence, mistake and error in judgement of his former lawyers as stated in his Affidavit in support of the Application.
2. That not being a trained lawyer, he did not have the technical capacity to comply with the pretrial requirements which were the responsibility of his lawyer, as specified in the terms of agreement for the provision of legal services attached as annexure "RC".
3. Therefore, he has proven that, it was the negligence, laxity and omission of his previous counsel, who failed to attend Court on 23/9/2021 and this mistake should not visited on him.
4. That it is in the interest of Justice that the Application is allowed.

#### **REPRESENTATION**

#### **SUBMISSIONS**

##### **1. Whether there is sufficient cause for reinstatement of the suit?**

Citing **Nicholas Roussoss vs Gulam Hussien Virani SCCA N0.09/1993**, Counsel for the Applicant, defined sufficient Cause to mean, the inability or failure to take a particular step within a particular time in a particular manner and *"...a mistake by an Advocate though negligent may be accepted as sufficient cause."* He relied on Order 9 rule 18 of the CPR for the legal proposition that *where a suit is dismissed under rule 16 and 17 of this order, the plaintiff may subject to the law*

*of limitations bring a fresh suit or he or she may apply for an order to set the dismissal aside...”*

Therefore, given that both parties did not appear on the scheduled hearing date resulting in Court dismissing LDR No.24 of 2019, Court should invoke its discretion and reinstate the dispute on the grounds that, the Applicant instructed Counsel to undertake all processes concerning the matter and he relied on him to handle the case while he was pursuing his studies abroad, as evidenced by a copy of the visa attached to his affidavit in support. He contended that instead his former Lawyer violated Regulation 5(1) and 6 of The Advocates (professional Conduct) Regulations when he did not handle the matter. He quoted the regulations as follows:

*Regulation 5(1)*

*“Every advocate shall, in all contentious matters, either appear in court personally or brief a partner or a professional assistant employed by his or her firm to appear on behalf of his or her client...”*

*Regulation 6 states that:*

*“An advocate shall be personally responsible for work undertaken on behalf of a client and shall supervise or make arrangements for supervision by another advocate who is a member of the same firm of all work undertaken by nonprofessional employees ...”*

He also relied on **Ntalo Mohamed vs Stanbic Bank of Uganda Limited Misc. Appln. No 211 of 2017**, in which this court stated that, the Claimant having engaged an agent to prosecute his claim and having been properly instructed, Counsel’s failure to do as instructed could not be held against his client therefore, it was sufficient cause to set aside the dismissal. It was his submission that Court should find that the Applicant, instructed his former Counsel to handle all the matters arising from the suit but he directly or inadvertently failed

to do as instructed leading to the dismissal of the Claim, therefore it should be reinstated.

In reply Counsel for the Respondent submitted that, although the Respondent was in total agreement with the holding in **Nicholas Roussoss vs Gulam Hussien Virani SCCA N0.09/1993, (supra)**, it was trite law that, the test to be applied in determining such Applications, is whether the applicant honestly intended to attend the hearing and did his best to do so. He cited **Nakiridde vs Hotel International Ltd[1987] HCB 85**, for the same legal proposition. Counsel argued that, a case belongs to the litigant and not his advocate and the litigant has the legal obligation to follow up his/her case. According to him, there is no evidence of negligence on the part of the Applicant's lawyers.

He argued that, although the Applicant not being a lawyer, engaged his former lawyers to conduct his claim when he traveled to India for studies and only returned on 22/09/2019, the claim was filed on 19/02/2019, the Respondent replied to it by 29/03/2019 and served it on the Applicant by 3/04/2019. Counsel also contested the Applicant's submission that, he filed an amended Memorandum of claim on 3/07/2019 because he did not serve the said claim onto the Respondent. Counsel insisted that, the Claimant did not honestly intend to pursue his case because he took no steps to prosecute his case between 26/06/2019 and 21/10/2019 before he left the country. According to him, the fact that, the Applicant made no inquiries about his case from 19/02/2019 when it was filed, meant that he had abandoned the legal obligation of prosecuting the case, otherwise, he would have been made aware about the timelines court had set for filing the relevant pretrial documents by 30/08/2019 and that a pre-session hearing had been scheduled for 23/09/2019. He insisted that by only inquiring about the case after he returned from India, the Applicant had exhibited conduct of a litigant who was not honestly intending to prosecute his claim. He contended that the matter was dismissed for want of prosecution and

not want of attendance because the Applicant did not comply with Court's directives to file pretrial documents. Therefore, even in the absence of the Respondent, the matter could not have proceeded exparte. He argued that, had the Applicant filed the pretrial documents, this Court would have at the very list adjourned the matter at the instance of his efforts. He insisted that, a serious litigant who was interested in prosecuting his claim, would have caused his former lawyer to record his witness statement and other pretrial documents and inform him about the progress of his case. In his view the Applicant's conduct was not one of a serious litigant who honestly intended to prosecute his case hence its dismissal for want of prosecution. He concluded that, the Applicant had not proved to this court that, he honestly intended to prosecute Labour Dispute Reference No. 24 of 2019, therefore the application should be denied for being an abuse of Court process.

## **DECISION OF COURT**

We have carefully perused the Notice of Motion together with the supporting affidavit and affidavit in opposition. The point of contention as we understand it is, whether the Applicant has demonstrated sufficient cause to warrant the setting aside of Labour Dispute Reference No. 24 of 2019, which this Court dismissed for want of prosecution.

It is the law that in order for such an application to succeed, the Applicant must show sufficient cause for his or her or lawyers nonappearance resulting in the dismissal. Order 9 rule 18 provides in part that:

***"18. Plaintiff may bring fresh suit or court may restore suit to file.***

*Where a suit is dismissed under rule 16 or 17 of this Order, the plaintiff may, subject to the law of limitation, bring a fresh suit or he or she may apply for an order to set the dismissal aside; ....., the court shall make an order*

*setting aside the dismissal and shall appoint a day for proceeding with the suit...”*

It is not in dispute that the Applicant instructed Counsel Mugalula Patrick of **Katende Ssempebwa and Co. Advocates**, to handle his case on his behalf and indeed Counsel Mugalula filed and served the Respondent’s with the Applicant’s memorandum of claim on 19/02/2019 vide **Labour Dispute No. 24 of 2019**. It is also an agreed fact that, the Respondent’s filed their reply to the claim on 29/03/2019. We also have no doubt that both Counsel were served with a hearing notice for a pre-trial hearing scheduled for 23/09/2019. However, none of the parties appeared in Court on the scheduled date. The Court proceeded to determine the matter by dismissing it, for want of prosecution in accordance with Order 9 rule 17 of the Civil Procedure Rules.

Regulation 5(1) of the Advocates (professional Conduct) Regulations(supra), provides that;

*“Every advocate shall, in all contentious matters, either appear in court personally or brief a partner or a professional assistant employed by his or her firm to appear on behalf of his or her client...”* and

Regulation 6 of, provides that:

*“An advocate shall be personally responsible for work undertaken on behalf of a client and shall supervise or make arrangements for supervision by another advocate (emphasis ours) who is a member of the same firm of all work undertaken by nonprofessional employees ...”*

The regulations not only make the advocate engaged personally responsible, for the conduct of the case, it also obligates him or her to supervise or cause the supervision of the work relating to the conduct of the case, for and on behalf of the client. The literal definition of supervise according to the Oxford Dictionary on line is;

*“...to observe and direct the execution of (a task or activity), observe and direct the work of (someone), Keep watch over (someone ) in the interest of their, other’s security, to be in charge of( someone or something) ...”*

It is therefore the role of the Advocate in personal conduct of a case, to handle, watch over and monitor the progress of the case including appearing in court personally or briefing another advocate in the firm to do so. It is an agreed fact that, Mr. Mugalula an Advocate of **Katende Ssempebwa and Co. Advocates**, undertook to provide the Applicant with legal services in pursuance of his claim under **LDR No. 24. of 2014**. Mr. Mugalula was therefore, expected to compile with Court’s directives regarding the filing of pretrial documents, and for monitoring the progress of the file and appraising the Applicant accordingly. He was also expected to appear in court in person or cause another advocate from the firm to do so on 23/09/2019 when the matter came up for pre-session hearing. We have no doubt in our minds that as held in **Nakiridde vs Hotel International Ltd[1987] HCB 85**, by engaging Counsel to conduct his claim, the Applicant honestly intended to prosecute his claim.

After scrutinizing the evidence on the record and the submissions of both Counsel, we established that Mr. Mugalula, served the memorandum of Claim onto the Respondent’s Counsel, as counsel for the Applicant. Counsel for the Respondent in turn filed and served a memorandum of reply on to him. A perusal of the main file indicated that, on 7/8/2019, Court served both Counsel with notice of a pre-session hearing scheduled for 23/09/2019. Service was rendered on both Counsel and not on the parties individually.

Therefore, it was the responsibility of both Counsel as provided in Regulation 5(1) and 6 of the Advocates( professional conduct) Regulations, to notify their respective clients about the court notices and not the other way around as Counsel for the Respondent would want this court to believe. We therefore, do not associate ourselves with the assertion by Counsel for the Respondent that,

the it was the responsibility of the Applicant himself to take the necessary steps to follow up his case, having engages counsel to do so on his behalf, even if the notice for the precession hearing was served on to counsel before he left for his studies.

As already stated, having received Court service, Counsel Mugalula or any other lawyer of the firm was expected to appear in Court for the precession hearing on 23/09/2019. In the same vein, Counsel Mugalula as Counsel in personal conduct of the Applicant's case or any other advocate from the firm had the primary responsibility to advise him about the status or progress of his case and specifically in this case to advise him about the precession hearing that was scheduled for 23/09/2019. We have no doubt in our minds that Mr. Mugalula was properly instructed by the Applicant but with no explanation, he failed and or refused to fulfill his obligations as his Advocate, leading to the dismissal of LDR. No. 24 of 2019.

Even if the Applicant's certificate from the Indian National Institute of Wind Energy (NIWE) indicates that the Applicant was still in the country on the 23/09/2019, given that he traveled on 22/10/2019, the conduct of his case was in the hands of Mr. Mugalula, his lawyer, who had an obligation to advise him on the processes relating to the conduct of the case, such as the precession hearing. In the circumstances, the Applicant cannot be faulted for dilatory conduct of his lawyers and the in the interest of justice the mistakes of his former lawyer and particularly Counsel's failure to comply with the directives of Court to enter appearance for the precession hearing on 23/09/2019, leading to the dismissal of his case, cannot be visited on him. We believe that having not been appraised of the status of the case, the Applicant did not willfully absent himself from the hearing on the 23/09/2019.

We are convinced that Mr. Mugalula, his former lawyer was properly instructed, but he failed to act as instructed hence the dismissal of the case. We are

therefore satisfied that the Applicant has shown sufficient cause for the dismissal of LDR No. 24 of 2019, to be set aside. It is therefore set aside and the case is reinstated.

On whether the Applicant has a prima facie case, having set aside the dismissal order and having reinstated the suit, it is not necessary to discuss this issue.

In conclusion, we find merit in the Application, it accordingly succeeds. The order for dismissal of **Labour Dispute Reference No.24 of 2019** is set aside and the suit is reinstated. No order as to costs is made.

Delivered and signed by:

**1.THE HON. CHIEF JUDGE, ASAPH RUHINDA NTENGYE** .....

**2.THE HON. JUDGE, LINDA LILLIAN TUMUSIIME MUGISHA** .....

**PANELISTS**

**1. MR. RWOMUSHANA JACK** .....

**2.MS. HARRIET MUGAMBWA NGANZI** .....

**3.MS. ROSE GIDONGO** .....

**DATE: 24/09/2021**