

**THE REPUBLIC OF UGANDA**

**IN THE SUPREME COURT OF UGANDA**

**(CORAM: ODOKI, CJ; TSEKOOKO, MULENGA, KANYEIHAMBA,  
AND KATUREEBE, JSC)**

**CIVIL APPEAL No.7 OF 2006.**

**GGOLOOBA GODFREY .....APPELLANT**

**AND**

**HARRIET KIZITO.....RESPONDENT**

*[Appeal from the decision of the Court of Appeal at Kampala (Mpagi-Bahigeine, Engwau and Twinomujuni, JJ.A) dated 22<sup>nd</sup> February, 2006 in Civil Appeal No.65 of 2005]*

**JUDGMENT OF THE COURT**

This is a second appeal from the Court of Appeal which allowed the appeal by the respondent whose suit had been dismissed in the High Court for non-appearance on the day of hearing.

Three grounds of appeal have been argued by Mr. Lutakome, counsel for the appellant, in this Court centering on whether the Court of Appeal was correct in not agreeing with the High Court that the respondent's advocate had shown sufficient cause for not appearing at the hearing of

the case. The appeal is opposed by Mr. Makada, counsel for the respondent.

Having heard the submissions of both counsel and having considered the evidence on record, we are satisfied that the Court of Appeal came to the correct conclusion that the High Court erred in dismissing the application for reinstatement of the suit when the respondent's advocate had shown sufficient cause for not appearing because he was under the impression that the parties were still negotiating a settlement. His affidavit to that effect was, in our view, sufficient and it was not necessary for the respondent to personally swear an affidavit to that effect. It has been held that a mistake by an advocate should not be visited on a party. We see no merit in the argument by Counsel for the appellant that affidavit was not properly sworn because it did not bear the name of the commissioner for oath who commissioned it. We think that this was an afterthought on the part of the appellant as the matter was not raised in the trial court, or pressed in the Court of Appeal.

In the result we find no merit in this appeal. It is accordingly dismissed with costs in this Court.

We set aside the order of the High Court dismissing the suit and reinstate the suit to be heard on its own merits.

Dated at Mengo this 27<sup>th</sup> day of June, 2007.

**B.J.ODOKI**  
**CHIEF JUSTICE**

**J.W.N.TSEKOOKO**  
**JUSTICE OF THE SUPREME COURT**

**J.N.MULENGA**  
**JUSTICE OF THE SUPREME COURT**

**G.W.KANYEIHAMBA**  
**JUSTICE OF THE SUPREME COURT**

**B. M .KATUREEBE**  
**JUSTICE OF THE SUPREME COURT**