



In his submission Mr. Musana the learned counsel appearing for the applicant from the firm of Nyakabwa & Co. Advocates relied on what was deposed to by Mr. Nyakabwa and the grounds in support of the application.

Mr. Mugamba on the other hand opposed the application. While submitting on the first ground that Mr. Nyakabwa was mistaken about the time the case was to be heard at 9.30 whereas the case was called at 8.30 am he submitted that Mr. Nyakabwa as a seasoned advocate could not have been mistaken about time. The courts start at 9.00a.m. The court process gives the time at 8.30 a.m. And Mr. Nyakabwa should have been the first person to arrive.

On the second ground of the application the learned counsel submitted that he was handicapped. He could not advise the court properly. The counsel should have attached the memorandum of appeal in order for him to be able to argue the merits of the application.

I have very carefully considered the submission by the learned counsel appearing for the parties. Order 39 rule 16 talks of re—admission of an appeal which had been dismissed for default where it is proved that the appellant was prevented by any sufficient cause from appearing when the appeal was called for hearing.

Also under Order 9 Rule 15 of the CPR where a suit is dismissed under rule 14 where neither party appears the plaintiff may apply for an order to set the dismissal aside if he satisfies the court that there was sufficient cause for his non appearance. Under section 2 of the Civil Procedure Act Cap 65 a suit is interpreted as meaning all Civil Proceedings brought before this court by notice of motion.

The application is for the purpose of this Act a suit and as such the application is properly before this court either as under Order 39 Rule 16 or under order 9 r 15 of the CPR.

Turning to the merits of the application Mr. Nyakabwa swore an affidavit to the effect that he was under mistaken impression that the application was to be heard at 9.30 am and arrived in court at around 9.15 a.m. only to find that the application had been dismissed. In the absence of evidence to controvert the affidavit as deposed to by Mr. Nyakabwa I am satisfied that there was sufficient cause for the non appearance of the learned counsel representing the applicant when

the application was called for hearing. The order therefore dismissing the application is set aside and the application is reinstated and I order that a near hearing date be fixed with a view dispose of the matter. Costs of this application would be costs in the cause.

**I. MUKANZA**

**JUDGE**

***3/5/91***