

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]
MISCELLANEOUS APPLICATION NO. 802 OF 2019
(ARISING OUT OF TAXATION APPEAL NO. 05 OF 2019)
(ARISING FROM TAXATION APPLICATION NO. 586 OF 2017)
(ARISING FROM CIVIL REVISION NO. 23 OF 2012 & 16 OF 2013)
(ARISING OUT OF CIVIL APPLICATION NO. 306 of 2014)

WAKABALA & CO ADVOCATES=====APPLICANT

VERSUS

BANYENZAKI CHRISTOPHER =====RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application brought by way of Notice of Motion under Section 98 of the Civil Procedure Act Cap. 71, Order 43 rule 14 & 16 of the Civil Procedure Rules.

The prayers sought in the application are;

- a. The order dismissing taxation Appeal No. 05 of 2019 Wakabala & Co. Advocates v Banyenzaki Christopher be set aside.
- b. The taxation Appeal No. 05 of 2019 Wakabala & Co. Advocates v Banyenzaki Christopher be reinstated.
- c. Costs of the application be granted to the Applicant.

The background and grounds to this application are laid out in the supporting affidavits of Wakabala Herbert but briefly the only meaningful ground was that: The applicant's counsel Wakabala Herbert having personal conduct on 2nd September 2019 fell sick and was not able to attend court.

The respondent opposed the application and contended that it is a falsehood that the applicant's counsel was sick; *"During the hearing on the 2nd September, 2019 the Learned Judge; Justice Ssekaana Musa paused the proceedings and instructed the clerk a one Imelda to call counsel Wakabala Herbert on his mobile who then picked up the call and informed the clerk on the cell's loudspeaker that he was in Mukono and would immediately jump on a boda boda to come to court for the hearing"*

RESOLUTION OF ISSUE

Whether there are any grounds to merit the setting aside of the dismissal order and reinstating of the taxation appeal.

Counsel for the Applicant submitted that sickness is sufficient cause for non-attendance of court and a sufficient ground for reinstatement of the Appeal.

He further contended that he has always been willing to proceed with the appeal.

The respondent opposed the application and contended that the applicant was not sick since he was called by the court while we were in court and he said he was in Mukono and was going to get a boda boda and come to court but he never appeared.

According to counsel the allegation of being sick is a lie and falsehood and it goes to the root of the application.

Determination

The applicant has to show sufficient cause before the application for reinstatement is allowed. It was the evidence of the respondent that the allegation of sickness is a falsehood.

This court agrees with the respondent's counsel that the affidavit contained a falsehood and or a deliberate lie, since the deponent was called on instructions of court and he said he was coming to court but he never appeared. According to the case *Joseph Mulenga v Photo Focus(U) Ltd [1996] VI KALR 19*, where an affidavit in support of an application contained obvious falsehoods, such falsehoods render the entire affidavit suspect and an application based on an affidavit must fail.

The answer given in answer to the conversation he had with the Court clerk, is very suspect and an afterthought. He tries to polish his lie to be near to the truth when he states that; *"I was sick I had a tooth extraction in Mbale town and thereafter proceeded to Kampala but had a stopover in Mukono town after starting to feel a lot of pain and in a consequence could not make it to Court"*

The fact that this information is coming up in in an affidavit rejoinder which was not filed with leave of court, it was filed in error and does not make the applicant's case any better.

If that is what had indeed happened on 2nd September, the applicant should have stated in the affidavit in support and not in an affidavit in rejoinder. This court does not believe the version of events of the day as presented by the applicant.

The Courts have addressed what amounts to sufficient case; In the case of **Pinnacle Projects Ltd v Business in Motion Consultants Ltd, Miscellaneous Application No. 362 of 2010**, wherein it was held that "the phrase 'good cause' is not defined under the rules but is defined in Black's Law Dictionary, 7th Edition as a legally sufficient reason." However, the phrase 'sufficient cause' that is normally used interchangeably with the phrase "good cause" has been explained in a number of authorities."

In the case of **Bishop Jacinto Kibuuka v The Uganda Catholic Lawyers' Society & 2 Others, Miscellaneous Application No. 696 of 2018**; that the holding regarded sufficient cause being defined to mean where a

party has not acted in a negligent manner or where a party cannot be alleged to have not been acting diligently.

In the case of **The Registered Trustees of the Archdiocese of Dar es Salaam v The Chairman Bunju Village Government & Others**, Court ably held in quoting **Mosa Oncwati v Kenya Oil Co. Ltd & Another** [2017] KLR, that;

“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...”

The alleged sickness or extraction of the tooth never happened and it is a falsehood intended to hoodwink court. Therefore there was no sufficient cause for non-attendance of court by the applicant.

This application fails and dismissed with no order as to costs in order to bring litigation in this matter to an end.

I so order,

Dated, signed and delivered be email at Kampala this 30th day of April 2020

Ssekaana Musa
Judge