

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)**

MISC APPLICATION NO. 0418 OF 2015

ARISING FROM CIVIL SUIT NO. 248 OF 2012

1. MOSES ABUREK 2. OJAGOLE LENNY 3. AARORWA BADI 4. JOYCE AKOL ABUREK <i>t/a ATEK FARMERS</i>	} APPLICANTS
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VERSUS

SHYAM V. KANABAR**RESPONDENT**

Before: HON. MR. JUSTICE HENRY I. KAWESA

RULING

The Applicant moved this Court by way of Notice of Motion for orders that;

- a) the Court sets aside the order of dismissal of High Court Civil Suit No. 248 of 2012,
- b) the suit be reinstated and
- c) Costs.

The application is supported by the affidavit of Mr. Shafir Hakeen Yiga whose main thrust is that Counsel Yiga who had been retained to represent the Plaintiffs in HCCS NO. 248/2012 filed to attend Court because he was ill, whereafter the suit was dismissed.

The Respondents opposed the application and filed an affidavit in reply by Claire Akampulira. The gist of the opposition by Claire is that the said Yiga did not furnish documentary proof of sickness, and the Applicants did not also attend the Court hearing. They argue that the application has no merit.

In court, both parties addressed Court through their respective Counsel. Counsel for the Respondents argued that the non attendance by Counsel lacks proof of sickness as challenged by the Respondents under Claire's affidavit in paragraph 4 and 5.

However, Counsel for the Applicants referred Court to the decision of **Dr. Sheik Ahmed Muhammed Kasule versus Cairo Bank In Liquidation, Misc. Application No. 102/2012**, to argue for the application of substantive justice to the case and not to visit mistake of Counsel to the Applicant.

This application raises one issue, that is: whether Counsel's failure to attend, on grounds of illness as claimed amounts to sufficient cause.

The law governing the responsibilities between the client and his/her Advocate is the law of recognized agents. Section 11 and 14 of the Advocates Act, empowers the Advocates who are licensed to represent litigants. It has been held in **Betuco (U) Ltd & Anor versus Barclays Bank (U) Ltd & Anor (HCMA NO. 507/2009 (unreported)** that;

'once Counsel is acting for a party in a cause and his/her instructions not terminated, he/she then has all full control over the conduct of the trial and authority to compromise all matters connected with the action. In this responsibility, Counsel has to ensure that he/she attends the trial once notified. He has a duty to inform both Court and the litigant (client) if he/she is unable to attend, so that steps are taken to adjourn the matter'.

The facts before me show that Counsel Yiga did not attend Court. The client also did not attend Court. Even in this application, Counsel did not furnish any evidence of sickness. Also the affidavit of Joyce Akol in paragraph 9, raises the fact that she also had a sick child and she brought this to the attention of Yiga (her Counsel).

However, Yiga depones in paragraph 3 of his affidavit that he was also sick. None of them proved this sickness beyond the affidavits. In view of the affidavit of Claire in reply to paragraph 4 and 5, the said sickness remains questionable.

The above then operates to remove this case from one where substantive justice as per Article 126(2)(e) and the case of **Christine Namatovu Tebajjukira (1992) HCB 85** would come in aid.

This case shows that Counsel and the client were guilty of dilatory conduct and did not come to Court with clean hands, given the history of the matter.

I am inclined to agree with Counsel for the Respondents that there is no sufficient cause proved why this Court should re-instate the matter.

The application fails and is dismissed with costs.

I so order.

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Henry I. Kawesa

JUDGE

06/11/2017

06/11/2017:

Mr. Ronald Oyine for the 1st Respondent.

Mr. Busingye Dan for the 2nd Respondent.

Mr. Wanume for the Applicants.

1st Applicant present.

Legal officer of 1st Respondent present.

Clerk: Irene Nalunkuuma.

Court: ruling delivered in chambers.

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Emukol Samuel

Deputy Registrar

06/11/2017