

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION

MISCELLANEOUS APPLICATION NO. 805 OF 2021
(ARISING FROM CIVIL APPEAL NO. 094 OF 2019)
(ARISING FROM C.S NO. 234 OF 2015, CHIEF MAGISTRATE’S
COURT OF LUWEERO AT WOBULENZI)

MOSES MAKUBUYA ::: APPLICANT

VERSUS

NAMUDDU BEATRICE ::: RESPONDENT

BEFORE HON. JUSTICE NAMANYA BERNARD

RULING

Introduction:

1. The applicant brought this application under **Section 98** of the **Civil Procedure Act (Cap 71)**, **Section 14(1)** of the **Judicature Act (Cap 13)**, and **Order 43 rule 14(1)** and **Order 52 rule 1** of the **Civil Procedure Rules (S.I 71-1) (“CPR”)** seeking for orders that:
 - a) Civil Appeal No. 94 of 2019 be readmitted and heard on its merits.
 - b) Costs be provided for.

2. The main ground of the application is that the applicant was prevented by sufficient cause from appearing when the appeal was called for hearing.
3. The application is supported by affidavits sworn by Jingo Christopher Ntalo and the applicant. The application is opposed by the respondent who swore an affidavit in reply.
4. The applicant was represented by *M/s. Jingo, Ssempijja & Co Advocates* while the respondent was represented by the *Lubulwa Peter & Co Advocates*. Both parties filed written submissions which I have considered.
5. The background of this application is that the respondent sued the applicant in C.S No. 234 of 2015 (Chief Magistrate's Court of Luwero at Wobulenzi) seeking for; a declaration that she is the rightful owner of rental houses located at Kibisi L.C 1, Musaaale parish, Luweero district; an eviction order: a permanent injunction; mesne profits; and costs of the suit.
6. The Magistrate Grade One, Her Worship Hope Bagyenda, passed judgment against the applicant granting all the reliefs sought. The applicant being dissatisfied with the decision of the Magistrate Grade One, filed Civil Appeal No. 94 of 2019 in this Court.
7. On the 5th November 2020, when the appeal was called for hearing, the appellant and his counsel were absent, but the

respondent was present, whereupon the Court dismissed the appeal for want of prosecution.

Consideration:

8. The main issue for determination is whether Civil Appeal No. 94 of 2019 can be re-admitted.
9. **Order 43 rule 16** of the **CPR** allows an appellant whose appeal is dismissed for failure to enter appearance to apply for its readmission.
10. In order for an applicant to succeed under **Order 43 rule 16** of the **CPR**, it must be shown that he/she was prevented by sufficient cause from appearing when the appeal was called for hearing (see the cases of **Bushenyi District Council v. Musisi Fred (Miscellaneous Application No. 304 of 2021) [2022] UGHCCD 126; and Wakabala & Co. Advocates v. Banyenzaki Christopher (Miscellaneous Application No. 802 of 2019) [2020] UGHCCD 81**).
11. It is the applicant's submission that him and his lawyer were prevented from attending the hearing due to sufficient cause. His lawyer, Jingo Christopher Ntalo, is said to have been taken ill on the 9th November 2020 (see paragraph 4 his affidavit).

12. The applicant himself swore an affidavit in which he claimed that on the 9th November 2020, he lost a close relative (whom he did not name), and that he was in charge of burial arrangements. That as a result, he was unable to attend the hearing of the appeal when it was called.
13. The respondent submits that both affidavits in support of the application contain obvious falsehoods, and should be disregarded.
14. According to the Court record, Civil Appeal No. 94 of 2019 was called for hearing on the 5th November 2020 at 9:00am. The appellant and his counsel were absent, while the respondent was present. The Court then proceeded to dismiss the appeal for want of prosecution.
15. It is my finding that the two affidavits in support of the application contain obvious falsehoods and deliberate lies to the extent that, they claim that Civil Appeal No. 94 of 2019 was called for hearing on the 9th November 2020, whereas in actual fact, the appeal was called for hearing on the 5th November 2020 at 9:00am.
16. It is trite law that where an affidavit in support of an application contains obvious falsehoods, such falsehoods render the entire affidavit suspect, and an application based on such an affidavit must fail (see ***Bitaitana & 4 Ors v. Kananura (Civil Appeal 47 of 1976) [1977] UGHCCD 2***).

17. Hearing of Civil Appeal No. 94 of 2019 was fixed for hearing on the 5th November 2020 at 9:00am. The events that are allegedly responsible for non-attendance of the hearing by the applicant (illness of Advocate Jingo Christopher Ntalo), and the loss of a relative by the applicant (who is not even named), took place on 9th November 2020, after the hearing of the appeal, and accordingly do not constitute sufficient cause for non-attendance of the hearing.
18. It is therefore, my finding that the applicant has failed to prove sufficient cause for failing to enter appearance when the appeal was called for hearing on the 5th November 2020. On this basis alone, this application must fail.
19. I now turn to address the question of whether this application is properly before the Court.
20. Civil Appeal No. 94 of 2019 was dismissed by this Court for want of prosecution. **Order 43 rule 31** of the **CPR** governs the dismissal of appeals for want of prosecution, and it provides, *inter alia*, that:

“[...] the court may order the dismissal of the appeal for want of prosecution [...].”
21. It is my finding that the remedy available to a party whose appeal is dismissed for want of prosecution under **Order 43 rule 31** of the **CPR**, is to appeal against the order, and **NOT** to apply for its readmission under **Order 43 rule 16** of the **CPR**.

22. In my view, there is a clear difference between the dismissal of an appeal under **Order 43 rule 14** of the **CPR**, and dismissal of an appeal under **Order 43 rule 31** of the **CPR**. The former relates to dismissal of an appeal for non-appearance of the appellant when the appeal is called for hearing, while the latter relates to dismissal of an appeal for want of prosecution (e.g. failure by an appellant to take an essential step in having the appeal heard).
23. Accordingly, it is my finding that this application is improperly before the Court, and must fail.

Conclusion:

24. In the result, **I ORDER** as follows:

a) This application is hereby **DISMISSED**.

b) The Applicant shall bear the costs of this application.

I SO ORDER.

NAMANYA BERNARD
Ag. JUDGE
2nd September 2022