**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(COMMERCIAL DIVISION)**

**MISC. APPLICATION NO. 549 OF 2014**

**GERALD ZIHEMBIRE AHABWE::::::::::::::::::::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**HAJJI UMARU SEMAMBO::::::::::::::::::::::::::::::::::::::::::::::::::::::RESPONDENT**

**BEFORE: HON. JUSTICE H.P ADONYO**

**RULING:**

The applicant by Notice of motion brought under Order 9 rules 23, Order 52 rules 1, 2 and 3 of the Civil procedure Rules SI 71-1 makes an application to this Honorable Court that the order of dismissal of HCCS No. 702 of 2013 be set aside and the costs of this application to be in the cause.

The application is supported by an affidavit of one Jude Byamukama who is stated to be care of BNB Advocates and it highlights the grounds of the application which are five in total.

The background of this application is that on the 11/4/2014 when the mains suit was set for hearing, the applicant and his advocates were absent when the matter was called at 9:00 before the trial court. The applicant states that the reason why they could not be before the trial judge was that he was appearing together with his advocates before the mediator in the matter having counsel erroneously assuming that the mention notice served on his chambers was for appearance in mediation which was in advance stages as well and was about to be concluded

The applicant was heard exparte upon court satisfying itself that the respondent was not in position to appear in court being stated to be in custody serving a prison sentence and refused to receive any court document. The affidavit of service is on record deposing to those facts.

The applicant in this matter relies on the affidavit in support of this application therefore.

The main grounds for this application as briefly stated earlier are that the applicant and his counsel were prevented to appear before the trial court on the date in question when the matter was called due to the fact that both were before a mediator having mistakenly been misdirected by the law firms’ administrator who assumed that the matter was for mention before a mediator for the given date yet the court had also set the matter for mention and direction.

The applicant deposes that at all material times, he and his counsel were interested in prosecuting the main suit and this could be seen from the fact that on the date in question they were before a mediator and immediately upon being informed of the dismissal of the suit made thus application.

The applicant further avers that the dismissal of suit was occasioned by the inadvertent action of the counsel for the applicant which inadvertently should not be visited on the applicant. Counsel for the applicant relied on the case of **Goloba v Kizito** where the Supreme Court similarly held that since there was a settlement taking place, the High Court should have taken that into account before dismissing the suit. That this holding was followed in the case of **Mugawe Fredrick v Agn Finance MA 968/201**3 where it was held that the omission or mistake of counsel should not be visited on the applicant.

Order 9 Rule 27 of the Civil Procedure Rules provides that where an exparte order has been passed against a defendant, the same may be set aside if the court is satisfied that there was sufficient cause.

In this instant matter, however, it is the plaintiff who is before court and has moved it under Order 9 Rule 231 of the Civil Procedure Rules. The provisions of the said rule in brief provides for court to set aside any order reason for having been prevented from appearing in court when the matter was set for hearing.

In this case, the applicant has proved by affidavit evidence that where it not be for the inadvertently of his counsel he would have appeared in court on the date when the main suit was called. I am satisfied that it was the mistake of counsel which caused the applicant not to be in court since he was properly represented. The authorities cited therefore are relevant. I have also noted that upon the main suit being dismissed, the applicant quickly through this application took effort to have the decision of the court reversed by filing this application.

I also note that the report of the mediator indicates that this matter was on 11/4/2014 and 2/5/2014 before the mediator showing that on the date when it was dismissed even if the parties were not before court, the action of court was pre-mature through the court record indicated that parties had to appear before it on 11/4/2014 but there was none.

The applicant before appears genuinely interested in persuing the matter and therefore, I would find no reason why this court should prevent such action. In the premises, I find that the applicant has satisfactorily made a case for the reinstatement of the main suit since he has shown good cause.

I do therefore set aside the order dismissing HCCS No. 702/2013 and order it to be reinstated accordingly with the costs of this application to be in the cause.

**Hon. Justice H. P. Adonyo**

**Judge**

**7/10/2014**