



## **Background:**

The Appellant filed Land Civil Suit No. 034 of 2017 in the Chief Magistrate's Court of Kasese at Kasese for trespass on land located at Ruboni Village, Ibanda Parish, Bugoye Sub County, Kasese District seeking an eviction order and a permanent injunction and costs of the suit. All the Defendants filed their defense and the suit was fixed for the first time on 18<sup>th</sup> April 2018. On that day, Counsel Kanyonyi Luke appeared for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> Defendants. Counsel Edgar who represented the plaintiff was absent. The 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 9<sup>th</sup> Defendants were present while the rest were absent. Counsel Gerald who represented the 6<sup>th</sup>, 2<sup>nd</sup> and 8<sup>th</sup> Defendants was absent and Counsel Thembo Julius was holding his brief. Counsel Kanyonyi addressed court to the effect that they were served hearing notices by the plaintiff and prayed that they file witness statements. Counsel Thembo Julius concurred with Kanyonyi while the plaintiff asked court for time to look for another advocate to represent him. Counsel Kanyonyi Luke replied that the plaintiff's lawyer was to write to them indicating that he had withdrawn instructions. The trial magistrate thus directed parties to file a joint scheduling memorandum and fixed the case for hearing on the 23<sup>rd</sup> May 2018 and advised parties to file their respective witness statements. The plaintiff was to file by 4<sup>th</sup> May 2018 and the Defendants by 18<sup>th</sup> May 2018.

On 23<sup>rd</sup> May 2018 when the case came up for hearing, the plaintiff was absent as well as his Counsel while Counsel Luke Kanyonyi who appeared for the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Defendants was present and Counsel Gerald for the 2<sup>nd</sup>, 6<sup>th</sup>, and 8<sup>th</sup> Defendant was absent. There is no record as whether any of the Defendants were in court. Counsel Luke thus made a prayer to have the case dismissed. The trial Chief Magistrate made a ruling dismissing the suit in the following words:

“The plaintiff was in court when the matter was adjourned even if he has not got a lawyer he would have appeared. Since he is not here the plaintiff’s case is dismissed for non appearance of the plaintiff under 0.9. r 22 CPR with costs.”

5 The appellant being aggrieved with the dismissal order by the Chief Magistrate filed Misc. Application No. 016 of 2018 for reinstatement of Land Civil Suit No. 34 of 2017. The main ground on which the application was premised was that the appellant heard the date on which case was adjourned to as 25<sup>th</sup> May 2018 and not 23<sup>rd</sup> May 2018. That as such he was not present on 23<sup>rd</sup> May 2018 when the case was dismissed but appeared on 25<sup>th</sup> May 2018 when he was informed that his case  
10 was dismissed and he immediately filed an application for reinstatement.

The trial magistrate dated 22<sup>nd</sup> August 2012 allowed the application and held thus:

“I find that this application has no merits but in order for the matters in contention to be resolved, let the Appellant first pay the taxed costs of the dismissed suit before C/s No. 37/2017 can be reinstated.”

15 The appellant being aggrieved lodged this appeal and framed the following grounds for determination by court:

1. *That the trial Chief Magistrate at Kasese erred in law and fact when she ordered the plaintiff to pay costs for the dismissal of the suit before reinstatement.*
- 20 2. *That the trial Magistrate erred by ruling that the appellant deceived court when he put it that he misconceived the date upon which the case was heard.*
3. *That it is within the interests of justice that this suit is expeditiously heard.*

**Hearing:**

The parties did not file submissions ever since the appeal was lodged on 20<sup>th</sup> September 2018 and after the record was received in the High Court on the 10<sup>th</sup> October 2018. This court therefore decided to determine the appeal on the basis of the grounds of appeal framed and the record of proceedings of the lower court.

## 5 **Consideration of the Appeal:**

The main issue is the propriety of the dismissal order made on 23<sup>rd</sup> May 2018 and the order reinstating the suit on condition that the appellant pays the taxed costs made on the 22<sup>nd</sup> August 2018.

The dismissal order made by the Chief Magistrate on the 23<sup>rd</sup> of May 2018 was  
10 made under order 9 rule 22 of the Civil Procedure Rules that states: “***Where the Defendant appears, and the plaintiff does not appear, when the suit is called on for hearing, the court shall make an order that the suit be dismissed, unless the Defendant admits the claim, or part of it, in which case the court shall pass a decree against the Defendant upon such admission, and, where part only of the***  
15 ***claim has been admitted, shall dismiss the suit so far as it relates to the remainder***”

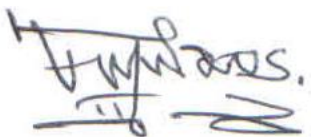
The above provision gives the presiding judicial officer the discretion to dismiss a suit when the case is called for hearing and the plaintiff does not appear and the defendant appears. In this case, on 23/5/2018, the record captured Counsel Luke  
20 Kanyonyi who appeared for 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> defendants as present and that the defendants were all in court. Counsel Gerald for the 2<sup>nd</sup>, 6<sup>th</sup>, and 8<sup>th</sup> defendants was recorded as absent. The record does not state whether the 2<sup>nd</sup>, 6<sup>th</sup>, and 8<sup>th</sup> defendants were present or not. This Court is inclined to take the view that the 2<sup>nd</sup>, 6<sup>th</sup>, and 8<sup>th</sup> defendants were not present for if they were indeed present  
25 court should have recorded them as present. In the absence of some of the

defendants and Counsel Gerald who represented the 2<sup>nd</sup>, 6<sup>th</sup> and 8<sup>th</sup> defendants, it was unfair to conclude that when the suit was called for hearing, the defendants were present and that only the plaintiff was absent. In addition, the subject matter is a land matter and the plaintiff had made effort to have the case heard by extracting and serving the first hearing notice. The case was coming up for the second time. In the premises the interests of justice favored an adjournment as opposed to a dismissal of the case. Therefore the justice of the matter required that in determining Misc. Application No. 016 of 2018, the reinstatement should have been allowed with no order as to costs.

This appeal succeeds with the following orders:

- 1. That the dismissal order of KAS – 00- CV – CS – NO. 37 of 2017 dated 23<sup>rd</sup> May 2018 is accordingly set aside.**
- 2. That the suit is hereby reinstated and shall be heard on merits.**
- 3. The order that the appellant pays costs of the dismissal is hereby set aside.**
- 4. The Registrar is directed to immediately prepare and send back this file to the Chief Magistrate of Kasese for expeditious disposal of the case on merit.**
- 5. That each party shall bear own costs.**

I so order.



Vincent Wagana  
**High Court Judge**  
**Fort-portal**

**10.01.2023.**