

2. The Applicant's right to fair hearing was derogated.
3. The applicant was vigilant on prosecuting his application which has the effect of striking out MISC. application No.843 of 2021 seeking to commit him to Civil Prison.
4. The application has been filed without delay.

In response to the application, the respondent filed an Affidavit in Reply and opposed the Applicant's application. Mr.Oburu Odoi Jimmy, Principal State Attorney in Respondent's Chambers swore an affidavit on behalf of the Respondent and stated as follows;

1. That the Applicant filed MISC. Application No.846 of 2021 seeking to strike out MISC. application No. 843 of 2021. MISC. Application No. 846 was dismissed by Court for want of prosecution.
2. That on 23rd December 2021 at 1.10 pm, the Applicant filed MISC. Application No. 916 of 2021 which seeks to strike out MISC. application 843 of 2021 on the same grounds as those in the dismissed application.
3. That on 23rd December 2021 at 1.10 pm, the Applicant simultaneously filed the present Application (No. 917) seeking to reinstate MISC. Application No. 846 of 2021.
4. That the Applicant's simultaneous filing of this present application which seeks to reinstate the dismissed application, and MISC. Application No. 916 of 2021 which seeks the same orders and on the same grounds as dismissed application, amounts to an abuse of this Court process.
5. That it is in the interest of justice that this application be struck out with costs for being an abuse of Court process.

BACKGROUND

The Respondent in the present application (Attorney General) filed Misc. Application No.843 of 2021 in this Court, against the Applicant in the present application (Male Mabirizi Kiwanuka) seeking orders that: a declaration that the Respondent/Applicant is in contempt of court and an order that the Respondent/ Applicant be committed to civil prison for contempt of court. As a result, the Applicant in the instant application filed Misc. Application No.846 of 2021 on 29th –November 2021, seeking an order of court to strike out the Misc. application No.843 of 2021 and the same was dismissed with costs on 22nd December 2021 for want of prosecution after court realized that the Applicant (Male Mabirizi), had not appeared in court twice and had not taken any positive steps towards prosecuting the application.

The Court also found out that the Applicant had failed to serve his own application on the Respondent. Following the dismissal of the said application, the Applicant in the present application 2021 filed Misc. Application No. 916 of 2021 on 23rd –December in this court seeking an order to strike out Misc. application No. 843 of 2021 which is pending determination.

ISSUES

- 1. Whether the applicant's application amounts to abuse of Court process?*
- 2. Whether there are sufficient grounds for court to grant orders sought by the applicant.*

The applicant was self-represented but never appeared in this court while the respondent was represented by *Ms. Patricia Mutesi-Assistant Commissioner*.

Like in all other applications filed on the same day, the applicant never appeared in court when they were called for hearing and did not file any submissions in support of his case. The court decided to proceed to determine the same instead of dismissing the same for want of prosecution.

Determination

Whether the applicant's application amounts to abuse of Court process?

An abuse of the Court's process would, in general, arise where the Court is being used for improper purposes, as a means of vexation and oppression, or for ulterior purposes; that is to say, court process is being misused. The proceedings, in such a case, should be shown to be frivolous, vexatious or harassing, or groundless not based on law. see Meme v Republic [2004] 1 EA 124 (HCK)

The Supreme Court of Nigeria in **Chief B. A. Allanah & Ors V. Mr. Kanayo Kpolokwu & Ors** N.W.L.R. Part 1507 Page 1, Per Amiru Sanusi Jsc;

"The concept of abuse of court process is not precise as such. It involves peculiar or various conditions, but in a nutshell, the common feature of abuse of process of court centers on improper use of judicial process by a party in litigation aimed or targeting on interference with due administration of justice. To my mind, some of the features of abuse of court process include the under mentioned features, even though they are by no means exhaustive. These features are:

- i) Filing of multiplicity of actions on the same subject matter against the same opponents on the same issues or numerous actions on the same matter between the same parties even where there is in existence, a right to commence the action.*
- ii) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.*
- iii) Where two or more similar processes are used in respect of the exercise of the same right, for instance, a cross appeal and a respondent's notice.*
- iv) Where two actions are instituted in court the second one asking for relief which may however, obtained in the first, the second action is prima facie vexatious and an abuse of court process. "*

The Respondent contends in his affidavit in reply: “**paragraph 6**” that the Applicant’s simultaneous filing of this present application which seeks to reinstate the dismissed application, and Misc. Application No. 916 of 2021 which seeks the same orders and on the same grounds as dismissed application, amounts to an abuse of this Court process.

I have examined Misc. Application No. 916 of 2021, arising out of Misc. Application No. 843 of 2021, arising out of Misc. Cause No.287 of 2021, filed at the High Court of Uganda at Kampala –Civil Division on 23rd December 2021 at 1.10pm by Notice of Motion between: **Male H. Mbirizi v Attorney General**. I have read the affidavit in support in respect of the same. The ruling of this application is pending, however, the applicants seeks the following orders;

- 1. That Misc.Application No. 843 of 2021 is struck out.*
- 2. That the costs of the application be personally and individually be paid to the applicant by Ms. PATRICIA MUTESI, Assistant Commissioner and Mr. JIMMY OBURU ODOI,PRINCIPLE State Attorney in Ministry of Justice and Constitutional Affairs.*

I have also examined Misc. Application No.846 of 2021, arising out of Misc. Application No. 843 of 2021, arising out of Misc. Cause No.287 of 2021 between: **Male H. Mbirizi v Attorney General**. This application was also filed at the High Court of Uganda at Kampala –Civil Division on 29 November 2021 at 10.05am. This application was dismissed with costs for want of prosecution but the applicant had sought the following orders;

- 1. That Misc. Application No. 843 of 2021 is struck out.*
- 2. That the costs of the application be personally and individually be paid to the applicant by Ms. PATRICIA MUTESI, Assistant Commissioner and Mr. JIMMY OBURU ODOI,PRINCIPLE State Attorney in Ministry of Justice and Constitutional Affairs.*

The present application was filed on 23rd December 2021 at 1.10pm in the same court seeking an order to reinstate Misc. Application No. 846.

In comparison, I have found out that Misc. Application No. 916 of 2021 which is pending ruling before this Court and Misc. Application No. 846 which was dismissed and the applicant seeks to reinstate in the present case, are seeking the same orders and against the same Respondent and basing on the same grounds, in other words it was just a **copy and paste**.

Thus, if Court reinstates Misc. Application No. 846 of 2021 as the applicant seeks in the present application, there shall be two pending applications in the same Court which are similar, that is to say, Application No. 916 of 2021 which is due for ruling and Misc. Application No. 846 of 2021 hence making the current application an abuse of court process.

The nature of the application made clearly show the ineptness of the applicant in the procedures of court. The nature of applications filed clearly show abuse of court process and confusion of the mind on what procedure to take in opposing an application. The applicant wants to re-instant or set aside a dismissed application No. 846 of 2021, while at the same time has filed two other applications seeking the same orders in Misc. Applications 918 & 921 of 2021.

One of the main forms of abuse of court process is the institution of a multiplicity of actions with the same parties on the same subject-matter. *In National bank of Kenya Ltd. v John Odowa Oluoch, Kisumu High Court civil Case No.205 Of 2007*: filing several applications seeking same order amounts to an abuse of Court process. This is a strain on the meager resources of the judiciary and seriously contributes to the backlog of cases.

In account of the above, I therefore, find the present application to be against the principle of an abuse of Court process.

Whether there are sufficient grounds for court to grant orders sought by the applicant.

The applicant has not set out any sufficient grounds for setting aside the orders of dismissal made on 22nd December 2021. He claims he was not aware when the matter was called for hearing and he was vigilant in prosecuting his application.

The applicant had demonstrated to this court by way of evidence the efforts he made to show that he was interested in prosecuting the application.

The court made an order to serve the applicant by email and it was indeed done to the satisfaction of the court. The applicant was fully aware of the date for hearing but for reasons best known to himself he refused to attend court.

He does not state that the service by email was not effective apart from trying to challenge the same in a separate application that the court did not exhaust all the available means of effecting personal service.

This application is part of the applicant's chain of abuse of court process and it only intended to delay trial. The nature of the application dismissed is not known in law and was merely an imagination of the applicant to stop an application for contempt. An application to strike out an application for contempt is the clearest abuse of court process such that the court should not hear contempt proceedings against the applicant.

This application fails and is therefore dismissed with costs.

I so order.

SSEKAANA MUSA

JUDGE

27st January 2022