

want of prosecution by Lady Justice Immaculate Busingye on the 19th April 2022.

5. The applicant is aggrieved by the order of dismissal of the appeal, and seeks leave to file a fresh appeal and to extend time to file a memorandum of appeal.
6. The application is opposed by the respondents through an affidavit in reply sworn by Walugembe Fred, in which he stated that due to lack of follow up by the appellant, the appeal was rightly dismissed.
7. At the hearing of the application on the 25th day of May 2023, the applicant was represented by *Ms. Muwanguzi Patience* while the respondent, *Mr. Walugembe Fred* represented himself.
8. There are two instances under the rules of procedure where an appeal may be dismissed by court without hearing its merits. These include dismissal for non-appearance of the appellant on a day fixed for hearing; and dismissal for want of prosecution.
9. Order 43 rule 14 of the Civil Procedure Rules provides that an appeal may be dismissed upon default in appearance by the appellant when it is called for hearing, and states that:

“14. Dismissal of appeal for appellant’s default.
(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the court may make an order that the appeal be dismissed.”
10. Under Order 43 rule 31 of the Civil Procedure Rules, the High Court has power to dismiss an appeal for want of prosecution:



“31. Dismissal for want of prosecution.

(1) Where there has been undue delay in the hearing of an appeal, the registrar may obtain the directions of a judge for the listing of the appeal at the next ensuing sessions of the High Court.

(2) Notice of the listing shall be served in such manner as the judge may think fit upon the appellant and respondent or their advocates, and upon the hearing thereof the court may order the dismissal of the appeal for want of prosecution or may make such other order as may seem just.”

11. For appeals dismissed under Order 43 rule 14 of the Civil Procedure Rules for default in appearance, an aggrieved appellant may apply under Order 43 rule 16 of the Civil Procedure Rules for readmission of the appeal:

“16. Readmission of appeal dismissed for default.

Where an appeal is dismissed under rule 14 or 15 of this Order, the appellant may apply to the High Court for the readmission of the appeal; and, where it is proved that he or she was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit.”

12. Where an appeal is dismissed for want of prosecution, the rules are silent on the remedy available to an aggrieved appellant. The case of Abel Balemesa v. Yesero Mugenyi, High Court of Uganda (Masindi), Misc. Application No. 126 of 2019 (Arising from Civil Appeal No. 86 of 2014) provides a possible solution for an appellant who finds him or her self in this predicament, and in this case, Justice Gadenya Paul Wolimbwa held that:



“[...] whereas Order 43 of the Civil Procedure Rules is silent on how to reinstate a dismissed appeal under Order 43 rule 31 of the Civil Procedure Rules, an affected party can rely on article 126 (2)(e) of the Constitution and section 98 of the Civil Procedure Act to request the court to reinstate a dismissed appeal if they have good reasons why the appeal should be reinstated. I should however, caution that the inherent powers of the court should only be invoked in very compelling circumstances and in a limited manner.”

13. Accordingly, an appellant aggrieved by the dismissal of an appeal may apply under article 126(2)(e) of the Constitution of Uganda, section 98 of the Civil Procedure Act (Cap 71) and section 33 of the Judicature Act (Cap 13), and the court may invoke its inherent powers to reinstate or re-admit a dismissed appeal on condition that the appellant establishes a compelling case and unique/ rare circumstances. See also Kigozi Andrew v. Mukasa Ronald (Miscellaneous Application No. 1516 of 2022, High Court, Land Division) [2022] UGHCLD 197.
14. In the application before me, the applicant seeks for leave to appeal against the judgment and orders of the learned Magistrate Grade One. The applicant does not seek to reinstate or readmit Civil Appeal No. 074 of 2019: Zubeda Mukasa Kiziri v. Walugembe Fred that was dismissed by the High Court for want of prosecution.
15. I would have considered the possibility of reinstating Civil Appeal No. 074 of 2019 subject to the applicant establishing a compelling case to do so, but the applicant has not asked for it.



16. I consider the application before me to be incompetent. It is accordingly struck out, and the applicant is ordered to pay the costs of the application.

IT IS SO ORDERED


BERNARD NAMANYA

JUDGE

31 May 2023




31 May 2023 at 9:16am.

Walugembe Fred – Respondent	Self-represented
Applicant and counsel absent	Counsel for the appellants
Winnie Nabuule	Court Clerk

Court:

Ruling delivered in open chambers.



Bernard Namanya

BERNARD NAMANYA
JUDGE

31 May 2023