THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

MISCELLANEOUS APPLICATION NO. 1017 OF 2023

[ARISING FROM MISCELLANEOUS APPLICATION NO. 1657 OF 2021]

[ALL ARISING FROM CIVIL SUIT NO. 669 OF 2014]

UGANDA DEBT NETWORK	**]**	**APPLICANT**
VERSUS		
EDWARD RONALD SEKYEWA **T/A HUB FOR INVESTIGATIVE MEDIA**	**]** **]**	**RESPONDENT**

Before: Hon. Justice Ocaya Thomas O.R

RULING

Introduction

The Applicant brought this application under the provisions of Article 126(2)(e) of the Constitution of Uganda, Section 33 of the Judicature Act, Section 96 and 98 of the Civil Procedure Act, Section 62 of the Advocates Act and Order 50 Rule 8 of the Civil Procedure Rules ["CPR"]

The Application seeks orders that the Applicant be given leave to file an appeal out of time against the taxation ruling of the learned Registrar of this court in the main suit dated 18 June 2021 and costs of this application.

Background

The Respondent filed Civil Suit 669 of 2014 against, interalia, the Plaintiff in this court. On 20th October 2020, this court returned judgment in that suit in favour of the Respondent. In the orders of the court, the Respondent was also awarded costs.

The Applicant was dissatisfied with that decision and therefore filed Civil Appeal No. 192 of 2021. While the appeal was pending, the Applicant filed an application for stay of execution and review of the taxation proceedings vide HCMA 1657 of 2023. The Court, in its ruling in that application, allowed the application for stay of execution in part and directed the Applicant to file its appeal or where applicable the application for leave to appeal out of time within thirty (30) days of this ruling lest the stay of execution granted should lapse.

The Applicant contends that owing to the above, the Applicant brought this application for leave to file its appeal against the taxation decision out of time. The Applicant asserts that the reason for failure to file its appeal in time is because it was never notified of the date of the ruling and neither was it heard in the taxation proceedings that resulted in an award of UGX 21,601,400 as costs of the suit.

The Applicant contends that it requested for a copy of the record of proceedings which was never provided to it, that it has never received a full version of the taxed bill of costs and does not know how the award of UGX 21,601,400 was arrived at, that the intended appeal challenges the taxing master's failure to follow procedure when he failed to make awards on each individual item in the bill of costs or allow a pre taxation meeting between the parties that would have ensured a fair and just award of costs.

The Applicant contends that the taxation certificate was never served on it which made it impossible for the Applicant or its lawyers to obtain knowledge of the taxation decision and challenge it in time. The Applicant also asserts that the taxation ruling was not delivered in the formal way and was only obtained by the Applicant after HCMA 1657/2022 was filed in the court.

The Applicant contends that the delay in filing the intended appeal was not caused by the Applicant but by the Learned Taxing master's failure to follow due process. The Applicant also asserted that their application was filed without undue delay.

For the Respondent, this application was opposed. In response, the Respondent asserted that

1. The matter was fixed for taxation on 14 May 2021 where a one Mwesiga Abna represented the Applicant. The matter was adjourned to 24 May 2021 to allow for a pre taxation meeting.
2. On the adjourned date, the Applicant was represented by Bwesigye Enock who raised objections in respect of some items in the bill and the matter was adjourned for ruling on 2 June 2021.
3. The ruling was delivered in August 2021 online and the Respondent's advocate, together with counsel for the first and second defendant in the main suit appeared and obtained a taxation certificate.
4. The Respondent applied for execution. Later, on 26 September 2022, the Respondent through his advocates wrote to the Applicant with a proposal for settlement of the matter as per sums decreed.
5. On 18 October 2022, the matter came up for notice to show cause why execution should not issue ["NTC"] where a one Mwesiga Abna represented the applicant. The Applicant's advocates, as well as counsel for the first and second defendant in the main suit opposed execution and the matter was adjourned for ruling to be delivered on 20 October 2021.
6. On the adjourned date, the Applicant was represented by Mr. Mwesigwa Abna and the court in its ruling directed that execution proceedings against all the defendants commence.
7. Owing to the above ruling, execution by way of attachment and sale of the property of the defendants began and the Respondent obtained police clearance to undertake the same.

The Respondent asserts that all parties were informed of the taxation decision in August 2021 and the Applicant participated in both the pre and post ruling processes through its advocates.

The Respondent contends that the taxation ruling of the learned taxing master ought to be challenged within two weeks and the Applicant was, through its advocate, present in court during the NTC proceedings on 23 November 2022 and never sought to challenge the same.

Representation

The Applicant was represented by M/s Mwesige Mugisha & Co. Advocates while the Respondent was represented by M/s Oasis Advocates.

Evidence and Submissions

The Applicant led evidence by way of an affidavit in support of the notice of motion deponed by Christine Byiringiro, its program manager [Policy and Governance] while the Respondent led evidence by way of an affidavit in reply deponed by him.

Both sides made submissions in support of their respective cases, including submissions in rejoinder, for which I am thankful for but have not felt the needed to repeat below as these submissions are not evidence.

Decision

Section 61(1) of the Advocates Act provides thus

"Any person affected by an order or decision of a taxing officer made under this Part of this Act or any regulations made under this Part of this Act may appeal within thirty days to a judge of the High Court who on that appeal may make any order that the taxing officer might have made."

The Applicant brought this application seeking leave to file its appeal against the decision of the learned registrar, acting as taxing master.

The Applicant relied, inter alia, on **Order 50 Rule 8** of the CPR which provides thus:
"In any case in which any particular number of days not expressed to be clear days is prescribed under these Rules or by an order or direction of the court, the days shall be reckoned exclusively of the first day and inclusively of the last day."

Order 50 of the CPR applies to extension of time for taking steps or actions provided for in the CPR. Appeals against decisions of the taxing master do not arise out of the CPR but rather from the Advocates Act. However, the reference to the wrong law is not fatal as long as the court has jurisdiction and the procedure applied is one under which the prayers for reliefs sought can be entertained and determined. See **Gids Consults Limited**

& Anor v Naren Mehta HCMA 864/2022, Saggu v Roadmaster Cycles Ltd 2002 1 EA 258 and Cwezi Properties v UDB HCMA 1315 of 2022

Section 33 of the Judicature Act provides thus:

> "The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided."

Section 98 of the CPR provides thus

"Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

These provisions vest the High Court with wide discretionary and inherent powers respectively to grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it."

See also **Kagumaho Musana v Rama and 3 Others HCMA 933 of 2019, Tullow Uganda Limited & Anor v Jackson Wabyona & Ors HCMA 443/2017 and Vantage Mezzanine Fund II Partnership & Anor v Commissioner Land Registration & Ors HCMA 2428/2023**

This court has, by virtue of its inherent powers, the jurisdiction to grant an extension of time. However, the grant of an extension of time is a discretion much must be exercised in accordance with very clear principles. See **Mulindwa George William v Kisubika George William SCCA 12/2014, Muzamilu Ayile v Rose Tarapke & Ors HCMA 24/2023**

In determining applications for extension of time, the court should consider the following

(a) Whether there is sufficient cause for grant of extension of time and this must relate to failure to take a step-in time.

(b) Whether there is good cause for grant of the extension.

(c) The administration of justice generally requires that all disputes should be heard and determined on their merits.

(d) Where there is a mistake of counsel occasioning the delay, an extension should usually be granted except if the mistake of counsel is inordinate delay, negligence to observe or ascertain plain requirements of law except if the same affect clear legal rights or where there was a vigilant litigant who couldn't control the actions of their advocate leading to non-compliance.

See **Muzamilu Ayile v Rose Tarapke & Ors HCMA 24/2023, J Mark Sekibuule v Sebastiano Sebagala HCMA 64/2021**

Sufficient Cause

In Uganda, the expressions "Good Cause" and "Sufficient Cause" have been used interchangeably, and to mean the same thing.

In the Indian Case of **Parimal v Veema Civil Appeal No. 1467 of 2011**, the Indian Supreme Court defined "Sufficient Cause" this way;

""Sufficient Cause" is an expression which has been used in large number of Statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously."

In the case of **Arjun Singh v. Mohindra Kumar & Ors., AIR 1964 SC 993** the Indian Supreme Court has this to say about "good cause" and "sufficient cause":

"The only difference between a "good cause" and "sufficient cause" is that the requirement of a good cause is complied with on a lesser degree of proof than that of a "sufficient cause."

I note that the CPR uses "good cause" and "sufficient cause" in different instances. For instance, "good cause" is used in **Order 1 Rule 15, Order 36 Rule 11 and Order 9 Rule 21**.

On the other hand, the CPR uses "sufficient cause" in **Order 9 Rule 18, Order 9 Rule 26, Order 43 Rule 16 and Order 43 Rule 18**, among other instances.

A review of these rules quickly shows that the expression "sufficient cause" is used where a litigant must explain their default, or failure to take a step as directed by the law or court.

In my view, "good cause" and "sufficient cause" are not the same. "Good Cause" requires a party to show a legally sufficient reason why court should exercise a discretion in their favour. Good cause may exist in spite of a party's own mistake; for instance, good cause may favour allowing a party amend a pleading to include a party who was mistakenly excluded or to amend their trial bundle and include a document they mistakenly forgot to include.

"Sufficient Cause" implies a much higher standard, requiring a party to show that they are not guilty of a default, or that it cannot be attributable to them. For instance, where an unrepresented party is hospitalised on the day of court, and accordingly an exparte decree is entered against them, there is sufficient cause to set it aside, since their failure to attend court is not a fault of their own.

I do not believe the rules committee were being colourful when they used "good cause" in one instance, and "sufficient cause" in another. They intended to apply two different standards.

Therefore, the standard for sufficient cause is much higher than that for good cause, and requires a party seeking the intervention of court to be free of culpability for the default causing the application.

Is there sufficient cause? The Applicant contended that it was not served with the bill of costs nor was it privy to the taxation proceedings and only got to know of their result after filing HCMA 1657/2023 and therefore there is sufficient cause for grant of extension of time.

I have read the affidavit in reply and it is clear that the Respondent does not indicate that the bill of costs was served on the Applicant, which tallies with a similar averment by the Applicant. Similarly, the Respondent's affidavit does not say whether a taxation hearing notice was extracted and served.

The Respondent simply states that the taxation was fixed for 14 May 2021 and consequent proceedings occurred on 24 May 2021, 2 June 2021 and 11 June 2021. The Respondent asserted that the hearings were attended by Counsel for the Applicant.

I must note that it is unfortunate that I could not access the record of the taxation proceedings as the same was not available. Unlike at appellate level where the law on missing or incomplete records has clearly been set out [See **Musoke Hussein & Ors v Uganda CACA 1,6,7 and 8/2015, Ephraim Mwesigwa v The Management Committee of Nyamirima School CACA 101/2011, Jacob Mutabazi v Seventh Day Adventist Church CACA 88/2011**], I have not found a precedent on a similar situation as the present case.

In **Justine Opolot v Aura Livingstone HCCA 29/2009**, the court took the position that an appeal against a taxation decision could proceed without the record of proceedings where the taxation ruling was available.

In my view, without a record or with an incomplete record, the court can take the benefit of credible evidence presented to the court as what transpired in those proceedings from parties who have direct knowledge of what transpired including parties, advocates or judicial staff.

In the present case the Respondent testified that he was advised by his lawyers that the taxation proceedings took place on 14 May 2021, 24 May 2021 and 2 June 2021. I note that this is not direct evidence, but hearsay.

Order 19 Rule 3(1) provides thus

"Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated."

The present application is a substantive and not interlocutory application and therefore, the evidence adduced by the Applicant on the above is not admissible. This would have been different if the actual advocate that had attended the hearing had led this evidence.

I am cognizant of the fact that the averments by the Respondent of the attendance of the Applicant's advocate, a one Mwesiga Abna was not controverted by the Applicant. I am also aware that as held in the case of **Energo Projekt v Brig. Kasirye Ggwanga HCMA 588/2009**, where one party depones a fact in an affidavit which is not controverted by the adverse party, the same is taken as admitted. However, in my view, this principle is not applicable as the averments by the Respondent are outside of what is permitted to deponed in affidavits in respect of a substantive application like this one.

I now turn to the issue of ECCMIS. Because all filings and steps in this court are done through ECCMIS, I take judicial notice of the workings of the system, including the fact that the system will typically send notices to parties of hearing dates or where steps have been taken. Key to note is that where a hearing or taxation notice is taken out, all linked advocates are notified. My learned Sister Justice Anna Mugenyi considered the working of this system recently in **Mwesigye Nicholas v P&A Credit Investments Limited HCMA 1677/2022** where she held that the failure of a party to access their ECCMIS account and obtain notices on the progress of their matters could be a basis for seeking discretionary remedies such as reinstatement (or in this case extension of time). I agree with Her Lordship's dicta entirely.

However, in the present case, it has not been demonstrated that either a taxation notice was taken out in the ECCMIS system in a matter where counsel for the Applicant was

linked which would have raised a notification to him. If the same had been demonstrated, it would be on counsel for the Applicant to show that the notification was not issued and therefore, he wasn't informed of the proceedings.

I therefore find that, in the absence of either the record, notice of ECCMIS notification or compelling evidence by an advocate or party or judicial staff who attended the proceedings and witnessed the presence and participation of the Applicant's advocate that, on the weight of evidence, the balance of probabilities favors the applicant's evidence that he was never informed of the taxation proceedings.

Having established that there is sufficient cause, I need not proceed to determine whether there is good cause since the consideration of the existence of good cause depends on the Applicant failing to meet the sufficient cause threshold.

Delay

Where a party takes an inordinate delay in seeking for a discretionary relief, the court is entitled to refuse to grant that relief. see **David Muhenda v Humphrey Mirembe SCCA 5/2012, Fred Byamukama & Anor v Michael Katungye HCMA 773/2022, Femisa International Limited & Ors v Equity Bank Limited HCMA 357/2022**]

An inordinate delay is a delay that is unusually or disproportionately large or excessive. [**Abel Belemesa v Yesero Mugenyi HCMA 126/2019**].

The Respondent asserted that

(a) The Applicant was served with the NTC before execution where it would have become aware of the taxation decision and taken steps to challenge it.

(b) The Applicant was served with a letter demanding for part payment of the sums awarded as costs which would have brought the taxation decision to their notice and therefore should have taken measures against the same.

For the Applicant, it was contended that

(a) They could not challenge the taxation decision because the certificate of taxation was never served on them

(b) They request for the record of taxation and the same has never been provided to date.

I have read the affidavit of service by Mubiru Moses dated 17 October 2021 and annexed to the affidavit in reply. The deponent avers that on 8 October 2021 he accessed the chambers of M/s Mwesige Mugisha & Co. Advocates and served copies of the NTC which was received and endorsed by the said advocates. I have looked at the copy of the NTC attached and I see no signature or stamp of the said firm as alleged by the deponent. For that reason, I found the averments of the deponent unreliable and I disregarded the same.

I have however looked at the letter dated 26 September 2022 to the firm of M/s Mwesige Mugisha & Co. Advocates as counsel for the Applicant from the Respondent's advocates which asserts that the court ordered for the payment of UGX 94,321,400 against the three defendants (including the taxation amount) and therefore that the Applicant should pay UGX 31,440,466 as payment of its share of the liability. This letter is stamped as received by the Applicant's advocates on 29 September 2022.

The Applicant filed HCMA 1657/2022 from which this application arises, and from which this court guided that an appeal or extension of time application should be filed at the election or choice of the Applicant on 23 November 2022, over a month later.

In my view, the assertion that the Applicant sought to first obtain the record of proceedings before filing the application for extension of time doesn't offer a cogent response. This is because, where a party asserts that proceedings took place in their absence and therefore seeks to challenge the same or seek and extension of time, the relevance of the record in that case, for the applicant is insignificant, if even relevant as a relevant annexure to the commencement documents. The party can simply lead evidence as to their absence and it is up to the respondent to adduce evidence of their participation by way of presenting the record, or in its absence, the other items of evidence alluded to above. Therefore, the refusal to file an application for extension of time or setting aside because a record has not been provided can itself expose the applicant to rejection of their application as being unduly or designedly delayed.

What constitutes undue delay is a case by case-by-case assessment. In this case, a delay by just over one month is not in my view an undue delay considering that the applicant is an unnatural person which likely has a long administrative approval process for litigation like HCMA 1657/2022 or indeed this application.

Conclusion

I therefore find that there is sufficient cause for the grant of extension of time within which to file the applicant's appeal. This court therefore makes the following orders:

(a) The Applicant is given an extension of time of fifteen (15) days within which to file an appeal challenging the decision of the taxing master. The time will begin running from the day after the day of delivery of this ruling.

(b) Costs of this application shall abide the outcome of the intended appeal for which extension of time has been granted.

I so order.

Delivered electronically this 29th day of February 2024 and uploaded on ECCMIS.

Ocaya Thomas O.R

Judge

29th February 2024