

Security Ltd. versus Charits Uganda Insurance Ltd. & another; (Misc. Application No. 8 of 2014, (Arising from Civil Appeal No. 14 of 2014 & Civil Suit No. 895 of 2011 were referred to.

He also referred to O.51 r6 of the Civil Procedure Rules which is that Court has power to enlarge time. Counsel argued that the Applicant by affidavits in support and in supplement has shown that his Counsel, then Sam K. Njuba died before filing the appeal, and Counsel Kafuuzi who was later instructed committed professional misconduct and also did not appeal in time as instructed. He prayed that for the above reasons, the Applicant be granted time to appeal out of time.

In response, the Respondent argued that the Applicant failed to prove any sufficient cause since the death of the said lawyer happened after expiry of the time allowed to file the appeal. He further argued that the time to appeal expired on 15th November 2013, yet the lawyer had passed away on the 13th day of December 2013. He prayed for the dismissal of the application.

This application is straight forward. It raises one question;

whether the Applicant has shown sufficient good cause to warrant Court's extension of time.

The arguments by Counsel for the Applicant have been challenged by the Respondents in terms as stated in the affidavit in reply that time to file an appeal had expired by the time the Notice of Appeal was filed.

I however note that both Counsel did not supply or annex copies of the judgment and Notice of Appeal. However, if I take it for a fact that Judgment was delivered on 14th October 2015 and the Notice of Appeal filed on 24th October 2015, as per paragraphs 2 and 3 of Sempala Steven's affidavit in support, but also take note of the other fact that the application is dated 4th September 2015, it means that the Applicant deponed to a future occurrence which had not yet happened!!.

Secondly I notice that this contradicts the affidavit in supplement (paragraphs 1 – 11) which depones that he instructed Kafuuzi in April 2015, after the death of the former lawyer, whom he however had deponed that he had died after 24th October 2015.

Thirdly, if the affidavit in supplement by Sempala is true, how could he instruct Counsel Kafuzi to file an appeal on 3rd February 2015 as per (paragraph 7) in a matter where he stated in paragraph 2 of his affidavit in support, that he had received the Judgment on 14th October 2015??

I also note that the Applicant in paragraph 3 of his affidavit in support refers to a copy of the Notice of Appeal attached as Annexure ‘A’ but none is attached. In paragraph 10, he again referred to an attached Memorandum of Appeal; annexed as ‘B’ which is also not attached. When all this is considered together with the affidavit of Najjuma Mary in reply, I note that she depones that Judgment was delivered on 14th October 2013 (paragraph 3), that Counsel died on 13th December 2013, after filing the Notice of Appeal on 24th October 2013 (paragraph 5).

I am constrained therefore to find that there are major discrepancies in the statement by the Applicant on oath which renders the contents of the affidavits suspect and unreliable. The law is that when an affidavit contains falsehoods, it will in most cases be rejected by the Court Practitioners over the Court and their clients and all parties, a duty to file in Court proper documents.

In a case like this one, where the affidavits are incurably defective, misleading and false; they cannot be saved by the principles set out in cases like ***Saggu versus Road Master Cycles (U) Ltd. (2002) I EA 258 or Kiiza Besigye versus Museveni Y. K & Electoral Commission (2001 – 2005) 3 HCB 4*** that;

‘Court can rely on parts of an affidavit which are truthful and rejects the parts which are false’.

The Applicant’s application lacks merit, it has contradictory information and the Respondent has successfully rebutted its allegations.

This application fails as no proof of sufficient cause has been shown.

Application is dismissed with costs to the Respondents.

I so order.

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Henry I. Kawesa

J U D G E

27/10/2017