IN THE COURT OF APPEAL FOR UGANDA

AT KAMPALA

(Coram: Saied, chief Justice)

CRIMINAL APPLICATION NO.1 OF 1978

BETWEEN

CHARLES KANGAMITETO..…….. APPLICANT

AND

UGANDA ……RESPONDENT

(Application for leave to file notice of appeal out of time in an intended appeal from a judgment of the High Court at Masindi (Nyamuchoncho, J.) dated 16th June,1976

IN

Criminal Sessions Case No.68 of 1976.)

RULING

This is an application for leave to file a notice of appeal out of time.

The applicant was tried by the High Court for murder. On 16th June, 1976 he was convicted of the lesser offence of manslaughter and sentenced to seven years' imprisonment.

This application was lodged in the registry on 26th April, 1978, almost twenty-two months after the expiration of 14 days within which a notice to appeal must be filed under r.58 of the Appeal Rules.

The application is supported by three affidavits, all made on 20th December, 1977. In his affidavit the applicant deposed that he was "prevented" from appealing in tine due to circumstances beyond his control. Those circumstances were that the applicants father who was the only person to have assisted him with the money of his appeal and whom he had had asked to provide the money and instruct counsel immediately after his conviction was himself arrested and detained, on a criminal allegation of overcharging. According to his father's affidavit, his

arrest came within a week of his sons request for money, and it was not till September, 1977 that he was finally acquitted. The third affidavit is that of counsel and concerns mainly with the merits of the intended appeal.

I heard this apr1ictien in chambers. During argument, the applicant's Counse1, Mr. Ayigihugu, said that he was instructed in this matter sometime in Octcber, 1977. On 18th November, 1977 he wrote to the Chief Registrar of the High Court asking for copies of the proceedings and judgment to assess the prospects of the appeal. He submitted that the delay between the swearing of the affidavits (that is, 20th Decembor, 1977) and the actual filing of this application on 26th April, 1973, a period of almost four months, occurred in his chambers for which the appellant ought not to be penalised. He submitted further that there were good prospects for the appeal to succeed, if not against the conviction, at least against the term of sentence. He said that since the delay was not occasioned by the applicant's father, who took immediate steps upon release, but rather his own, this court should exercise its discretion despite the inordinate delay as no prejudice will result to the State.

The application was strongly opposed by Mr. Kabega., Senior State Attorney, appearing for the respondent. He submitted that no sufficient reason had been shown for the delay. He said that the applicant's argument based on lack of money is negatived by the fact no fees are in fact required for filing a notice of appeal. He argued that the delay on the part of counsel was not in itself a sufficient reason; and he stressed that none of the affiants has shown diligence in pursuing this matter.

The material part of r.4 of the Appeal Rules, which confers on the court a limited power extend time, reads as follows:

> 'The Court may for sufficient reason extend the time limited by these Rules or by any decision of the Court or of a superior court for the doing of any act authorised or required by these Rules, whether before or after the expiration of such time ....."

It is to be noted that the power can only be exercised sufficient reason which relates to the inability or failure to take the particular step in time — Mugo v. Wanjiru, (1970) E.A.481, 485. The matter being of discretion it is not possible to lay dawn an invariable rule, but it is necessary

that time limits should he treated with respect, and in considering whether a time limit shall be extended, one has to have regard to the circumstances of the case and. the merits of the excuse put forward for not adhering to the original time in the first instance.

The applicants contention the he looked to his father for financial assistance to file his appeal has been rightly, in my opinion, criticise by the learned Senior State Attorney. The Appeal Rules not stipulate any fee for filing a notice of appeal, See r.l02 (a). The essential step required to be taken by an intending appellant after his conviction is to file a notice of appeal, for which no fees are payable, within fourteen days of the superior court's decision. The applicant could have informed the prison authorities of his intention to appeal and, they would have field the necessary documents on his behalf, as they invariably do. Learned counsel for the app1icnt did not refer to this argument in his reply. I can only presume that he deliberately shut his mind to it, not having any reasonable and convincing answer to it. If ignorance of the law governing appeals had been advanced as an excuse I would have had no difficulty in rejecting this too in view of what was said in R. v. Brown s/o Mbetwa, (1948) 15 E.A.C.A. 138:

> "In an affidavit dated 31st July, the appellant has sworn that the reason for the delay was caused by his ignorance of the laws governing appeals. We cannot regard this as a sufficient reason for exercising discretion in the appellants favour. To do so would open the door wide to the reception of appeals months out of time and would clearly give rise to abuse."

There being no need for any financial assistance to lodge an appeal within the stipulated time, I find this argument of the applicant's not amounting to a sufficient reason.

I will consider the inordinate delay in the applicant's counsel's chambers. It is obvious that counsel did not file the notice to appeal within fourteen days of his being instructed to do so. He ought to have appreciated that prompt action was necessary. His first step instead was to ask for copies of the proceedings and Judgment to assess, as ho submitted, the prospects of the success of the intending appeal. With respect, his main and the only concern at that stage was to identify any sufficient reason for the delay. This has been succinctly stated in Shanti v. Hindocha & Others, (1973) E.A.207 as follows:

> "The position of an applicant extension of time is entirely different from that of an applicant for leave to appeal. He is concerned with showing 'sufficient cause' why he should be given more time and the most persuasive reason that he can show, as in Bhatt's case (1962) 49T, is that the delay has not been caused, or contributed to by dilatory conduct on his part. But there may be other reasons and these are all matters of degree. He does not necessarily have to show that his appeal has a reasonable prospect of success or even that he has an arguable case, but his application is likely to be viewed more sympathetically if he can do so and if he fails to comply with the requirement set out above he does so at his peril."

Learned counsel L's nut advanced reason for his own inaction and the subsequent delay of some four months. On the contrary he has endeavored to employ his own dilatoriness as sufficient reason for his client to be allowed to appeal out of time. This argument obviously lacks conviction and is manifestly illogical. Recalling Shah H. Bharmal v. Santesh Kamuri, (1961) E.A. 679, where the Court of Appeal, after considering Gatti v Shoosmith, (1939) 3 ALL E.R. 916, expressed the view that mistakes of a legal adviser may amount to "sufficient cause" under the Appeal Rules, what has to be stressed in my view is the distinction between such a mistake and simple, clear inordinate delay which may spring from forgetfulness or default of the legal advisor. I firmly believe that in the circumstances of this case the delay in learned counsel's chambers in executing his instructions, for which incidentally no attempt was made to offer an explanation, was not the result of any misunderstanding or misconstruction of the relevant Appeal Rules which arc couched in clear and unambiguous language, or any such other factor which could properly be construed as a mistake. Accordingly, here there was no question of mistake on the part of the legal adviser, but merely of lack of diligence resulting in inordinate delay which I find inexcusable.

Besides these matters, the learned counsel for the appellant has been unable to put forward a single valid reason why he should have time extended at this late stage except his belief that the appeal has reasonable prospects of succeeding. As has been consistently held by the Court of Appeal, that is a factor for consideration in applications of this nature but the main factor, and the burden is on the applicant in this respect, is that the court must be satisfied that for sufficient reason it was not possible for the appeal to be lodged in the time prescribed. Likewise, it has

been held in Mrs. Nyambura Kisoi v Wanjiku E.A.C.A. Civil Application No. NAI.7 of 1976 that the question of prejudice does not matter at this stage. It is only after “sufficient reason” has been advanced that a court considers the question prejudice or the possibility of success and such other factors before it exercises its discretion whether to grant or refuse an application for extension.

I find that there is absolutely no reason here shown to me why the appeal could not have been lodged in time. This application for the extension of time is accordingly dismissed.

Dated at Kampala this 30th day of May, 1978.

M. SAIED
CHIEF JUSTICE

I certify that thin in a true
copy of the original.

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CHIEF REGISTRAR