

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL MISC. APPLICATION NO.15 OF 1997**

**CHARLES MAYAMBALA: ::::::::::: : APPLICANT**

**VERSUS**

**UCB: ::::::::::: RESPONDENT**

**BEFORE: THE HONOURABLE MR. JUSTICE C.M. KATO, J.A.**

**RULING**

This is an application for extension of time within which the applicant Charles Mayambala may be permitted to file his notice of appeal. The application is by a notice of motion dated 27/3/97 lodged under the provisions of rule 4 of Court of Appeal Rules 1996. The application is supported by applicant's affidavit dated 27/3/97.

The application was heard ex parte under Rule 55(2) of Court of Appeal Rules 1996 because Dr. Byamugisha the learned counsel for the respondent who had been served with hearing notice did not show up in court in time although he came later on after the other counsel had argued the application and had gone away.

The background of this application is briefly that the applicant filed Miscellaneous Application No.160 of 1981 in the High court. The application was disposed of by the High Court on 9/1/92. The applicant was not satisfied with the manner in which it was disposed of. He instructed his lawyer Sendege & Co. Advocates to file a Notice of Appeal in the Supreme Court which the counsel did and paid the necessary fees. The notice of appeal was dismissed on the ground that it was lodged in the wrong court it should have been lodged in this court not in the supreme court hence this new application for enlargement of time to enable the applicant to file his notice of appeal out of time in order to appeal against the decision of the high court in Miscellaneous application no.160 of 1981.

Although the learned counsel for the applicant Mr. Zaabwe argued 2 grounds in support of this application in my view there is only one ground appearing to support the application the ground is that the applicant was not at fault in filing his notice of appeal in time, it was his counsel who was at fault to have gone to the wrong court.

Mr. Zaabwe argued that all along the applicant genuinely believed that his counsel had taken a proper course to institute his notice of appeal in time and that he (applicant) should not be punished for his lawyer's mistake. He quoted the case of: Kananura Melvin Consulting Engineers vs. Connie Kabanda [Supreme Court Civil Appeal No.11 of (1992)] in support of his argument. The facts in that case were almost identical to those in the present case and it was held by the Supreme Court that the mistake was excusable.

Considering the history of this application as a whole as shown in the notice of motion and the applicant's affidavit in support of the application, I am inclined to agree with Mr. Zaabwe's contention that the applicant was not at fault and he should not be made to suffer because of his counsel's wrong-doing. In my view the applicant has shown sufficient reason within the meaning of rule 4 of Court of Appeal rules 1996 to warrant this application being granted. The applicant is accordingly permitted to file his notice of appeal out of time. He is to lodge the notice of appeal within 7 days from the date of this ruling. Costs of the application shall abide the outcome of the intended appeal.

**C.M. KATO**

**JUSTICE OF APPEAL**

22/12/1997