

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA**  
**HOLDEN AT KAMPALA**

**CORAM: HON. MR. JUSTICE G.M. OKELLO, J.A.**

**MISC. APPL. NO. 11 OF 1999**

**(Arising from Cr. Appeal No. 39 of 1999)**

**Between**

**HAJI ASSUMANI BUSULWA SSALONGO::::::::::::::::::::::::::::APPLICANT/APPELLANT**

**AND**

**UGANDA::RESPONDENT**

**RULING OF G.M. OKELLO, J.A.**

This application seeks extension of time within which to apply to this court for a certificate to appeal to the Supreme Court. It was brought under rules 4, 40 (1) and (2), 41(2) and 42 (1) of the Court of Appeal rules Directions, 1996, Legal Notice No.11 of 1996.

The grounds on which the application is based are firstly that the lawyers that were first instructed by the applicant filed the Notice of Appeal but did not apply for the certificate. Secondly, that there is a strong likelihood of the appeal succeeding. The application is supported by the affidavit of Harriet Diana Musoke, Counsel duly instructed to handle the appeal. The affidavit was sworn on 13<sup>th</sup> July, 1999. There is no affidavit in reply.

M/s Musoke submitted that the delay to apply for a certificate from this Court was twofold: firstly, due to the failure of the Firm of Advocates that was instructed in time to appeal on behalf of the appellant, to apply for a certificate within time. They filed Notice of Appeal but did not apply for a certificate. Secondly, ignorance of the applicant to apply for the certificate within time himself.

She contended that the fault of the advocate and ignorance of the applicant both constitute sufficient reason for extension. She cited *Andrew Gitau Kimani Vs Uganda [1992-93] HCB 1* where the Supreme Court held that court will consider application for extension of time with sympathy if the applicant can show that the delay has not been caused by his dilatory conduct or that his intended appeal has reasonable prospect of success.

Mr. Ogwal-Olwa Principal state attorney who appeared for the state contended that reasonable prospect of success of the intended appeal has not been demonstrated by the applicant and prayed that the application be dismissed.

Under rule 4 of the Rule of this court, extension of time can be granted when sufficient reason is shown. Such reason must relate to the failure by the applicant to act within time. Where applicant is found guilty of delay, extension shall not be granted. See: *Andrew Sitau Kimani supra.*

The evidence before this court showed that the main cause of the delay was the failure of the firm of advocates that was instructed by the applicant in time to appeal on his behalf to the Supreme Court. It was the duty of the advocate from that firm handling the case to ascertain whether or not a certificate was required in the appeal. It is was to take necessary steps to obtain it in time. In this case the firm of the advocates did not discharge that duty. It is trite that the fault of Advocate cannot be visited on the applicant. I cannot fault the applicant in this case for delay, since he had instructed a Firm of advocates in time. In my view, sufficient reason has been shown for extension.

In the result, the application is allowed and the applicant is to file his application for a certificate within 7 days from the date of this ruling. Costs of the application were not submitted on and I make no order in that regard.

Dated at Kampala this 28<sup>th</sup> day of July 1999.

G.M. OKELLO

JUSTICE OF APPEAL