

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL FOR UGANDA AT KAMPALA**  
**CRIMINAL APPLICATION NO. 299 OF 2014**

*(Arising from Court of Appeal Criminal Appeal No. 250 of 2011, High Court Criminal Appeal No. 15 of 2011, and Criminal Case No. 21 of 2010)*

**WAIDHA OKUKU STEPHEN.....APPLICANT**

**VERSUS**

**UGANDA.....RESPONDENT**

**BEFORE: THE HONORABLE LADY JUSTICE SOLOMY BALUNGI BOSSA JA**

**RULING**

The applicant applied for extension of time within which to file his appeal, following the striking out of his appeal for failure to comply with **section 45** of the **Criminal Procedure Code Act**.

Counsel Wamukota Charles argued the application on his behalf, while Counsel Luteete Micah, a Senior Inspectorate Officer represented the respondent.

In his affidavit in support of the motion, the applicant stated that he was convicted by the High Court on appeal of the offences of corruptly soliciting for gratification on November 12, 2011. He was sentenced to three years' imprisonment and barred from employment by a public body for 10 years. At the time of the application, he was in Luzira government prison serving his sentence. He had filed an appeal in time but it was struck out on September 25, 2014 for offending **section 45** of the **Criminal Procedure Code Act**.

His Counsel argued that; he has prepared a better memorandum of appeal to be filed after the leave is granted; the appeal raises arguable grounds

on points of law and has a high chance of success, based on a copy of the draft memorandum of appeal attached to the application. Refusal to grant the application for extension of time within which to appeal would curtail the applicant's right to be heard on appeal. This court had the powers and discretion under rule **2(2)** and **5** of the **Court of Appeal Rules** to grant the applicant the extension and it was only just, fair and equitable that extension of time be granted to enable him to file a memorandum of appeal out of time.

Counsel for the respondent argued that there was no specific reason given to justify extension of the time. The applicant's affidavit only narrated what happened when the appeal was dismissed. The applicant was not specific about what he wanted the court to address.

**Applicable law**

**Rules 2** and **5** of the Court of Appeal Rules provide as follows;

**2(2) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, or the High Court, to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent abuse of the process of any court caused by delay.**

**5. Extension of time**

**The court may, for sufficient reason, extend the time limited by these Rules or by any decision of the court or of the High Court for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to the time as extended.**

**Section 45 of the Criminal Procedure Code Act** provides;

**Second appeals**

**(1) Either party to an appeal from a magistrate's court may appeal against the decision of the High Court in its appellate jurisdiction to the Court of Appeal on a matter of law, not including severity of sentence, but not on a matter of fact or of mixed fact and law.**

5 **Resolution of the application**

The above provisions grant power to this Court to make all such orders as are necessary to meet the ends of justice and for any sufficient reason to extend time limited by the rules. They also allow a second appeal based on a matter of law.

10 The only issue for determination is therefore whether sufficient grounds have been established to justify extension of time within which to file the appeal.

I observe that the reasons for which the ***Criminal Appeal No. 250 of 2014*** was struck out do not go to its merits. The appeal was struck out as incompetent for failure to disclose grounds based on law, contrary to ***section 45*** of the ***Criminal Procedure Code Act***. Its merits were not considered.

20 The applicant's advocates poorly drafted the memorandum of appeal in ***Criminal Appeal No. 250 of 2014***. Their lack of diligence ought not to be visited on the applicant. It is now trite that errors of an advocate should not be visited on a party.

Furthermore, this is a second appeal, which must solely be based on matters of law. The proposed memorandum of appeal contains the following grounds;

- 25
- 1. The learned trial Judge erred in law when he convicted the appellant of the offence of corruptly soliciting a gratification without evidence to prove the essential ingredients of the offence of corrupt intention.***
  - 2. The learned trial judge erred in law when he failed to properly evaluate the evidence on record and hence arrived at a wrong conclusion.***




**3. The learned trial judge erred in law when he based the conviction on the confession of the co-accused which was not properly admitted in evidence.**

5 Grounds 1 and 3 challenge the degree of proof of an essential ingredient of the offence, and reliance by the learned trial Judge on the confession of a co-accused, respectively. To my mind, the grounds raise issues of law that this court ought to investigate and which also justify extension of time within which to appeal. The applicant should not be deprived of his right of appeal,

10 Taking into account the totality of the above and in the interests of justice this application is allowed. The applicant is granted extension within which to file his appeal within 14 days from the date of this ruling.

**Dated this 12<sup>th</sup> day of February, 2015**

15 Signed by:

 12 February 2015

**Solomy Balungi Bossa**

**Justice of Appeal**

20