

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NUMBER 0032 OF 2018

5 WILLIAM ODOI NYANDUSI :::::::::::::::::::: APPLICANT

VS

JACKSON OYUKO KASENDI :::::::::::::::::::: RESPONDENT CORAM:

10 HON. MR. JUSTICE STEPHEN MUSOTA, JA

RULING

The applicant is seeking for an extension of time to file an appeal against the ruling and orders of the High Court given by Hon. Mr.

15 Justice Henry Kawesa on 8th February, 2017. The application was filed in this court on 29th, January 2018; 11 months after judgment had been delivered. It is supported by the affidavit of Mr. William Odoi Nyandusi deponed on 2nd January 2018. The application is brought under Rules 2(2) of the Judicature (Court of Appeal Rules) Directions S.I 13-10, Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act and Order 52 Rule 1, 2 and 3 of the Civil Procedure Rules.

The grounds upon which the application is premised are contained in the affidavit of the applicant and are:

- 25 1. That Judgment was entered in Civil Appeal No. 104 of 2013 on the 8th February 2017 in favour of the Respondent in the High Court of Uganda at Mbale.
2. That the Applicant only learnt that Judgment had been entered for the respondent in the Civil Appeal mentioned herein above on the 29th August 2017 long after he could file an appeal.
3. That the Applicant instructed Mr. Majanga Obel of Obel Majanga & Co. Advocates to defend

the Civil Appeal.

4. That the said Mr. Majanga Obel, as his lawyer, informed him that he would let him know when judgment in the Civil Appeal would be delivered.
5. That the Applicant only came to know that Judgment had been delivered when the Respondent started alienating parts of the estate and claiming he had full authority of the court.
6. That the Applicant's wife at his behest then visited the registry of Mbale High Court on 29th August 2017 and found that indeed Judgment in the Civil Appeal had been entered in favor of the Respondent.
7. That the Applicant is dissatisfied with the judgment and intends to appeal it.
8. That the Applicants Appeal has a likelihood of success.
9. That the time within which to file a Notice of Appeal has passed necessitating an application to extend the time.
10. That it is just and equitable in the in the circumstances that Court be pleased to extend the time for filing the notice of appeal.

In the affidavit in reply deponed by Jackson Oyuk Kasede dated 7th May 2018, he contends that the applicant has not demonstrated that his intended appeal has merit and that this application is only intended to delay the finalization of the seven year long dispute. That the applicant filed this application five months after purportedly learning of the judgment which is clear evidence of lack of diligence. That the applicant's claims that the respondent has cleared the estate land with intention of putting up a market overt are false.

At the hearing of the application, Mr. Batanda Gerald appeared for the applicant while Mr. Andrew Wamina appeared for the respondent.

Counsel for the applicant submitted that Rule 2(2) of the Court of 5 Appeal Rules gives this court unfettered discretion to make such orders to avoid abuse of court process and to meet the ends of justice. Counsel gave a brief background to this application and submitted that the applicant was granted letters of administration by the Chief Magistrate Court of Tororo. The respondent, being 10 dissatisfied with that decision applied to court to have those letters revoked. The Chief Magistrates Court of Tororo dismissed the suit seeking to revoke the letters of administration. The respondent being dissatisfied appealed to the High Court challenging that decision and the High Court reversed the decision of the Chief 15 Magistrates' Court. The applicant now files this application seeking to extend time within which to file a Notice of Appeal.

That the applicant had instructed Mr. Majanga Obel to represent him in the appeal before the High Court and as counsel, he informed the applicant that he would give him an update on the 20 case which he never did. The applicant only got to learn that judgment had been passed by court when execution ensued.

Counsel cited the authority of **Julius Rwabinumi vs. Hope Bahimbisomwe Civil Application No. 14 of 2009** in which the applicants sought to file their memorandum of appeal 9 months out 25 of time and it was held that where there is mistake of counsel, this can be considered to be sufficient grounds to grant an extension of time. He prayed that this court be pleased to grant this application.

In reply, counsel for the respondent opposed the application and submitted that the applicant did not adduce evidence to support his 30 allegation that he only came to know that judgment had been delivered when the respondent started alienating parties of the estate and claiming that he had full authority of the court. In

addition, that it is not true that the delay has only been 5 months because the judgment was delivered in February 2017 and the applicant filed this application 29th January 2018 which is about 11 months.

5 I have considered all the above circumstances and from the reading of Rule 5 of the rules of the Judicature Court of Appeal Rules, this Court has discretion to enlarge the time within which a party to an appeal may do an act if sufficient reason is shown for the enlargement.

10 Rule 5 of the Rules of this court provides that:

‘The Court may, for sufficient reason, extend the time limited by these Rules or by any decision of the Court/of the High Court for the doing of any act authorized or required by these Rules, whether before or after expiration of that time and is whether before or after the doing of the act and any reference in these Rules to any such time shall be construed as reference to the time as extended.’⁹

The starting point, is to determine whether or not sufficient reason has been shown for the failure to act in time. According to the 20 affidavit of William Odoi Nyandusi, he only got to learn about the judgment when the respondent made an effort to execute. In essence, his counsel failed to follow up on the matter at the High Court.

In determining whether or not this application for extension of time 25 within which to file an appeal should be granted under the above Rule, the paramount consideration is that there must be sufficient cause for the failure of the Applicant to file and serve a Notice of Appeal within time.

The expression ‘sufficient reason’ is not defined anywhere in the 30 Rules of this Court. In the case of **Rosette Kizito v Administrator General and others, Supreme Court Civil Application, No. 9 of**

1986, reported in Kampala Law Reports, Volume 5 of 1993 at page

4, it was held that ‘Sufficient reason must relate to the inability or failure to take the particular step in time’.

In Sabiiti Kachope and 3 others v Margaret Kamuje, Supreme 5 Court Civil Application, No. 31 of 1997, Oder JSC, (as he then was), it was held that:

Tor applications of extension of time such as the present one, a mistake or Negligence of the applicant’s Counsel maybe accepted as a proper ground for granting relief such as the 10 leave to file out of time. The discretion of Court is not fettered as long as sufficient reason has been disclosed to justify court’s exercise of its discretion in favor of the Applicant. In the present application, the inordinate delay was caused by the Applicant’s previous Counsel. Therefore, the Applicants 15 have shown sufficient reason to justify the Court’s discretion in their favor. ’

I will also refer to the case of **Seperia Kyamulesiire v Justine Bikanshire Bagambe, Civil Appeal No. 20 of 1995**, where Justice Karokora, JSC, then, was of the view that:

20 *‘It is now settled that errors or omission by Counsel are no longer considered fatal to the applicant under Rule 4 of the Rules of this Court unless there is evidence that the applicant*

was guilty of dilatory conduct in the instructions of his lawyer. ’

25 Taking the above into account, I find that the applicant had sufficient reason for not filing his appeal in time because it was as a result of the mistake of his former Counsel whom he had instructed to follow up the case in the High Court but failed him.

In the circumstances of this case, refusal to grant leave to extend 30 time to file an appeal would cause an injustice to the applicant

since the delay was as a result of mistake of his Counsel which should not be visited on the innocent litigant.

In the result, an extension of time being sought is hereby granted.

The Notice of Appeal is to be filed within 7 days from the date 5 hereof.

I so order.

Dated this 23rd May 2018

Hon. Mr. Justice Stephen Musota
(Justice of Appeal)