

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL FOR UGANDA AT KAMPALA

[Coram: Owiny-Dollo, DCJ; Egonda-Ntende & Tuhaise, JJA]

MISCELLANEOUS APPLICATION NO. 56 OF 2018

(Arising from High Court Miscellaneous Cause No. 323 of 2016)

BETWEEN

Law Development Centre=====Applicant

AND

Lubega Joseph=====Respondent

RULING OF FREDRICK EGONDA-NTENDE, JA


- [1] The applicant in this application is seeking for leave to file an appeal against the decision of the High Court in Miscellaneous Cause No. 323 of 2016; leave to serve it out of time and that costs for this application be provided for. The applicant sets out a litany of 11 grounds out of which I find that the following are closest to being grounds for the application. (a) That unknown to the applicant its advocate in the matter who had been instructed to file an appeal withdraw from the conduct of the case without informing the applicant and without filing a notice of appeal. (b) The applicant should not suffer injustice on account of the mistakes, errors, negligence and fault of its advocate. (c) The respondent will not suffer any prejudice if leave is granted and the appeal has high chances of success. (d) That this application has been brought promptly and without inordinate delay.
- [2] The application is supported by 2 affidavits sworn by Mr Didas Bakunzi Mufasha, the Secretary of the Applicant. The respondent, Mr Joseph Lubega filed an affidavit in opposition. At the hearing of the application the applicant was represented by Dr Akampumuza while the respondent appeared in person.
- [3] The application below sought a multiplicity of orders but it will suffice to state that it sought a writ of certiorari seeking to quash a decision of the

applicant to recall a diploma in legal practice that had been awarded to the respondent on 3rd September 2010 and a writ of prohibiting the applicant from recalling the diploma. That application was successful and the writs granted on 5th September 2017 with costs to Mr Joseph Lubega.

- [4] Mr Lubega filed his bill of costs that was taxed *inter partes* on 28th November 2017 and allowed in the sum of Shs. 40,027,200.00. He then sought to enforce its payment through garnishee proceedings against the applicant. An Order *Nisi* was issued on the 14th February 2018. The applicant brought this application on the 21st February 2018 seeking leave to file the appeal out of time.
- [5] Dr Akampumuza submitted that the applicant had orally instructed their counsel, Mr Tibaijuka to file an appeal soon after the decision of the High Court was rendered but he had failed to do and had not informed the applicants. He relied on the supporting affidavits to the application. He prayed that the applicant should not suffer on account of the mistake or errors of its advocate.
- [6] Mr Lubega submitted that the applicant had acted in a dilatory manner and only brought to this application seeking to stifle his efforts at executing and recovering the sum of costs allowed by court.
- [7] I have considered the application before us including the notice of motion, supporting and opposing affidavits. It is clear from the applicant's own additional affidavit filed in this matter that the applicant's former advocates notified the applicants in writing by a letter dated 14th September 2017 notifying them that they had ceased acting for them in 5 matters in the High Court which included this one. The Director of the applicant acknowledged so in his letter to those advocates dated 2nd October 2017.
- [8] By the time the initial advocates withdrew from handling this matter there was still time for an appeal to be filed. Had the applicants been prudent at this stage or had they really intended to appeal they would not have sat on their laurels until 21st February 2018 when they filed this current application. I am inclined to agree that they only woke up to appeal after the respondent raised the 'heat' with his recovery efforts in respect of the costs allowed by the trial court.
- [9] The attempt to malign the original advocate that he had negligently failed the applicant's instructions to pursue an appeal is as unfortunate as it is untenable. I am satisfied that the applicant has no justification whatsoever

for failing to file his intended appeal in time. I would dismiss this application with costs.

Dated, signed, and delivered at Kampala this ^{27th} day of June, 2019


Fredrick Egondu-Ntende
Justice of Appeal

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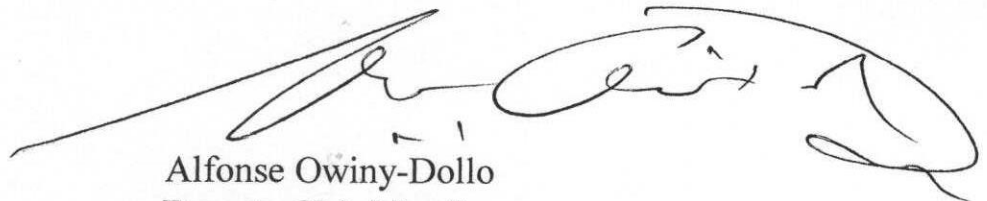
AND

Lubega Joseph=====Respondent

RULING OF ALFONSE OWINY-DOLLO, DCJ

- [1] I have had the opportunity to read in draft the ruling of my brother, Egonda-Ntende, JA. I agree that this application has no merit.
- [2] As Tuhaise, JA, agrees, this application is dismissed with costs.

Dated, signed and delivered at Kampala this 27th day of June, 2019



Alfonse Owiny-Dollo
Deputy Chief Justice

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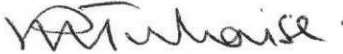
Lubega Joseph:..... Respondent

Ruling of Hon. Lady Justice Percy Night Tuhaise, JA

I have had the benefit of reading in draft the Judgment of my brother Hon. Mr. Justice Fredrick Egonda-Ntende, JA.

I agree with his analysis reasoning and conclusion that this application has no merit and should be dismissed with costs.

Dated at Kampala this ...27th day of June 2019.


Percy Night Tuhaise
Justice of Appeal.