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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 212 OF 2017

(Arising from Misc. Application No. 261 of 2016)

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1. JEFF LAWRENCE KIWANUKA

2. JAMAL KITANDWE

3. KAMUGISHA BERNARD APPLICANTS

VERSUS

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1. GAIRA MATHEW

2. WAWOMOLA JOSEPH

3. NKOJO JAMES

4. WAISWA PAUL

5. RWAKIISA BOAZ

6. TWAHIRWA JOEL RESPONDENTS

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BEFORE: HON. LADY JUSTICE HELLEN OBURA, JA

RULING

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This is an application brought by way of a notice of motion under Rules 2 (2) and 5 of the Judicature (Court of Appeal) Rules SI 13-10, seeking for orders that the applicants be granted leave to file a reference to challenge the decision of a single Justice out of time and costs of this application be provided for.

The grounds upon which this application is based are contained in the affidavit in support of the notice of motion deposed by Jeff Lawrence Kiwanuka, one of the applicants in this matter

5 and they are as follows;

1. *The applicants' counsel was unable to apply for the reference to challenge the decision of a single judge in the stipulated time because he was not physically in court as he had lost his mother at the time.*
2. *The learned single judge had no jurisdiction to hear the application.*
3. *No prejudice will be caused to the respondents and to the affected parties therein.*
4. *That it is just and equitable that this honorable Court grants leave to the applicants to file a reference to challenge the decision of a single judge.*
5. *That the applicants have brought this application without undue delay.*

15 Mr. Gaira Mathew, the 1st respondent swore an affidavit in reply and opposed the application on the grounds that the applicants have not shown sufficient reason to grant this application. Further that grant of the application may prejudice the respondents who have already engaged the government to have their money paid as soon as all court matters are settled. He also averred that the applicants never challenged the jurisdiction of the single justice
20 when Miscellaneous Application No. 261 of 2016 came up for hearing and as such the issue is an afterthought.

The background to this application as found by the leaned single Justice is that the applicants and the 1st, 2nd and 3rd respondents together with others, all numbering 500 were Public Service employees of the Internal Security Organization (ISO) of the Government of Uganda.
25 As a result of the restructuring exercise in the Public Service their employment was terminated. They, however, contended that the termination of their employment was in breach of the terms that governed their employment. They thus resolved to sue the Government for that reason. They filed Miscellaneous Application No. 17 of 2004 to seek permission to bring a representative suit under Order 1 Rule 8 of the Civil Procedure Rules
30 and the 1st, 2nd and a one Henry Waibale were allowed to sue the Attorney General for

5 themselves and on behalf of the other claimants. However, Henry Waibale passed on later and he was replaced by a one Kamugisha Benard (the 3rd applicant).

A representative Suit vide HCCS No. 164 of 2004 was lodged in the High Court at Kampala by which the plaintiffs prayed for terminal benefits, pensions, gratuity, arrears of unpaid allowances, money in lieu of notice of termination, medical and transport allowances as well
10 as general damages for each of them. The suit was heard and judgement was delivered in favor of the plaintiffs. The Court awarded all the prayers in the plaint with interest at 10% on the monetary awards from the date of filing till payment in full. The Court also awarded general damages of Ushs. 500,000/= to each of the plaintiffs and the defendant was ordered to pay costs of the suit.

15 Being dissatisfied with this decision, the Attorney General lodged an appeal in this Court vide Civil Appeal No. 69 of 2009 which was dismissed for want of prosecution with costs to the respondents. The Attorney General then lodged an application in this Court vide Civil Application No. 1169 of 2011 seeking to set aside the order dismissing Civil Appeal No. 69 of 2009 and to have the said appeal re-instated. That application is still pending disposal.
20 Subsequently, the applicants lodged this application.

At the hearing of this application, Mr. John Matovu and Mr. Hassan Lwanga appeared for the applicants while Mr. Roscoe Iga appeared for the respondents. At the commencement of the hearing, counsel for the applicants orally applied to court to drop the 4th applicant who was the Attorney General as he was mistakenly included. His application was allowed and the 4th
25 applicant was accordingly dropped. Counsel submitted that the respondents were applicants in Miscellaneous Application No. 169 of 2011 in which they were seeking for orders to be substituted as representatives of a group of claimants of the former Internal Security Organization (ISO). The application came before a single Justice, Hon. Justice Kasule and it was dismissed. He referred to page 9 of the ruling where the learned Justice found that there

5 was nothing in court that justified the filing of that application and as such there was nothing
pending. He argued that if extension is granted, the applicant intends to argue in the reference
that at that point the single Justice should have referred the matter to a full bench. He added
that his failure to file a reference in time should not be visited on the client. Counsel prayed
that the application be allowed and the costs be borne by himself as counsel who made the
10 mistake. To support his submission, he relied on the case of **Hon. George Patrick Kassaja
vs Fredrick Ngobi Gume & anor, Court of Appeal Criminal Application No. 56 of 2016.**

Conversely, counsel for the respondent opposed the application and submitted that it does
not bring out sufficient reason for failure to file the application in time. He argued that
paragraph 1 of the grounds in the notice of motion states that a letter informing court of the
15 death of counsel's mother was attached as annex "A" yet there is no attachment. Counsel
also submitted that the ruling that is intended to be challenged by the reference was delivered
on 12/6/2017 and this application was filed on 25/7/2017 over one and a half months later.
He argued that any other lawyer in that firm could have filed this application earlier. Further,
that it would have also been prudent to annex the reference to this application otherwise the
20 respondents would be prejudiced as stated in paragraph 10 of the affidavit in reply. Counsel
added that, both parties are supposed to get their benefits from government but as long as
there are matters in court it cannot be paid. He prayed that this application be dismissed with
costs to counsel for the applicants as prayed.

In rejoinder, counsel for the applicants conceded that the letter alluded to in paragraph 1 of
25 the grounds was not actually attached but that this does not mean that the unfortunate event
did not occur.

5 **COURT'S FINDING**

I have carefully studied the court record and considered the submissions of both counsel and the issues they raised. The applicants seek for leave to file a reference to challenge the decision of a single Justice out of time.

10 Rule 55 (1) (b) of the *Judicature (Court of Appeal Rules) Directions SI 13-10* provides for the time frame within which to file a reference from the decision of a single Judge as follows;

“ (1) Where under section 12(2) of the Act, any person being dissatisfied with the decision of a single judge of the court—

(a)

15 (b) in any civil matter wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the court, the applicant may apply for it informally to the judge at the time when the decision is given or by writing to the registrar within seven days after that date.”

The applicants in the instant case did not take this essential step within the time prescribed as provided for above. I am alive to the fact that this Court has the discretion to extend time 20 within which to do an act pursuant to rule 5 of the *Judicature (Court of Appeal Rules) Directions SI 13-10* which provides as follows:-

25 “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 authorised 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.”

The phrase “sufficient cause” has been explained in a number of authorities. In the case of **Rosette Kizito vs Administrator General and ors, Supreme Court Civil Application No.**

5 **9/86** reported in *Kampala Law Report 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.

The Supreme Court in the case of *Nicholas Roussos vs Gulam Hussein Habib Virani and
10 anor SCCA No. 9 of 1993* laid down grounds or circumstances which may amount to
sufficient cause and these include a mistake by an advocate through negligence, ignorance
of procedure by an unrepresented defendant and illness by a party.

Guided by rule 5 of the Judicature (Court of Appeal Rules) Directions SI 13-10 and the
authority of *Nicholas Roussos vs Gulam Hussein Habib Virani and anor (supra)* the
15 question to be determined in this application is whether the applicants have shown sufficient
cause as to why they failed to file a reference challenging the decision of a single Justice
within the prescribed time.

The applicants' counsel stated in one of the grounds in the notice of motion that he was unable
to apply for the reference to challenge the decision of a single Justice in the stipulated time
because he was not physically in court as he had lost his mother at the time. He indicated
20 that he had attached a letter marked "A" onto the notice of motion informing court of the
aforesaid. However, there was no such attachment and counsel for the applicants even
conceded in his rejoinder that the said letter was not actually attached. In the circumstances,
I find no proof that the alleged death occurred and this makes the application devoid of any
sufficient cause upon which I can base my decision to grant it.

25 I also accept the submission of counsel for the respondents that there was dilatory conduct
on the part of the applicants given the date of the ruling intended to be challenged by the
reference and the date of filing of this application.

5 Most importantly, I note that the substantive matter that gave rise to this application is a claim
for terminal benefits by former workers of ISO, the bulk of whom are not even aware of this
battle between the 2 factions as to which of them is more suitable to represent them. It is
therefore my considered view that this matter and the intended reference are diversionary as
they are based on side issues which will only serve to delay the claimants in the substantive
10 suit from pursuing their claim and as such are not in their best interest.

In the circumstances, I am not persuaded that this matter merits grant of leave to the
applicants to file a reference challenging the decision of the single Justice out of time.

In the result, this application is dismissed with costs to be personally paid by counsel for the
applicants to the respondents.

15 I so order.

Dated at Kampala this.....1st.....day of.....June.....2020.



Hellen Obura, JA

JUSTICE OF APPEAL

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