**THE REPUBLIC OF UGANDA**

**CIVIL REFERENCE NO.45 OF 2011**

(Arising from the Ruling of Court of Appeal No.146of 2012 by Hon. Lady Justice Faith Mwondha, JA Single Justice (as she then was )delivered on 2nd April 2014

**UGANDA ELECTRICITY DISTRIBUTION COMPANY LTD=====APPELLANT**

**VERSUS**

**LEVY OKELLO AND 41 OTHERS==========RESPONDENT**

**CORAM HON. MR. JUSTICE GEOFREY KIRYABWIRE, JA**

**HON. LADY JUSTICE MONICA MUGENYI, JA**

**HON. MR. JUSTICE REMMY KASULE, JA**

**RULING OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA**

I have had the benefit of reading in draft the Judgment of my learned sister, Hon. Lady Justice Monica Mugenyi, JA. I agree with her reasons and conclusions. Since the Hon. Mr. Justice Remmy Kasule, Ag. JA, also agrees, accordingly, this Reference stands dismissed with costs to the Respondents.

Dated at Kampala this.....31st.....day of.....March.....2021.

.....

**HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA**

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL REFERENCE NO. 45 OF 2011

*[Arising from Ruling of Court of Appeal Reference No. 146 of 2012 by Hon. Lady Justice Faith Mwondha, JA Single Justice, (as she then was) delivered on 2nd April 2014]*

UGANDA ELECTRICITY DISTRIBUTION COMPANY LTD========== APPELLANT

VERSUS

LEVY OKELLO & 41 OTHERS ==========RESPONDENT

**CORAM: Hon. Mr. Justice Geoffrey Kiryabwire, JA**
**Hon. Lady Justice Monica Mugenyi, JA**
**Hon. Mr. Justice Remmy Kasule, Ag. JA**

**RULING OF MR. JUSTICE REMMY KASULE, Ag. JA**

I have had the privilege of reading through the draft Ruling of my Learned sister, Hon. Lady Justice Monica Mugenyi, JA.

I agree with the reasoning, analysis of issues and conclusions she reaches. I have nothing useful to add.

Accordingly, I dismiss this Reference with costs to the Respondents.

Dated at Kampala this 31st day of March 2021.

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**HON. MR. JUSTICE REMMY KASULE**
**AG. JUSTICE OF APPEAL**

# THE COURT OF APPEAL OF UGANDA
# AT KAMPALA

**CORAM: KIRYABWIRE, JA; MUGENYI, JA AND KASULE, AG. JA**

**CIVIL REFERENCE NO. 45 OF 2014**

**BETWEEN**

**UGANDA ELECTRICITY DISTRIBUTION CO. LTD ..... APPELLANT**

**AND**

**LEVY OKELLO & 41 OTHERS ..... RESPONDENTS**

**(Reference arising from the Ruling of the Court of Appeal (Hon. Lady Justice Faith K. Mwondha, JA, Single Judge) in Civil Application No. 103 of 2010)**

**RULING OF MONICA K. MUGENYI, JA**

A. **Introduction**

1. This is a Reference by the Uganda Electricity Distribution Company Limited ('the Applicant') against the Ruling of a single judge of the Court in **Reference No. 146 of 2012** dated 2nd April 2014, itself arising from the decision of a Registrar of the Court in **Civil Application No. 103 of 2010**. Given the convoluted history of this Reference, a brief background thereof would be useful.

2. Mr. Levy Okello and 41 (forty-one) other residents of Obutowelo 'A' village in Ojwina Division, Lira Municipality ('the Respondents') filed **Civil Suit No. 85 of 2004** in the High Court of Uganda sitting in Gulu seeking compensation for their house structures, as well as non-use of land, that were affected by a 33 KV electric line that had been installed by the Applicant over their land. The case was adjudicated on various dates between 19th October 2007 – 24th August 2009, when parties were given a schedule for the filing of written submissions and the matter adjourned to 12th October 2009 for mention. When the case came up for mention, only the Respondents were in court and judgment was scheduled for delivery on 26th February 2010. On that day, judgment was delivered for the Respondents as against the Applicant.

3. Dissatisfied with the judgment but caught by time limitation within which to file an Appeal, the Applicant filed **Civil Application No. 103 of 2010** seeking an extension of time within which to file a Notice of Appeal. It was the Applicant's contention that it had not been notified of the date of delivery of judgment, only learning of the judgment on 20th May 2010. This was well beyond the time within which a Notice of Appeal may be lodged. The Applicant did, nonetheless, go ahead to lodge a Notice of Appeal in this Court on 24th May 2010. I revert to this Notice of Appeal later in this Ruling.

4. Be that as it may, on 11th July 2012 when the application first came up for hearing, despite it having been adjourned in the presence of Counsel for both parties, neither the Applicant's advocates not a representative of the Applicant company appeared in court. It was therefore dismissed with costs to the Respondents. Presumably upon its reinstatement, the application was subsequently heard and determined by an Assistant Registrar of this Court who, finding no merit therein, dismissed it on or about 25th October

2012. Dissatisfied with the Registrar's decision, the Applicant lodged a Reference to a single judge of the Court. It was similarly dissatisfied with the Ruling of the single judge that upheld the Registrar's decision, hence this Reference to a fully constituted bench of the Court.

5. In the meantime, before this Reference could be heard, the Respondents filed **Civil Miscellaneous Application No. 112 of 2015** – an application to strike out the Notice of Appeal that had been lodged out of time. This application was heard, determined and allowed by a fully constituted bench of the Court, and the offensive Notice of Appeal was struck out. It will suffice to point out here that in determining **Civil Miscellaneous Application No. 112 of 2015**, no reference whatsoever was made to the decision of the single judge that is under Appeal herein, neither did the Court consider the merits thereof. For clarity, the Court's decision is reproduced below.

> ***Resolution of the Issues***
>
> ***The Judgment of the High Court having been delivered on 26th February 2010, a notice of appeal filed on 24th May 2010 was way out of time. Rule 72 of the rules of this Court requires a notice of appeal to be lodged at the High Court 14 days after the date of the decision intended to be appealed from.***
>
> ***There is no order enlarging the time within which to appeal. For the above reasons, we found that this application had merit and we allowed it and struck out the notice of appeal with costs to the respondent. It was so ordered.***

B. **The Reference**

6. The Applicant preferred the following grounds of reference:

   i. **The learned single Justice of Appeal erred in law and failed to evaluate the evidence on record thereby erroneously held that failing to give judgment notice on the Applicant did not constitute sufficient reason for extending time for filing a Notice of Appeal.**

   ii. **The learned single Justice of Appeal erred in law and failed to evaluate the evidence on record thereby making the erroneous finding that the Applicant had several lawyers representing it in HCCS No. 85 of 2004.**

iii. **The learned single Justice of Appeal erred in law and failed to evaluate the evidence on record thereby making the erroneous finding that the Applicant 'delayed to file the Application because they were confident of parading' non-service of the Judgment Notice as an excuse.**

iv. **Alternatively but without prejudice to the foregoing, the learned single Justice of Appeal erred in law and failed to evaluate the evidence on record thereby erroneously failing to find that the Applicant had otherwise proved other reasons why the appeal should be allowed to proceed though out of time.**

v. **The learned single Justice of Appeal erred in law and failed to evaluate the evidence on record thereby making the erroneous finding that the Applicant does not have an arguable case on appeal.**

vi. **The learned single Justice of Appeal erred in law and failed to evaluate the evidence on record thereby failing to find that shutting out the Applicant's appeal will constitute injustice to the Applicant.**

7. At the hearing of the Reference, the Applicant was represented by Ms. Rachael Tumwebaze, while Mr. Twontoo Obaa appeared for the Respondent. The Parties adopted their respective written submissions in the matter. I propose to consider Grounds *1 and 3 together; followed by Ground 2, and concluding with the determination of Grounds 4, 5 and 6 together, albeit with Ground 4 being considered last.*

C. **Determination**

**Grounds 1 and 3**: *The learned single Justice of Appeal erred in law and failed to evaluate the evidence on record thereby erroneously held that failing to give judgment notice on the Applicant did not constitute sufficient reason for extending time for filing a Notice of Appeal*, and *making the erroneous finding that the Applicant 'delayed to file the Application because they were confident of parading' non-service of the Judgment Notice as an excuse.*

8. It was the Applicant's case that it was entitled to a judgment notice and therefore non-service of one with regard to the judgment in the case sought to be appealed (**Civil Suit**

**No. 85 of 2004**) constitutes sufficient reason for granting an extension of time. The Applicant relied upon a decision of this Court in **St. Kizito Youth Farm Ltd vs. The Attorney General, Civil Application No. 58/1997** to bolster its case. In that case, citing Rule 4 of the then Court of Appeal Rules 1996, it was held:

> **The expression 'sufficient reason' is not defined anywhere in the rules. ... In the present case the applicant's version is that he could not file the notice in time because judgment was delivered in his absence and in the absence of his counsel as they had not been served with notice for the delivery of judgment. It is the applicant's case that by the time he learnt of the decision of the court the time within which to file notice of appeal had expired. According to the copy of the judgment on file there is no doubt over the fact that the judgment was delivered in the absence of the applicant and his counsel ... Considering all the circumstances of this application I am satisfied that the explanation given by the applicant as to why he was unable to file the notice of appeal in time is a sufficient reason within the meaning of rule 4 of the court of appeal rules 1996.**

9. The Applicant did also rely upon the authority of **F. L. Kaderbhai & Another vs. Shamsherali M. Zaver Virji & Others, Civil Application No. 20 of 208** (Supreme Court) where the following decision in **Boney M. Katatumba vs. Waheed Karim, Civil Application No. 27 of 2007** (per Mulenga, JSC) was cited with approval:

> **Under r 5 of the Supreme Court Rules, the court may, for sufficient reason, extend the time prescribed by the Rules. What constitutes 'sufficient reason' is left to the Court's unfettered discretion. In this context, the court will accept either a reason that prevented an applicant from taking the essential step in time, or other reasons why the intended appeal should be allowed to proceed though out of time. For example, an application that is brought promptly will be considered more sympathetically than one that is brought after unexplained inordinate delay. But even where the application is unduly delayed, the court may grant the extension if shutting out the appeal may appear to cause injustice.**

10. With the benefit of the foregoing case law, it was the Applicant's contention that shutting out the appeal would occasion injustice given its genuine misgivings about the retrospective award of interest in **Civil Suit No. 85 of 2004**. The Applicant argued that, the Respondents' compensatable properties having been valued as of 2009, the award of interest thereon retrospectively from 2003 merits consideration on appeal. It is the contention that 15% interest on the Ushs. 400,000,000/= (four hundred million) decretal amount for six years (2003 – 2009) represents substantial sums in public funds, hence the need for this Court to reconsider the impugned decision on appeal. On that premise, the Appeal was considered to have a high likelihood of success. Other approbating circumstances, from the Applicant's perspective, was that the application for extension of time had been lodged without undue delay, nineteen days after the Applicant became aware of the judgment; and, it had demonstrated good faith by settling all the trial court's awards, save for interest.

11. The Application was vehemently opposed by the Respondents. It was argued that the judgment and decree in **Civil Suit No. 85 of 2004** had been in place for ten years, the Applicants not bothering to utilize Rule 13 of the Judicature (Court of Appeal Rules) Directions ('the Court's Rules of Procedure') to lodge an Appeal or take any steps in that regard. In the estimation of learned Counsel for the Respondent, the Court having previously struck out a Notice of Appeal that had been filed out of time, the present Reference was rendered incompetent. In any event, it was the contention that section 26 of the Civil Procedure Act (CPA) aptly addressed the Applicant's misgivings with regard to the interest awarded by the trial court in **Civil Suit No. 85 of 2004**, the sole bone of contention in the intended appeal.

12. For ease of reference, section 26(2) of the CPA and Rule 13(1) of the Court's Rules of Procedure are reproduced below.

> Section 26(2) of the CPA
>
> *Where and in so far as a decree is for the payment of money, the court may, in the decree, order interest at such rate as the court deems reasonable to be paid on the principal sum adjudged from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the court deems reasonable on the*

*aggregate sum so adjudged from the date of the decree to the date of payment or to such earlier date as the court thinks fit.*

Rule 13(1) of the Court's Rules of Procedure

*The registrar or the registrar of the High Court, as the case may be, shall not refuse to accept any document on the ground that it is lodged out of time but shall mark the document with the words "lodged out of time" and inform the person lodging it accordingly.*

13. I carefully considered the rival submissions of both Parties. The remedy sought by the Applicants hinges on Rule 5 of the Court's Rules of Procedure, which reads as follows:

*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.*

14. Rule 5 provides a discretionary remedy that ordinarily would only be availed to litigants upon the demonstration of sufficient reason for recourse thereto. In the absence of a definitive definition of what would amount to 'sufficient reason', it has been proposed that this would be determined on a case-by-case basis with appropriate regard to the circumstances of each case. See **St. Kizito Youth Farm Ltd vs. The Attorney General** (supra). It cannot be suggested, therefore, (as I understood learned Counsel for the Applicant to propose) that non-service of a judgment notice would be an automatic basis for the extension of time within which to lodge a Notice of Appeal, neither do I construe that to be the import of the **St. Kizito Youth Farm** case. The Court took all the circumstances of that case into account in arriving at the decision it did. Indeed, in **Boney M. Katatumba vs. Waheed Karim** (supra) that was cited by the Applicant, what would amount to sufficient reason for extension of time was left to courts' 'unfettered discretion.'

15. In the instant case, the trial court's record of proceedings reveals that on 24th August 2009 directions had been given by the court for the parties in **Civil Suit No. 85 of 2004** to return to court on 12th October 2009 for mention of the suit after the filing of their respective written submissions. These directions were given in the presence of both parties' advocates. As it were, on the date of mention, although some of the present Respondents

did attend court, neither a representative of the Applicant company not its advocates bothered to honour the court's directions; this in spite of an earlier warning by the trial judge that no further adjournments would be granted on account of the non-appearance of advocates. The trial judge therefore scheduled a date for delivery of the judgment, and it was duly delivered on that day in the absence of either the Applicant or its advocates.

16. Quite clearly, had the Applicant and/ or its advocates respected the trial court's directions the question of a judgment notice would not be in issue. It would have been an entirely different matter if the trial court had reserved judgment to be delivered on notice but gone ahead to deliver it without proof of due service of the judgment notice upon the Applicant. In that case, the Applicant's predicament would warrant an extension of time to lodge an Appeal. It is trite law that court orders or directions are not issued in vain. Thus, a party that elects to dishonour them would squarely bear the implications of its discourteous conduct. In the result, I find that the absence of a judgment notice in the circumstances of this case would not be sufficient reason for the extension of time as sought by the Applicant. *Ground 1* of this Reference is therefore misconceived and accordingly disallowed.

17. It will suffice to point out here that I find no merit in Ground 3 as framed. Whereas indeed my sister, Faith Mwondha, JA (as she then was), did form the impression that the Applicant '*delayed to file the Application because they were confident of parading' non-service of the Judgment Notice as an excuse*', her conclusion on the matter is to be found elsewhere. The learned judge drew the conclusion that '*it cannot be in the interest of justice that the application is granted on that basis alone.*' Having arrived at a similar finding in my interrogation of Ground 1 hereof, I cannot fault my sister judge for her finding on this issue. I would therefore disallow *Ground 3* of the Reference.

**Ground 2**: *The learned single Justice of Appeal erred in law and failed to evaluate the evidence on record thereby making the erroneous finding that the Applicant had several lawyers representing it in HCCS No. 85 of 2004.*

18. The record of proceedings in the trial court that was appended to the Respondents' Reply to the Memorandum of Reference filed in this Court on 31st July 2014 clearly depicts the Applicant as having been represented by Mr. Louis Odong between 19th October 2007 – 17th March 2009; jointly by Mr. Odong and Mr. Andrew Kabombo on 30th March 2009; Mr.

Kabombo on 28th April 2009; Mr. John Fisher Kanyemibwa and Mr. Kabombo on 4th June 2009, and finally Mr. Kanyemibwa alone on 24th August 2009. It seems to me to be unduly pedantic for the Applicant to contest this observation by the learned single judge in this Reference. Without belabouring the issue further, I am satisfied that no error was made in that regard. *Ground 2* thus fails.

**Grounds 4, 5 & 6**: *The learned single Justice of Appeal erred in law and failed to evaluate the evidence on record thereby failing to find that the Applicant had otherwise proved other reasons why the Appeal should be allowed to proceed though out of time; making the erroneous finding that the Applicant does not have an arguable case on appeal*, and *failing to find that shutting out the Applicant's Appeal will cause an injustice to the Applicant.*

19. In the **Boney M. Katatumba** case (supra), it was the Supreme Court's proposition that courts would either accept as sufficient reason to grant an extension of time '**a reason that prevented an applicant from taking the essential step in time or other reasons why the intended appeal should be allowed to proceed though out of time.**' The prompt filing of an application for extension of time, as well as injustice flowing from shutting out an appeal were proposed as plausible reasons that could move a court to exercise its discretion in favour of an applicant. Obviously, these considerations would not in themselves confer an automatic right of extension of time, being but mere guides in the context of the facts before a court. Thus, if granting an extension of time to lodge an appeal clearly does not serve the ends of justice, however promptly such an application is brought, a court would be disinclined to grant the extension. It is against that background that I interrogate the circumstances of this case to determine whether they provide any other reason as would warrant the grant of the extension of time sought; and, more specifically, whether there is indeed an arguable case on Appeal that if shut out would cause an injustice to the Applicant.

20. As gleaned from the court record, it would appear that following the delivery of the Judgment in **Civil Suit No. 85 of 2004** in the absence of the Applicant and its advocates, the Applicant filed a Notice of Appeal in this Court albeit out of time, and secured an interim order of stay of execution in respect of the trial court's Judgment. It did not, however, bother to lodge its Memorandum of Appeal under Rule 13(1) of this Court's

Rules of Procedure and has not done so to date. Had it done so, a judicial officer considering the application for extension of time would have been in a better position to appreciate the contours and *bona fides* of the intended Appeal. Be that as it may, the Applicant did state in submissions that it had substantially complied with the judgment and orders of the trial court, only taking issue with the retrospective award of interest from 2003, rather than 2009 – the date of the valuation report relied upon in computing the Respondents' compensation. It did not intimate any misgivings about the rate of interest awarded, its contestation apparently arising solely in respect of the date when the interest would start to accrue.

21. To be clear, the trial court rendered itself as follows on the question of interest:

> ***As to interest, the plaintiffs have been deprived of the use of their money for a considerable time. The plaintiffs are thus entitled to interest. The sums awarded herein are to carry interest at 15% p.a running from 01.08.03 in respect of the sums awarded a compensation and special damages, and to run from the date of judgment in respect of the general damages, till payment in full.***

22. Where (as was the case in the matter before the trial court) a court decree entails a monetary payment, section 26(2) of the CPA confers discretionary powers upon such court to *inter alia* award interest on the principal sum for any period prior to the institution of the suit. In the case of **American Express International Banking Ltd vs. Atul (1990 – 94) EA 10** (Supreme Court), it was held that an appellate court could only interfere with the discretion exercised by a court of original jurisdiction in the following instances:

    i. **Where the judge misdirects himself with regard to the principles governing the exercise of discretion;**
    ii. **Where the judge takes into account matters that he ought not to consider; or fails to take into account matters that he ought to consider;**
    iii. **Where the exercise of discretion is plainly wrong.**

23. In the matter before this Court, the discretion exercised by the trial court is soundly grounded in the express provisions of section 26(2) of the CPA. In addition, the trial court

awarded interest on the infallible premise that the Respondents had been denied use of their compensatory money. The rationale for this award resonates with the definition of interest as '**the return or compensation for the use or retention by one person of a sum of money belonging to, or owed, to another.**'[1] To the extent that the trial court made an apparently uncontested finding that the Applicant company's electricity line had been erected over the Respondents' land in 2003, the Respondents were entitled to recompense for the retention by the Applicant of monies that accrued to them upon the construction of that line. The trial judge thus cannot be faulted for his judicious approach to the exercise of his discretion with regard to the award of interest. Accordingly, in so far as this Court is constrained by the dictum in **American Express International Banking Ltd** (supra) from inappropriately exercising its appellate mandate, I am unable to agree with the Applicant company that it either has an arguable case on appeal or that shutting out its appeal would cause any injustice. Whereas it is appreciated that 15% p.a interest on the Ushs. 400,000,000/= (four hundred million) decretal amount for 6 years (2003 – 2009) represents substantial sums in public funds, for the reasons advanced in this Judgment, that is no reason to attribute high likelihood of success to the intended Appeal. *Grounds 5 and 6* of the Reference do therefore fail. Finally, finding no other reason on record to warrant the grant of an extension of time, I am disinclined to allow *Ground 4* of this Reference.

D. **Conclusion**

24. All the grounds thereof having failed, this Reference is hereby dismissed with costs to the Respondents.

It is so ordered.

**Dated at Kampala this 31st day of March, 2021.**

**Hon. Lady Justice Monica K. Mugenyi**
**JUSTICE OF APPEAL**

[1] See the Oxford dictionary of Law (7th Edition), 2009, p. 289.