

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPLICATION NO. 325 OF 2017**

*(Arising out of H.C.C.S No. 69 of 2012)*

**SENYONJO DICK ::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**DELTA PETROLEUM (U) LTD ::::::::::::::::::::::::::::::::::: RESPONDENT**

**CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ**

**HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA**

**HON. JUSTICE STEPHEN MUSOTA, JA**

**RULING OF COURT**

This application was brought by way of Notice of Motion under Rules 5, 43 and 44 of the Judicature (Court of Appeal Rules) Directions seeking for orders that time within which to appeal be extended and leave be granted to the applicant to appeal the High Court decision in H.C.C.S No. 69 of 2012 and that costs of the application be provided for.

The grounds upon which the application is premised are laid out in the Notice of Motion and the affidavit of the applicant, Senyonjo Dick, and are briefly that;

1. The applicant was sued by the respondent in Civil Suit No. 69 of 2012.

2. Judgment was passed in favour of the respondent on the 8<sup>th</sup> day of April 2016.
3. Being dissatisfied, the applicant immediately instructed their lawyers, Messrs P. Wettaka Advocates to file a Notice of Appeal.
4. The said Notice of Appeal was filed but the applicant later on learnt that the same was filed out of time.
5. That upon discovery of the above error, the applicant immediately withdrew the appeal under Rule 94 of the Judicature (Court of Appeal Rules) Directions.
6. The applicant is still interested in prosecuting the appeal.
7. Counsel's mistake cannot be visited on the litigant.
8. It is in the interest of justice that the application is granted.

The respondent filed an affidavit in reply deposed by Eric Karambasaizi and stated therein that the applicant's appeal was filed on 3<sup>rd</sup> February 2017 and a copy of the Memorandum and Record served on the respondent's then lawyers. Later the applicant withdrew the appeal but has not shown sufficient reason why he withdrew the appeal resulting in its dismissal in law instead of applying to Court to validate the appeal. On 30<sup>th</sup> March 2017, the respondents filed an application vide Civil Application No, 78 of 2017 Delta Petroleum (Uganda) Limited Vs Dick Senyonjo seeking orders that the applicant's appeal be struck out on grounds that the Notice of Appeal was served out of time.

## **Representation**

When this application came up for hearing, Mr. Songon Mustapha Walima appeared for the appellant while Mr. George Arinaitwe appeared for the respondent. Both parties filed written submissions which they adopted.

## **Applicant's submissions**

Counsel for the appellant referred to Rule 5 of the Judicature Court of Appeal Rules Direction SI 13-10, which allows this court, for sufficient reason, to extend the time limited by these Rules. Counsel relied on the decision in **Rosette Kizito Vs Administrator General and others S.C.C.A No. 9 of 1986** in which 'sufficient reason' was defined to relate to the inability or failure to take the particular step in time. Counsel relied further on the Supreme Court decision in **Sabiiti Kachope and 3 others Vs Margaret Kamuje Supreme Court Civil Application No. 31 of 1997** in which Oder, JSC (as he then was) held that; *"for applications of extension of time, a mistake or negligence of the applicant's Counsel maybe accepted as a proper ground for granting relief such as 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."*

Counsel argued that in the present case, the affidavit of the applicant emphasizes that the inordinate delay was caused by the applicant's previous counsel who inspite of having instructions to file a Notice of Appeal, failed to do so within time. He negligently filed the Notice of Appeal when time within which to file had passed. Counsel relied on



**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 of time, and it was held that where there is a mistake of counsel, it can be considered sufficient ground to grant an extension of time.

### **Respondent's submissions**

In reply, counsel for the respondent submitted that the Notice of withdrawal filed by the applicant was never served on the respondent and the respondent never consented to it under Rule 94 of the Rules of this Court. Counsel relied on the Supreme Court decision in **Crane Bank Limited (in receivership) Vs Sudhir Ruparelia and another Civil Appeal No. 7 of 2020** in which the respondent, upon being served, had endorsed his objection to the withdrawal on the notice of withdrawal. Since the objection was still before the court, the court had the occasion to dismiss the appeal. In the present case, the notice was not even served upon the respondent contrary to the mandatory requirement in Rule 94(2) of the Rules of this Court.

Counsel submitted further that the applicant in this case has not shown sufficient cause to warrant the exercise of Court's discretion to extend time within which to file the proposed appeal. Counsel relied on the decision in **Mulindwa George William Vs Kisubika Joseph S.C.C.A No. 12 of 2014** in which it was held that an applicant seeking for extension of time has the burden of proving to the court's satisfaction that for sufficient reasons, it was not possible to lodge the appeal in the prescribed time.

That the applicant in the present case seeks to rely on the mistake of counsel which ought not to be visited on the innocent litigant. The Notice of Appeal was filed within 30 days instead of the stipulated 14 days and it was never served on the respondent. Counsel submitted that the general principle of law stated in the case of **Kananura Andrew Kansiime Vs Richard Henry Kaijuka Supreme Court Civil Reference No. 15 of 2016** is that mistake of counsel should not be visited on the litigant is subject to exceptions.

### **Applicant's submissions in rejoinder**

In rejoinder, counsel for the applicant relied on **Rule 94** of the **Judicature Court of Appeal Rules Directions SI 13-10** and argued that for an appeal to be dismissed with costs, it is subject to an application by the party who did not consent under Rule 94 (5) which shall be made 14 days after lodging the notice of withdrawal. In addition, the respondent did not serve on the appellant's address of service under Rule 80 of the rules of this court.

Counsel further relied on the decision in **Chelbei and another Vs Masai Labu Misc. Application No. 140 of 2010** which states that Rule 94(1) of the rules of this court permits an appellant to withdraw an appeal only before it has been called for hearing and once it has been called for hearing, it cannot be withdrawn by the appellant. Counsel argued that the withdrawn appeal had never been scheduled for hearing at the time it was withdrawn and the appellant exercised his right to withdraw the said appeal so as to prepare a fresh and more prepared appeal in this court.



## **Court's consideration of the application**

Rule 5 of the **Judicature (Court of Appeal Rules) Directions SI13-10**, gives this Court discretionary powers to extend time within which an act is required to be done by the rules. The rule provides 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.”*

The condition for the grant of the extension of time is that the applicant must show sufficient reason as to why the Court should grant the extension of time; in this case, extension of time within which to appeal. In **Re. Christine Namatovu Tebajjukira Versus Noel Shalita (1992-93) HCB 85**, it was held that an application for extension of time must show sufficient reason before the court can exercise its discretion in granting the same.

In **Dr. Rubinga v Yakobo Kato and 2 others, Supreme Court Civil Appeal, No. 35 of 1992**, it was held that;

*‘When a judge sets out to consider an application for leave to appeal out of time he may take into account all the circumstances involved in the procedures up to that point. For instance, he may take into account the delays which have occurred, the probable likelihood of success of*

*the Appeal or otherwise and he may take into account the general situation as to whether the appeal could in law be instituted.'*

Under the Constitution, a person whose civil rights and obligations are being determined by a court or tribunal is entitled to a fair hearing which is a hearing conducted impartially in accordance with due process where a party has had reasonable notice as to the time, place and issues with reasonable opportunity to prepare.

Likewise, in **Clouds 10 Limited v Standard Chartered Bank (U) Limited, Supreme Court Civil Application, No.35 of 1992**, Manyindo, DCJ (as he then was) held that; *'The Court is only entitled to grant an extension of time for sufficient reason, which must be shown to the court.'*

In the present case, the applicant has stated in paragraph 5 that his current lawyers inadvertently filed Civil Appeal No. 20 of 2017 without realizing that the Notice of Appeal filed earlier was filed out of time. The applicant filed a Notice of withdrawal of the appeal and now seeks extension of time and/or leave of court to file his appeal in a proper manner. The Supreme Court in **Seperia Kyamulesiire Vs Justine Bikanshire Bagambe Civil Appeal No. 20 of 1995** held that errors or omission by counsel are no longer considered fatal to the applicant under Rule 4 of the Rules of the court unless there is evidence that the applicant was guilty of dilatory conduct in the instructions of his lawyer.

The applicant, after the decision in Civil Suit No. 69 of 2012, instructed his lawyers Messrs P. Wettaka Advocates to file a Notice


of Appeal. The Notice of Appeal was filed and the applicant learnt later that it had been filed out of time and withdrew the appeal under Rule 94 of the Rules of this court. From the set of events since the judgment of the High Court was delivered, it is clear that the applicant is interested in prosecuting his appeal and was only let down by the previous lawyers.

The Constitution, in Article 28(1), requires that the substance of disputes should be investigated on their merits, and errors and lapses should not necessarily bar a litigant from the pursuit of his/her rights.


In the result, an extension of time and/or leave to appeal out of time being sought by the applicants is hereby granted. Notice of Appeal should be lodged within 7 days from the date of delivery of this ruling.

Each party shall bare its costs.

Dated this 9<sup>th</sup> day of March 2023

  
**Richard Buteera, DCJ**

  
**Catherine Bamugemereire, JA**

  
**Stephen Musota, JA**