

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

HCT - 00 - CC - MA - 1058 - 2013
(Arising from HCCS No. 178 of 2008 - CMs Court Mengo)

VICTORIOUS EDUCATION SERVICES ::::::::::::::::::::
APPLICANT

VERSUS

MEGA CONSULTS LIMITED ::::::::::::::::::::
RESPONDENT

BEFORE: THE HON. JUSTICE DAVID WANGUTUSI

R U L I N G:

The Applicant, Victorious Education Services Limited, seeks that the court extends the time within which to file an appeal from the decision of the Chief Magistrates Court at Mengo.

The Mengo decision was made on the 28 October 2013. The Applicant contends that its failure to file the appeal in time was occasioned by lack of notification of the judgment date and that it only got to learn of the judgment on the 9th of December 2013, 41 days later.

The second reason the Director of the Applicant forwarded was that Mr. Joseph Ekemu who was counsel for the Applicant did not notify it of the date of judgment nor of the delivery of judgment until the 9th December 2013 when he required the Applicant's Directors signature on a Notice of Appeal.

Lastly, that the failure of the Applicants advocate should not be visited on the Applicant.

The Respondent filed an application in opposition deponed by Mr. Christopher Makode, who contended that the Applicant was aware of the judgment early in time. That the advocate of the Applicant also held meetings trying to reach a settlement on the 9th November, 15th November and 8th December 2013. Furthermore that the Applicant even instructed his advocate to enter a consent judgment in respect of the costs.

This application is brought under S. 79(2) 96 and 98 CPA.

Section 96 CPA provides

"Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the Court may, on its discretion, from time to time enlarge that period, even though the period originally fixed or granted may have expired".

Time will be enlarged where the Applicant shows sufficient reason for his failure to do the act expected of him in the time given.

In cases like appeals, time begins to run from dated of judgment. This however, operates only where the party has been notified of the date of judgment.

In normal circumstances the attendance of the advocate to receive a judgment would be considered sufficient. The situation however, changes where issues of appeal arise.

I say so because, to file an appeal, in most cases the client has to give fresh instructions. This he can only do where the intending Appellant is aware of the judgment. A party to a suit should be vigilant in checking the position of his case. This vigilance cannot however, be forever.

The parties filed then submission in March 2013, no date of judgment was given. It is normal that as time for waiting for the judgment turns into months, even the daily or weekly inquiry as to the position of the case also reduces. The daily contact of counsel and his client might also reduce to such an extent that special effort might be necessary to inform the client of developments at court.

From the evidence on record there is nothing to show that the Applicant's Director was aware of the judgment date.

There is however, all the evidence that his advocate knew of the date and in fact attended court for the judgment. There is also evidence that he even attempted to reach a settlement of payment after the judgment. There is also the evidence that a consent was entered in respect of costs.

It is however, not shown that counsel for the Applicant was acting in full knowledge of his client. He seems to have kept the Applicant in the dark until the 9th December 2013. This was a mistake on the part of the Applicant's advocate which should not be visited on his client. An innocent client should not suffer the mistakes of his advocate, **Banco Arabe Espanol V Bank of Uganda** SCCA No. 8/98.

In the circumstances, I find that the delay that was occasioned by the ineptitude of counsel constitutes sufficient ground for failing to file the appeal within time, and this application is granted. The Applicant is given 14 days within which to file the necessary pleadings. It is so ordered.

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David K. Wangutusi
JUDGE

Date: 23 - 04 - 2014