



**IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA  
COMMERCIAL DIVISION**

Reportable  
Miscellaneous Application No. 1592 of 2021

In the matter between

**1. GOOD AFRICAN FOUNDATION LTD  
2. ANDREW RUGASIRA**

**APPLICANTS**

**And**

**AGRICULTURAL BUSINESS INITIATIVE TRUST**

**RESPONDENT**

**Heard: 12 May, 2022.**

**Delivered: 19 January, 2024.**

*Civil Procedure — Appeals — Enlargement of Time — The inherent jurisdiction of the Court is more fundamental than, and goes beyond, mere procedure — Inherent power is exercised only in circumstances in which courts believe that existing law does not adequately address the problem at hand — If the court concludes that written procedures actually do provide all necessary guidance in resolving the legal problem presented, the court need not press forward with the use of inherent power — A court resorts to inherent power in circumstances in which there are no particular options to choose between; there is simply a perceived need to act — Through inherent jurisdiction, a court possesses all of the common law equity tools to process litigation to a just and equitable conclusion — Inherent power though should be exercised with caution, used only when absolutely necessary to accomplish the underlying needs of the court and always with sensitivity to the purposes underlying relevant written rules, even the marginally relevant written rules — Even when there is a reasonable explanation for the delay, enlargement of time will not be granted unless the intended appeal is meritorious — Where the appeal is a hopeless one, notwithstanding even a very short delay, an extension of time will generally not be granted by the Court simply*

*because to do so would be an exercise in futility, resulting in a waste of time as well as resources for all concerned.*

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## **RULING**

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**STEPHEN MUBIRU, J.**

Background:

- [1] The respondent is a private limited liability company engaged in the business of financing agribusiness. It executed an agreement with the 1<sup>st</sup> applicant involving the disbursement of shs. 559,098,540/= for funding the improvement of the quality and production levels of coffee by farmers in Kasese District. The 2<sup>nd</sup> applicant was sole signatory to the account through which the funds were disbursed. The 1<sup>st</sup> respondent was bound to apply the funds in accordance with the contract terms, which included providing periodical accountability to the respondent. In due course, the respondent being dissatisfied with the accountability furnished by the 1<sup>st</sup> respondent, it demanded for a refund.
- [2] The dispute eventually led to the respondent filing a suit against the applicants for the recovery of the funds. The suit culminated in a judgment being entered on 18<sup>th</sup> December, 2020 in favour of the respondent against both applicants jointly and severally. The applicants were ordered to refund shs. 360,484,540/= to the respondent, to pay general damages of shs. 40,000,000/= with inters on both awards at the rate of 10% per annum, the first from the date of filing the suit and the latter from the date of judgment, until payment in full. The applicants were also ordered to meet the costs of the suit.

The Application:

- [3] This application by Notice of Motion is made under the provisions of section 98 of The Civil Procedure Act, and Order 51 Rules 6; and Order 52 rules 1 and 3 of The Civil Procedure Rules. The applicants seek enlargement of time within

which to file an appeal. It is the applicants' case that they were unaware of the delivery of the judgment until the respondent's counsel served them with a letter dated 11th November, 2021 seeking their approval of the terms of a draft decree. The applicants are aggrieved by the judgment and intend to appeal.

The affidavit in reply:

- [4] In the respondent's affidavit in reply opposing the application, it is averred that the jurisdiction to enlarge time for filing an appeal rests with the Court of Appeal and not his Court. For that reason, the application is misconceived and ought to be dismissed. There is no justifiable reason for extending the time and by failure to attach the intended memorandum of appeal, the applicants have not demonstrated any justifiable reason for the extension of time sought.

Submissions of Counsel for the applicant:

- [5] Counsel for the applicants submitted that Order 51 rule 6 of *The Civil Procedure Rules* empowers this Court to enlarge time for the filing of an appeal, provided there are justifiable reasons for doing so. In the instant case the applicants were unaware of the fact that the judgment had been delivered. By the time they got to know that fact, the time allowed for appeal had elapsed. Rule 2 (2) of *The Court of Appeal Rules* does not limit the inherent power of the Court of Appeal and of the High Court to grant the relief.

Submissions of counsel for the respondent.

- [6] Counsel for the respondent submitted that this court cannot extent the time. Rule 76 (2) of *The Court of Appeal Rules* and Rule 5 grants the jurisdiction. The jurisdiction is vested in the Court of Appeal. The court cannot invoke its inherent jurisdiction.

The Decision:

[7] Article 134 (2) of *The Constitution of the Republic of Uganda, 1995* provides that appeals lie to the Court of Appeal from such decisions of the High Court as may be prescribed by law. On the other hand, section 10 of *The Judicature Act* states that appeals lie to the Court of Appeal from decisions of the High Court prescribed by *The Constitution*, that Act or any other law. According for section 66 of *The Civil Procedure Act*, unless otherwise expressly provided in the Act, an appeal lies from the decrees or any part of the decrees and from the orders of the High Court to the Court of Appeal. By virtue of section 79 (1) (a) of the Act, except as otherwise specifically provided in any other law, every appeal has to be entered within thirty (30) days of the date of the decree or order of the court. In the instant case, the judgment sought to be appealed having been entered on 18th December, 2020 the time allowed for appeal elapsed on 18th January, 2021, hence this application for enlargement of time.

i. The jurisdiction to enlarge time for appeal.

[8] For that purpose, while the applicants rely on the provisions of Order 51 rule 6 of *The Civil Procedure Rules*, counsel for the respondent contends it is inapplicable but rather the jurisdiction vests in the Court of Appeal by virtue of Rule 2 (2) of *The Judicature (Court of Appeal Rules) Directions*. Order 51 rule 6 of *The Civil Procedure Rules* clearly and specifically applies to enlargement of time that “has been fixed for doing any act or taking any proceedings under these Rules or by order of the court,” Similarly Rule 5 of *The Judicature (Court of Appeal Rules) Directions* applies to extensions of time limited by those Rules or by any decision of the court or of the High Court for the doing of any act authorised or required by those Rules. The period of thirty (30) days for filing an appeal is neither fixed by those rules nor by an order of Court, but by statute. The applicant therefore cannot rely on this provision to invoke the jurisdiction of this court in matters of enlargement to time within which to appeal.

- [9] On the other hand, Rule 2 (2) of *The Judicature (Court of Appeal Rules) Directions* does not specifically vest jurisdiction for enlargement of time with the Court of Appeal. It only permits that Court, as well as the High Court, to invoke their inherent jurisdiction to make such orders as may be necessary for attaining the ends of justice, or to prevent abuse of the process of any such court, without being necessarily being limited or otherwise affected by any express provision in the rules.
- [10] The “inherent power” or “inherent jurisdiction” of the court was defined in *Grobbelaar v. News Group Newspapers Ltd. [2002] 1 WLR 3024 at 3037B*, as follows:
- The inherent jurisdiction of the court may be defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.” (Jacob, *The Inherent Jurisdiction of the Court*, (1970) 23 Current Legal Problems, 23).
- [11] Parties to litigation expect courts to operate both predictably and fairly. A core part of this expectation is the presence of codified rules of procedure, which ensure fairness while constraining, and making more predictable, the ebb and flow of litigation. A court cannot exercise its inherent jurisdiction in contravention of legislation or rules of court. The situations in which it is necessary to rely on the inherent power therefore are likely to be rare but most commonly are situations where there is little or no precedent, statutory or common law, yet it is necessary so as to do justice between the parties, and therefore justified through the invocation of the Court’s inherent jurisdiction.
- [12] These cases present themselves whenever there are procedural gaps and omissions that arise when the Constitution, statutes, court rules, or cases fail to

address the legal issues that have arisen. In such situations, if courts had no reliance on inherent authority, they would have no alternative but to either (a) leave procedural problems unresolved, or (b) offer strained interpretations of existing rules to address those problems in light of codified rules. There are circumstances in which considerations of fairness are imperfectly addressed by written rules, and allowing flexibility through the exercise of inherent power is an important safety valve.

[13] Written rules provide notice to parties about how a court's authority is going to be exercised, articulate relevant standards that govern the exercise of authority for all to see (and to criticise or seek to change, should the need arise), and provide guidance for appellate courts in determining whether a trial court's exercise of discretion in a particular case was appropriate or not. While the unconstrained exercise of inherent power is ever-less acceptable in a legal system that is increasingly moving toward written rules, the absence of such authority would have its own perverse effects. With written procedure, parties are aware of the most likely procedural choices and the considerations that factor into making those choices.

[14] Because inherent power is exercised only in circumstances in which courts believe that existing law does not adequately address the problem at hand, the process of exercise of their inherent power requires; (i) an evaluation of existing rules of written procedure to assess whether the use of inherent power is necessary at all, and (ii) a clear statement about the standards that the court is using to determine precisely how its inherent power should be exercised in a particular circumstance. The court should therefore take care to search all relevant written authority for guidance regarding either (a) the exercise of power without resort to inherent authority, or (b) the exercise of inherent authority, albeit in a manner constrained by articulated written rules. If the court concludes that written procedures actually do provide all necessary guidance in resolving the

legal problem presented, the court need not press forward with the use of inherent power.

[15] The situations in which it is necessary to rely on the inherent power are likely to be rare. A court resorts to inherent power in circumstances in which there are no particular options to choose between; there is simply a perceived need to act. That court is left to call upon its inherent power in deciding whether to exercise that power, the scope of options available to it in doing so, and which of the available options it has to choose. Through inherent jurisdiction, a court possesses all of the common law equity tools to process litigation to a just and equitable conclusion. Exercise of the power is bound up with the very nature of courts and judicial decision-making. To that end, the exercise of inherent power is also properly thought of in a functional way: a necessary means to ensuring that courts are able to manage interactions between parties, counsel, third parties, and the courts themselves. Inherent power though should be exercised with caution, used only when absolutely necessary to accomplish the underlying needs of the court and always with sensitivity to the purposes underlying relevant written rules, even the marginally relevant written rules.

[16] The inherent jurisdiction of the Court is more fundamental than, and goes beyond, mere procedure. At the root of the decisions in *Boyd, Gilmour and Co. v. Glasgow and South Western Railway Co.* (1888) 16 R 104 and *Hutchison v. Galloway Engineering Co.* 1922 SC 497 must be the inherent jurisdiction of the Court. The Court has to retain the flexibility needed to deal with unusual situations unless it had clearly deprived itself of the power to do so. A Rule of Court is not to be interpreted as altering a settled rule of law unless that is expressly stated or followed by necessary implication. Otherwise, the inherent jurisdiction of the Court would be emasculated. Construction of the Rules of Court in such a way as to have that effect would not serve the interests of justice. The Court cannot regard itself as constrained, simply because there is no Rule of Court.

[17] In the instant case, neither the rules of procedure of this Court nor those of the Court of Appeal expressly guide on application for enlargement of time. However, section 79 (1) (b) expressly provides that “the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.” Rule 5 of The Judicature (Court of Appeal Rules) Directions could also be invoked upon failure to comply with Rule 76 (2) which requires an intending appellant to that Court to file a notice of appeal within fourteen days after the date of the decision against which it is desired to appeal. It follows therefore that since the jurisdiction for enlargement of time is expressly, by statutory provision, vested in the Court of Appeal, there is no legal or procedural lacuna that would require this Court to invoke its inherent jurisdiction. On this ground alone the application would fail.

ii. The grounds for enlargement of time for appeal.

[18] However for purpose of completeness, the Court deems it necessary to consider the merits of the application as well. When an application is made for enlargement of time, it should not be granted as a matter of course. Grant of extension of time is discretionary and depends on proof of “good cause” showing that the justice of the matter warrants such an extension. The court is required to carefully scrutinize the application to determine whether it presents proper grounds justifying the grant of such enlargement. The evidence in support of the application ought to be very carefully scrutinized, and if that evidence does not make it quite clear that the applicant comes within the terms of the established considerations, then the order ought to be refused. It is only if that evidence makes it absolutely plain that the applicant is entitled to leave that the application should be granted and the order made, for such an order may have the effect of depriving the respondent of a very valuable right to finality of litigation.

[19] What constitutes “sufficient reason” will naturally depend on the circumstances of each case. It was held in *Shanti v. Hindocha and others* [1973] EA 207, that;



The position of an applicant for an extension of time is entirely different from that of an applicant for leave to appeal. He is concerned with showing sufficient reason (read special circumstances) why he should be given more time and the most persuasive reason that he can show is that the delay has not been caused or contributed to by dilatory conduct on his own part. But there are other reasons and these are all matters of degree. (Emphasis added).

[20] Although such circumstances ordinarily relate to the inability or failure to take the particular step within the prescribed time which is considered to be the most persuasive reason, it is not the only acceptable reason. The reasons may not necessarily be restricted to explaining the delay. An applicant who has been indolent, has not furnished grounds to show that the intended appeal is meritorious may in a particular case yet succeed because of the nature of the subject matter of the dispute, absence of any significant prejudice likely to be caused to the respondent and the Court's constitutional obligation to administer substantive justice without undue regard to technicalities. I am persuaded in this point of view by the principle in *National Enterprises Corporation v. Mukisa Foods, C.A.* Civil Appeal No. 42 of 1997 where the Court of Appeal held that denying a subject a hearing should be the last resort of court.

[21] Even when there is a reasonable explanation for the delay, enlargement of time will not be granted unless the intended appeal is meritorious. Where the appeal is a hopeless one, notwithstanding even a very short delay, an extension of time will generally not be granted by the Court simply because to do so would be an exercise in futility, resulting in a waste of time as well as resources for all concerned. The law is now settled and clear that extension of time will be granted where the intended grounds of appeal raise issues of general importance, or novel points of law, or where the grounds show a prima facie or arguable appeal. It is therefore imperative that the applicant places before Court, material on basis of which it may be determined that the intended appeal is not frivolous. The Court granting leave must be satisfied that there is a serious or reasonable question or

issue to be brought on appeal. It is therefore by practice that applicants attach the draft or intended memorandum of appeal, laying out the intended grounds to be raised on appeal. The applicant have neither attached such a memorandum nor outlined the intended ground in their affidavit in support of the application. They only state that they are aggrieved by the decision, without elaboration.

[22] That notwithstanding, without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it does not exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. It is for those reasons that the application fails and it is hereby accordingly dismissed with costs to the respondent.

Delivered electronically this 19<sup>th</sup> day of January 2024 .....Stephen Mubiru.....

Stephen Mubiru  
Judge,  
19<sup>th</sup> January, 2024.

#### Appearances

For the applicant : M/s Arcadia Advocates.

For the respondent : M/s MMAKS Advocates.