

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS CAUSE NO. 0027 OF 2022

(Arising out of Misc. Application No. 122 of 2019)

10 **(Arising out of Nakawa Chief Magistrates' Court Civil Suit No. 237 of 2018)**

DENIS OUCHORO ::::::::::::::::::::: APPLICANT

VERSUS

FAST TRACK FINANCIAL SERVICES LTD::::::::::::::::::: RESPONDENT

BEFORE: HON. LADY JUSTICE HARRIET GRACE MAGALA

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JUDGMENT

Brief facts and background

The Respondent successfully sued the Applicant in the Chief Magistrates' Court at Nakawa vide Civil Suit No. 237 of 2018 for the recovery of Ugx. 46,590,000/- (*Uganda Shillings Forty-Six Million Five Hundred Ninety Thousand only*) and was 20 granted an Ex-parte Judgment because the Applicant never filed a defence to the suit.

The Applicant filed Miscellaneous Application No. 122 of 2019 to have the Ex-partite Judgment in Civil Suit No. 237 of 2018 set aside and the Applicant be granted unconditional leave to file a defence in Civil Suit No. 237 of 2018. This

- 5 Application was dismissed on a finding that the Applicant was served with Summons to file a defence but he shut himself out of court proceedings.
- Subsequently, the Applicant filed a Notice of Appeal vide Civil Appeal No. 0005 of 2020, against the Ruling of the learned trial magistrate dismissing Miscellaneous Application No. 122 of 2019.

- 10 This Appeal was dismissed vide Miscellaneous Application No. 202 of 2020 by the **Hon. Lady Justice Susan Abinyo** for failure to take an essential step in prosecuting the Appeal, that is failure to serve the Respondent with a letter requesting for certified copy of proceedings in Miscellaneous Application No. 122 of 2019.

The Applicant now brings this Application under **Section 79 and 98 of the Civil Procedure Act cap. 71, and Order 44** of the **Civil Procedure Rules** and **Order 52 Rules 1,2 & 3 of the Civil Procedure Rules S.I 71-1, as amended**, for leave to file an Appeal out of time and costs of the Application to be in the cause.

Representation

- At the hearing of this Application, the Applicant was represented by Counsel
- 20 Mutyaba Ivan of DeMott Law Advocates while Counsel Sophia Dhatemwa appeared for the Respondent. The Parties were given schedules to file their written submissions.

The grounds supporting this Application

The grounds of the Application are that:

- 5 a) The Applicant filed a Notice of Appeal on 14th November 2019 before the trial court together with a letter requesting for the typed record of proceedings and the Notice of Appeal was served on the Respondent's lawyers save for the letter requesting for proceedings;
- 10 b) The Applicant lodged a Memorandum of Appeal against dismissal of Miscellaneous Application No. 122 of 2019, but the Appeal was struck out for failure to serve the Respondent with the letter requesting for the typed record of proceedings and filing a memorandum of appeal out of time without seeking leave to do so;
- 15 c) The Applicant was committed to civil prison in execution of the ex- parte decree;
- 20 d) That since November 14th, 2019 to date, the typed record of proceedings has never been availed to the Applicant;
- 25 e) The Applicant has now instructed M/s DeMott Law Advocates to take on further conduct of the matter and file an application for leave to file an appeal out of time;
- f) The Applicant has always been committed to appealing the decision of court but has been let down by mistake of counsel in not serving the letter of typed record of proceedings on the Respondent and not applying for leave to file the memorandum of appeal out of time when the record was not availed to the Applicant and also the fact that the record of proceedings has to date never been availed to the Applicant; and
- g) That it is in the interest of justice that the orders sought be granted to allow the Applicant a chance to be heard.

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5 **Affidavit in support of the Application**

The Applicant, in his affidavit in support of the Application stated that:

- a) That an Ex-part Judgment was entered against him in Civil Suit No. 237 of 2018;
- b) That through his lawyers, he filed Miscellaneous Application No. 122 of 2019 to set aside the Ex -part Judgment/Decree rendered in Civil Suit No. 237 of 2018 and to file a defence out of time;
- c) That through his lawyers, he lodged in the trial Court a Notice of Appeal on the 14th day of November 2019 together with a letter requesting for a copy of record of proceedings;
- d) That he has been informed by his lawyers, which information he believes to be true that the Notice of Appeal was duly served on the Respondent's lawyers save for a letter requesting for the record of proceedings;
- e) That during this time, he was incarcerated/committed to civil prison in execution of the ex-part decree;
- f) That he has been informed by his lawyers, whose information he believes to be true that since the 14th day of November 2019 to date, the typed record of proceedings has never been availed to him;
- g) That his lawyers at the time filed a Memorandum of Appeal under Civil Appeal No. 05 of 2020 but the same was struck out vide Misc. Application No. 202 of 2020 for failure to serve the Respondent with a letter requesting for the typed record of proceedings and filing the Memorandum of Appeal out of time without leave to do so;

- 5 h) That he has now instructed DeMott Law Advocates to take on further conduct of the matter and file this Application;
- 10 i) That he gave his lawyers instructions in time to file the Appeal and indeed the Notice of Appeal was filed the same day the Ruling in Miscellaneous Application No. 122 of 2019 was rendered, together with a copy requesting for record of proceedings;
- 15 j) That he has always committed to appealing the decision of court but has been let down by mistake of counsel in not serving the letter of typed record of proceedings on the Respondent and not applying for leave to file the memorandum of appeal out of time when the record was not availed to the Applicant and also the fact that the record of proceedings has to date never been availed to him;
- 20 k) That the delay if any was not by himself as through numerous Applications, he has demonstrated his desire to be accorded a chance to be heard;
- l) That this state of affairs has brought him grave suffering and has been since committed to civil prison; and
- m) That it is in the interest of justice that the orders sought be granted to allow him a chance at an opportunity to be heard since the main suit was not heard inter-party.

25 **Affidavit in Reply**

The affidavit in reply was deposed by its Director, Ambrose Rwabajungu and he stated that:



- 5 a) That he has been advised by his lawyers, which advice he believes to be correct and true that this Application is untenable in law is devoid of merit, is an abuse of court process, aimed at wasting this court's time and is brought malafide with the intention to deny the Respondent the opportunity of reaping the fruits of judgment in Civil Suit No. 237 of
- 10 2018 through execution and ought to be dismissed with costs;
- b) That the Respondent filed Civil Suit No. 237 of 2018 in the Chief Magistrates Court of Nakawa against the Applicant for breach of a money lending Agreement, payment of UGX 46,590,000/-, interest and costs. The Applicant failed to file a written statement of defence despite being duly served with summons and thus a default judgment was entered against him;
- c) That the Applicant filed Miscellaneous Application No. 122 of 2019 seeking to reinstate Civil Suit No. 237 of 2018 and set aside the default judgment but it was dismissed on 14th November 2019;
- d) That the Applicant filed a Notice of Appeal against the Ruling in Misc. Application No. 122 of 2019 and served the Respondent's lawyers on 25th November 2019 but never served the Respondent nor its lawyers a copy of letter requesting for the record of proceedings in Miscellaneous Application No. 122 of 2019;
- e) Subsequently, the Respondent commenced execution proceedings against the Applicant vide EMA No. 620 of 2019 and a warrant of arrest was issued against the Applicant;
- f) That on 4th February 2020, the Applicant filed Miscellaneous Application No. 72 of 2020 to stay execution under EMA No. 620 of 2019 and on 7th

5 February 2020, the Applicant's lawyers served the Respondent's lawyers with the said Application with an attached document titled

'Memorandum of Appeal,' purportedly Civil Appeal No.0005 of 2020 arising out of Misc. Application No. 122 of 2020 (sic);

10 g) The Respondent on March 4th, 2020 filed Civil Application 202 of 2020 to strike out Civil Appeal No. 05 of 2020 for failure to take an essential step in prosecution of the Appeal and the Application was allowed by the

Hon. Lady Justice Susan Abinyo;

15 h) The Applicant was later committed to prison in execution of Miscellaneous Application No. 202 of 2020 but later filed Miscellaneous Application No. 0482 of 2022 to stay the execution and be released from prison but the same was dismissed by H/W Juliet Hatanga . However, the Applicant was later released after entering a consent to pay the costs in the said Application;

20 i) The Applicant applied for stay of execution of Civil Suit No. 237 of 2018 before the Chief Magistrates' Court of Nakawa vide Misc. Application No. 231 of 2022 on grounds for having filed Misc. Application No. 0484 of 2022, seeking leave to appeal out of time, in this court but later withdrew Misc. Application No. 0484 before it was heard. Thereafter, Misc. Application No. 231 of 2022 was dismissed;

25 j) When the Applicant was served with a Notice to Show Cause why Execution Should not Issue in Civil Suit No. 237 of 2018, he again filed Miscellaneous Application No. 705 of 2022 at Nakawa Chief Magistrates' Court for leave to appeal the ruling in Miscellaneous Application No. 231 of 2022;

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Page 7 of 20

- 5 k) The Applicant then filed this Application for leave to appeal out of time
the decree in Civil Suit No. 237 of 2018, four years later;
- 10 l) That he was advised by the Respondent's lawyers, which advise he
believes to be true and correct that this Application is similar to
Miscellaneous Application No. 484 of 2020, which was withdrawn by the
Applicant;
- 15 m) That he was advised by the Respondent's lawyers, which advise he
believes to be true and correct that it is the duty of the intending
Appellant to be vigilant and follow up on the typed record of
proceedings and there is inordinate delay by the Applicant which
indicates that he never genuinely intended to prosecute the Appeal but
to stay the execution of the Decree;
- 20 n) That the Ruling that struck out the Appeal was delivered on 10th March
2021 and no action had been taken by the Applicant until after a year,
which amounts to dilatory conduct;
- o) That the Applicant cannot keep blaming his dilatory conduct and
improper handling of his post appeal process on mistake of counsel
because to date, he has retained the services of the same counsel, and
the Applicant is only manipulating the judicial system by filing this
Application; and
- 25 p) That the Respondent has suffered enormous costs in trying to enforce its
judgment and defending the Applicant's numerous Applications.
Therefore, this Application should be dismissed with costs.



5 **Submissions**

Applicant's submissions

The Applicant's counsel framed the issue for determination as, whether the Applicant has a good cause to warrant the relief of enlargement of time within which to file an Appeal.

10 Counsel for the Applicant submitted that the Applicant has a right to apply for enlargement of time to file the Notice of Appeal and such order should be granted unless the Applicant is guilty of unexplained or inordinate delay in seeking the indulgence of the court, has not presented a reasonable explanation of his failure to file the Notice of Appeal within the time prescribed by the rules, the extension
15 will be prejudicial to the Respondent or the Court is otherwise satisfied that his intended Appeal is not an arguable Appeal. Counsel referred to ***Muzamil Ayile Versus Rose Taraoke and others HCMA No. 0024 of 2013.***

That under **Section 79(1) of the Civil Procedure Act**, an appellate court may for good cause admit an appeal though the period of limitation prescribed by the
20 Section (30 days) has elapsed, but the grant of extension is discretionary and depends on proof of good cause showing that the justice of the matter warrants such an extension.

In counsel's opinion, the Applicant has demonstrated that upon pronouncing of the decision dismissing Miscellaneous Application No. 122 of 2019, the Applicant
25 immediately instructed counsel at the time to institute an Appeal and indeed the notice of appeal and a letter requesting for the typed copy of proceedings were filed and the notice of appeal served on the respondents but the letter requesting

5 for proceedings was omitted; which mistake led to striking out Civil Appeal No. 005 of 2022. That this was a mistake of counsel, coupled with the fact that to date the record of proceedings has never been availed to the Applicant hampered him from proceeding properly, leading to his earlier appeal being struck out with costs.

Learned counsel for the Applicant further submitted that the Applicant was 10 committed to civil prison in execution of the decree which ordinarily would disorganize anybody leading to loss of time and the making of many mistakes and poor judgment.

That the delay to pursue the appeal was not occasioned by the Applicant but counsel's numerous mistakes and yet the Applicant had taken necessary steps to 15 have his day in court but only to be let down by counsel and as such, court should not penalize him. While relying on ***Andrew Bamanya V Shamsherali Zaver SCCA No. 70 of 2001***, counsel submitted that mistakes, faults/lapses or dilatory conduct of counsel should not be visited on the litigant, and administration of justice requires that all substance of disputes should be heard on merit.

20 **Respondent's Submissions**

Counsel for the Respondent submitted that for extension of time, there has to be a sufficient reason and the Applicant is not guilty of dilatory conduct. That sufficient reason has been defined to mean legally sufficient reason in ***Dr. Byarugaba Versus Alison Kantarama Emirebe HCMA No. 229 of 2019.***

25 It was counsel for the Respondent's submission that the Applicant has failed to prove a sufficient cause for failure to take an essential step in prosecution the Appeal that is, that the law firm that represented him in MA No. 122 of 2019 is

- 5 the same law firm that filed the Notice of Appeal and has represented him in numerous Applications before this court and at Nakawa Chief Magistrates' Court. Thus, both the Applicant and the lawyers were negligent.

Counsel argued that the case of ***Muzamil Ayile Versus Rose Tarapake HCMA No. 0024 of 2013*** is distinguishable since in that case, the Respondent had not taken

10 any step towards enforcement of the decree, thus no likelihood of prejudicing the Respondent and it was a land dispute. That in the present case before court, the Respondent has taken numerous steps to enforce the decree in Civil Suit No. 237 of 2018 such as taking out warrants of arrest vide EMA No. 620 of 2019 and M.A 202 of 2019; and the Respondent was in the process of executing the decree of

15 Civil Suit No. 237 of 2018 but the Applicant has so far filed four Applications for stay of execution of the Decree, with one purpose of denying the Respondent the enjoyment of the fruits of the Decree.

Counsel for the Respondent further submitted that the Respondent has on more than three occasions attempted to execute the Decree but was faced grave

20 retaliation from the Applicant who has made it his personal routine to use court process in frustrating the Respondent's efforts. The Applicant has never had intentions of seeking any appellate remedy and thus being dilatory and indolent in all post judgment remedies as evidenced by filing Applications and withdrawing them, not following up on prosecuting his Appeal and had to wait for over a year

25 and a half to have it actively fixed for hearing.

Learned counsel for the Respondent further submitted that both the Applicant and his lawyers were guilty of dilatory conduct in as far as they never followed up on the matter by taking necessary steps to prosecute the Appeal. Counsel for the

- 5 Respondent concluded her submissions by stating that the Applicant was abusing the court process as reflected the persistent vexatious and frivolous applications filed whenever there was a threat for execution and dilatory conduct in prosecution of the Appeal.

Applicant's Submissions in Rejoinder

- 10 Counsel for the Applicant submitted that at the time of dismissal of Civil Appeal No. 0005 of 2020, the Applicant's lawyers were Lugolobi and Associates, not the current lawyers and the omission to serve the copy of letter requesting for typed proceedings was made by the said lawyers and thus no dilatory conduct by the Applicant.
- 15 Further, that since filing of this Application, the judge initially allocated the file was transferred and the same was not reallocated and fixed until the appointment of new judges. That this Application was not intended to hamper enjoyment of the fruits of judgment by the Respondent, but it is a constitutional right of fair hearing to the Applicant and which does not frustrate the execution process.
- 20 Lastly, that the earlier Applications were dismissed on valid reasons and not because they were vexatious or frivolous as alleged by the Respondent.

Determination

Section 79 (1)(a) of the Civil Procedure Act cap. 71 on Limitation for appeals states that:

- 25 *"Except as otherwise specifically provided in any other law, every appeal shall be entered within thirty days of the date of the decree or order of the*

5 *court or as the case may be, appealed against; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed".*

In the case of **Pinnacle Projects Limited Vs Business in Motion HCMA No.362 of 2010** court held that:

10 "The phrase "good cause" is not defined under the rules but is defined in Black's Law Dictionary, 7th Edition as "a legally sufficient reason".

In the case of **Mugo and others Versus Wanjiru and another (1970) E.A 481 at 483**, Justice Spry V.P observed that, the sufficient reason must relate to the inability or failure to take the particular step in time.

15 The question before court is whether the Applicant has shown sufficient reason as to why the time within which to file the appeal should be enlarged. The Applicant must not be guilty of dilatory conduct or there must not be lack of *bona fide* on his/her part. See. **Hadondi Daniel vs Yolam Egondi Court of Appeal Civil Appeal No 67 of 2003.**

20 For the Applicant it has been argued by his counsel that his previous advocates in Civil Appeal No. 0005 of 2020 were M/s Lugolobi & Co. Advocates who failed to serve a copy of a letter requesting a copy of typed record of proceedings from the honorable Chief Magistrates' court of Nakawa and in addition to that, the typed copy of the record of proceedings has never been availed to the Applicant. That
25 this mistake should not be visited on the Applicant. It is also the argument of the Applicant that because he was incarcerated in civil prison, this affected the prosecution of the Appeal.

- 5 The sequence of events as presented by the Respondent's is that:
- a) The Applicant filed Miscellaneous Application No. 122 of 2019 seeking to set aside the Decree issued in Civil Suit No. 237 of 2018. The Application was dismissed on 14th November 2019 and on 15th November 2019, he filed a Notice of Appeal and served the Respondent on 25th November 2019;
- 10 b) In the meantime, the Respondent commenced execution proceedings against the Applicant vide EMA No. 620 of 2019. In turn, the Applicant filed Miscellaneous Application No. 72 of 2020 to stay the execution proceedings in EMA No. 620 of 2019 arising out of civil suit No. 237 of 2018;
- c) The Respondent further filed Miscellaneous Application No. 202 of 2020 challenging Civil Appeal No. 0005 of 2020. This Application was allowed and Civil Appeal No. 0005 of 2020 struck out;
- 15 d) The Respondent, then sought to execute the orders in Miscellaneous Application No. 202 of 2020 by committing the Applicant to prison, upon which the Applicant filed Miscellaneous Application No. 482 of 2022 to stay execution and be released from civil prison. Although this Application was dismissed the Applicant was released from civil prison after consenting to pay the costs in Miscellaneous Application No. 482 of 2020;
- 20 e) Again, the Respondent sought to execute Decree in civil suit No. 237 of 2018 at Chief Magistrates' Court of Nakawa but the Applicant filed Miscellaneous Application No. 231 of 2022 on the basis that he had filed Miscellaneous Application No. 0484 of 2022 in this Court for leave to file an application for leave to appeal out of time but later the Applicant withdrew this, Miscellaneous Application No. 0484 of 2022. Thereafter Miscellaneous Application No. 231 of 2022 was dismissed; and

5 f) Later, when the Applicant was served with Notice to Show Cause why Execution should not Issue in respect of the Decree in Civil Suit No. 237 of 2018, the Applicant filed Miscellaneous Application No. 705 of 2022 seeking leave to appeal the Ruling in Miscellaneous Application No. 231 of 2022.

All the above averments by the Respondent were not denied by the Applicant and
10 this Court therefore has considered them as true.

Since 2019, the Applicant has filed about six applications against the Respondent, all with one aim. That is, to stall or halt the execution of the Decree in Civil Suit No. 237 of 2018. Most of these Applications save for Miscellaneous Application No. 705 of 2022, which is pending hearing, have been dismissed against the Applicant,
15 and Miscellaneous Application No. 484 of 2022, which was withdrawn by the Applicant.

Miscellaneous Application No. 484 of 2022 was withdrawn vide a Letter dated August 17, 2022 from the Applicant's advocates and uploaded on ECCMIS on 26th August 2022. The orders sought in Miscellaneous Application No. 484 of 2022 are
20 the same as the orders sought in this Application.

I have noted that the Applicant files these Applications whenever there is a threat of execution against him. This is blatant abuse of court process.

Counsel for the Respondent argued that these Applications were afterthoughts intended to prevent the execution proceedings from taking place there by
25 misleading this court and wasting court's time. I associate myself with the sentiments of Counsel for the Respondent.



- 5 Counsel further referred to the case of ***Attorney General and another V James Kamoga and another SCCA No. 8 of 2004*** where abuse of court process was defined as using of court process for an improper purpose. She went ahead to buttress her contention by citing and relying on the case of ***Male Mabirizi V Attorney General HCMA Nos. 916 and 921 of 2021*** where it was observed that
- 10 bringing several applications to challenge the same order is an abuse of court process.

Court's time and resources should be utilized by parties convincingly with valid defenses against disputes, not evasive litigants that use the judicial system to avoid liability. The Applicant alleges that he was incarcerated and this curtailed his

15 prosecution of the Appeal. However, he has not convinced this court that he was in prison since 2019 to date. This court is aware that civil incarceration or execution by detention of a civil debtor does not exceed six months. In any event, the Respondent averred that once the Applicant agreed to pay the costs in Miscellaneous Application No. 482 of 2022 he was released from incarceration. So

20 a short stint in civil prison cannot be used an excuse by the Applicant for following up on the court processes.

Learned Counsel for the Applicant submitted that his previous lawyers, M/s Lugolobi & Co. Advocates failed to prosecute the Appeal by not serving a copy of the letter requesting for a copy of certified proceedings and following up to get a

25 copy of the record of proceedings to the Chief Magistrates' Court at Nakawa. That this was a mistake of counsel which ought not to be visited on the Applicant. I have carefully read the Ruling in Miscellaneous Application No. 122 of 2019-Annexure B of the Affidavit in support of this Application. On record, the



5 Applicant was represented by counsel Mutyaba, whose name appears on the letter head of the Applicant's lawyers' M/s DeMott Law Advocates; the current lawyers representing the Applicant and the same counsel has appeared before this honorable court.

Further to the above, Annexure C to the Affidavit in Support of this Application
10 that is the Notice of Appeal and Letter requesting for record of proceedings in Miscellaneous Application No. 122 of 2019 were drafted and filed by M/s DeMott Law Advocates, who are the current lawyers representing the Applicant in this Application. Whereas the Memorandum of Appeal in Civil Appeal No. 0005 of 2020 was drawn by M/s Lugolobi & Co. Advocates, at the time of service of the
15 Notice of Appeal and letter requesting for record of proceedings from the Chief Magistrates Court of Nakawa, M/s DeMott Law Advocates were the lawyers of the Applicant. For that reason, therefore, the Applicant cannot plead mistake of counsel when he still retains the services of the same law firm to date which he alleges did not do a good job at representing since they slept on the job. Since the
20 same law firm is on record as representing , he condoned their conduct and cannot be seen at this point plead that their conduct should not be visited on him.

Whereas I am aware of decisions of this court and superior courts have held that mistake of counsel should not be visited on the litigant, each case ought to be decided on its own facts. **See. *Tibero Okeny and another V Attorney General***
25 **CACA No. 51 of 2001.**

In the case of **Matovu Charles Versus Lukwata Yusuf and other HCMA No. 40 of 2017**, Hon. Justice Wilson Masalu Musene(RIP) observed that:

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5 "Whereas it is true it has been held in a number of cases including **Mutaba Barisa Kweterana LTD vs Bazirakye Yeremiya C.A.CA. NO. 158 of 2014**, that
mistake or negligence of an Advocate should not be visited on the litigant,
the question is for how long should a litigant hold on the mistake of his/her
Advocate. Is it for one month, two months, six months or one year. In my
10 humble view, there has to be a time limit within which a litigant can be
excused due to the mistake of his/her Advocate. It would be understandable
if the delay was say between one month to six months, it would amount to
abuse of court process if one is allowed extension of time after a delay of a
whole year or two years as was apparent in the present Application. Time
15 lines were set by the legislature with a purpose and not for fun." (Emphasis
added)

I have noted that the arguments of alleged mistake of counsel relate to the prosecution of Civil Appeal No. 0005 of 2020 that arose out of Miscellaneous Application No. 122 of 2019. These arguments as advanced by the Applicant ought
20 to have been made while arguing Miscellaneous Application No. 202 of 2020. In my considered opinion, the Applicant is in disguise, trying to improperly appeal the Ruling in Miscellaneous Application No. 202 of 2020 that dismissed Civil Appeal No. 0005 of 2020. The learned trial judge in Miscellaneous Application No. 202 rendered Her decision on the 10th March 2021. This Application disguised as
25 one applying for leave to file an appeal out of time against her decision was lodged in this court one year and four months later. And this cause which arises out of Miscellaneous Application 122 of 2019 which was dismissed on 14th November 2019 was filed in court about **two years and five months later!** I

- 5 believe what the Applicant out to have done is to appeal against the decision of this honorbale court in Miscellaneous Application No. 202 of 2020.

The failure to serve a copy of a letter requesting for certified copy proceedings in Misc. Application No. 122 of 2019 was made by the current lawyers of the Applicant. The Applicant instructed new lawyers M/s Lugolobi and Co. Advocates 10 in Civil Appeal No. 5 of 2020, who as well never sought remedy for the Applicant. When the Applicant Miscellaneous Application No. 202 of 2020 on 10th March 2021, he waited until 19th May 2022 to file this Application. He never remedied the error made. What he did was to instruct new lawyers but then again, went back to the lawyers that made the mistake, almost a year after the 15 Appeal/Application did not go in his favor.

In the case of ***Ruth Asiimwe Kanyaruju Versus Hon. Namara Grace CACA No. 168 of 2012***, the **Court of Appeal** observed that, it is the duty of every intending appellant to be seen taking an active role within the time stipulated by the rules to prosecute his or her appeal. The Court referred to ***Election Petition Application No. 24 of 2011, Bakaluba Mukasa Peter and Anor vs. Nalugo Mary Margret Sekiziyivu***, where it had held that:

“Delay in taking the right step in litigation at the right time hinders successful parties from enjoying the fruits of their judgment which was obtained in their favour. The respondent has delayed in taking the right step at the right time with the result that the application would be allowed and the notice of appeal will be struck out....” (sic)



- 5 The Applicant has therefore not established good cause for the extension of the time within which to file an Appeal from Miscellaneous Application No. 122 of 2019. As earlier observed, this application is not tenable in law as it seeks to indirectly make a case as to why an appeal should be filed out of time after this court rendered its decision in MA 202 of 2020. This Application like all the others
10 that have been dismissed is meant to, without good reason circumvent execution of the decree in Civil Suit No. 237 of 2018. This application is an abuse of the court process and court is empowered to curtail such abuse under section 17(2) of the Judicature Act and section 98 of the Civil Procedure Act. Litigation has to come to an end at some point in time.
- 15 The Application is therefore dismissed with costs to the Respondent.

Dated and signed at Kampala this **19th** day of **February 2024**.



Harriet Grace MAGALA

Judge

20 **Delivered online (ECCMIS) this 21st day of February 2024.**