

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC. APPL. NO.- 42 OF 1994

ARCONSULT ARCHITECTS ::::::::::::::::::::;::::: APPELLANT

VERSUS

A.BAUMAN(U)LTD. :::::::::::::::::::::RESPONDENT

Before: The Hon. Lady Justice M. Kireju

Ruling:

This is an application brought under S. 37 (1) (a) of the Judicature Act by the applicant seeking orders of this court for an order extending the time within which to lodge a Notice of Appeal in HCCS No. 404 of 1992.

The ground of this application is that the court clerk of Hunt & Greig was given court fees but he swindled the money. The applicant was supported by an affidavit sworn by Mr. Kateera dated 7/3/94. Mr. Kateera and Mr. Kanyomibwa of M/S Hunt Greig presented the application on behalf of the applicants and Mr. Kibuka Musoke of M/S Shonubi, Musoke Advocates appeared for the respondent.

S. 37(1)(a) of the Judicature Act gives the High Court power where any appeal lies from its judgment to extend the time for giving notice of intention to appeal. The court is given wide discretion under this provision but it has to be exercised judiciously. According to decided cases the party applying for the extension of time must show sufficient reason for having failed to file his notice in time.

The expression sufficient reason relates to the inability or failure to take the particular steps in time although other considerations may be invoked National Pharmacy Ltd vs. Kampala city Council 1979 HCB 132 refer

After careful perusal of the application with the supporting affidavit and after listening to the submission by counsel for the applicant and also counsel for the respondent who did not oppose the application, I have found that the applicant was prevented from filing a notice of appeal by the dishonest clerk who pocketed the filing fees for filing the notice of appeal.

A dishonest servant who fails to do his duty without the Knowledge of his employer is in my opinion sufficient reason for failure to file notice of appeal in time. However I wish to comment that the advocate would have done the society a better service if the clerk was reported to police rather than just dismissing him.

In conclusion I shall grant the application as prayed and the applicant is given 7days with in which to file notice of appeal.

Costs of this application to the respondent.

M.KIREJU

JUDGE

17/5/1994