

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA  
**HCT-05-CV-MA-0177-2004**  
(Arising FROM CV-CS-07-95 -Rukungiri)

BYESHAMIKA JOHN..... APPLICANT

VS

KAKWERERE LYDIA .....RESPONDENT

BEFORE: THE HON. MR. JUSTICE P. K. MUGAMBA

**RULING**

This is an application for leave to appeal out of time. The application is not contested despite evidence of service of process upon the respondent. In the event what is available for court to go by is the notice of motion and the affidavit in support together, of course, with the record as a whole.

In *Shanti vs Handocha & others* [1973] EA 207, 209 the principle to be followed in applications such as this was well laid out by Spry V-P as he then was when he stated inter alia:

‘The position of an applicant for an extension of time is entirely different from that of an application for leave to appeal. He is concerned with showing “sufficient reason” why he should be given more time and the most persuasive reason he can show is that the delay has not been caused or contributed to by dilatory conduct on his part.....’

The period to be considered is that between the day the order or decree to be appealed was delivered and the day when this application came to be filed. From the record I find that on 18 April 2000 an appeal was filed by this applicant. According to the memorandum of appeal the appeal was against the decree in Rukungiri Civil Suit No. 7 of 1995. Judgment had been delivered about two years earlier on 14th April 1998. The words in the memorandum of appeal curiously state as under:

‘The aforementioned Appellant being aggrieved by and dissatisfied with the judgment of HIS WORSHIP, JOHN AGABA, Magistrate G.1 hereby appeals to this Honourable Court

having been granted leave to appeal out of time. (Ruling dated 8/9/99 but delivered 5/10/99).’

With respect, I see no evidence of the leave referred to. Be that as it may the applicant herein went ahead and filed his appeal. Predictably it was struck out on March 2004 as incompetent having been filed out of time. I have looked at the first ground of the Notice of Motion and at the affidavit in support. The applicant seeks to show that his appeal failed because the clerks at the Court Registry in Kabale delayed. It is not shown in the application when the applicant approached the Registry staff. It is not clear whether it was not already out of time. I am mindful also of the alleged extra mile for leave to appeal out of time whose evidence is lacking. Could time have been squandered this way and by whom? All this is omitted in the details of application. I must also have regard to what has transpired since the appeal was struck out. The appeal was struck out on 1st March 2004. This application was filed with court on 21st October 2004 — more than seven months afterwards. I cannot help observing that the conduct of the applicant was dilatory. I call into question his honesty also. The affidavit in support sworn on 2nd October 2004 states in paragraph 4 that the appeal had been struck out the previous day when the truth of the matter was it had been struck out about seven months before. Clearly the affidavit was false.

All in all I find no sufficient reason why the applicant should be given more time to lodge an appeal. I dismiss the application with no order to costs.

P. K. Mugamba

Judge

18th May 2005

18th May 2005

Mr. Mwene-Kahima for the applicant

Ms Tushemereirwe court clerk/interpreter

Court: Ruling read in court.

P. K. Mugamba

Judge