

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-MA-0172-2004

TINDIFA SERAPIOAPPLICANT

VS

KATIITI DRESPONDENT

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

RULING

This is an application for extension of time in which to appeal to the High Court. The application follows a series of misadventure related to by the applicant. The applicant wishes to appeal a ruling by the Grade I Magistrate, Bushenyi delivered in his absence on 21st February 2003. He says he did not learn of the ruling until the 6th May 2003 despite several visits to court on his part to check on the position. When on 6th May 2003 he learnt that a ruling had been made in February 2003 he immediately instructed an Advocate to file for him in the High Court an application to appeal out of time. The application was filed on 27th May 2003. On 5th October 2004 counsel for the applicant then purported to withdraw the application after an objection was raised by counsel for the respondent that the affidavit in support was incompetent, it having been filed without being commissioned by a Commissioner of Oaths. The present application is yet another effort. It details the reasons for the delay. I find the applicant was vigilant when he instructed his Advocate to file the first application of 27th May 2003. Counsel failed in his duty to ensure the documents filed were beyond reproach. When on 5th October 2004 counsel would not proceed with the application the applicant instructed another Advocate and on 13th October 2004 this application was already registered.

In *Shanti vs Handocha & others* [1973] EA 207, 209 Spry V-P has this to say:

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. But there may be other reasons and these are matters of degree. He does not necessarily have to show that his appeal has a reasonable prospect of success or even that he has an arguable case, but his application is likely to be viewed more sympathetically if he can do so, and if he fails to comply with the requirement set out above, he does so at his peril'.

Returning to this matter, I have looked at the affidavit in reply. In paragraph 6 it states that on 31 January 2003 the ruling was fixed for 21st January 2004. This cannot be correct given that the ruling was actually delivered on 21st February 2003. Parties were absent from court and the applicant learnt of the ruling long after time to appeal had passed by. The delay to appeal in time was not his doing nor was the failure to prosecute his appeal on the 5th October 2004 caused by him as already observed.

Consequently I find sufficient cause has been shown why he should be given more time to prosecute his appeal. Let him do so within 15 days of this ruling. Costs to abide the outcome of the appeal.

P. K. Mugamba

JUDGE

27th April 2005

27th April 2005

Mr. Dhabangi holding a brief for Ms Lydia Ahimbisibwe for respondent

Respondent in court

Ms Tushemereirwe court clerk/interpreter

Court:

Ruling read in court.

P. K. Mugamba

JUDGE