

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CV-MA-174-2008

(FROM MBALE CIVIL SUIT NO. 67/2007)

YUNIYA NAMBAFU.....APPLICANT

VERSUS

GRACE NAMAROME.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

JUDGMENT

This is a very old dispute. There was filed an earlier appeal 66 of 2007 between the applicant herein and the respondent which was struck out because the memorandum of appeal was filed out of time without court's leave contrary to S.79 CPA and O.43 r.1 (1)CPR. Thereafter, the applicant filed an application for stay of execution and one for leave to appeal out of time through M/s Musiiho & Co. Advocates.

The application to appeal out of time is by way of Notice of Motion under O.51 rule 6 and O.52 rules 1 and 3 and S.98 CPA. The Notice of Motion is supported by the affidavit of the applicant which depones *inter alia* that;

- 1) The appeal is likely to succeed.

- 2) The applicant will suffer substantial loss if the extension is not granted.
- 3) There was sufficient cause why the memorandum of appeal was not filed in time.

The respondent Grace Namarome did not file an affidavit in rebuttal.

In his submission, Mr. Musiiho reiterated the contents of the affidavit in support of the application.

In response, the respondent told court that this application was brought in bad faith since an earlier appeal was dismissed. That she could not answer when the application before court is intended to waste court's time.

I have considered the application as a whole. I have related the same to the submission by Mr. Musiiho and the answer by the respondent in person. I have noted that the affidavit evidence by the applicant has not been rebutted. Secondly the issues raised by the applicant especially the contention that the lower court's record is incomplete can best be handled when an appeal is filed.

It is trite law that court has power to enlarge time where a limited time has been fixed for doing any act or taking any proceedings on such terms as the justice of the case may require provided costs of an application to extend time and of any order made on the application shall be borne by the parties making the application unless court shall otherwise order.

Consequently I will allow this application. The applicant shall file the appeal in 10 days from the date of this order. Costs of this application shall be borne by the applicant.

Musota Stephen

JUDGE

11.3.2010

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Parties in court.

Mudangha on brief for Musiiho for the applicant.

Respondent unrepresented.

Wanale Interpreter.

Mudangha: Matter for ruling. We are ready to receive it.

Musota Stephen

JUDGE

11.3.2010

Court: Ruling delivered.

Musota Stephen

JUDGE

11.3.2010