

1. The said application and ruling were delivered without service or notice of any kind to the applicant or the law firm of Byenkya, Kihika & Co. Advocates, the applicant's attorney duly entered on record.
2. The applicant has been gravely prejudiced as he has been condemned unheard.
3. The applicant's intended appeal has merit and has a high likelihood of success.
4. The applicant's intended appeal has grounds which merit serious judicial consideration.
5. That it is just and equitable that this application be allowed.

The applicant's complaint in this application majorly is that he was condemned unheard, when on 1st 12/2011, I summarily heard miscellaneous application No.190 of 2011 and re-instated the respondent's appeal, appeal No.6 of 2005. To consider whether this application has merit or not, I have looked at the Court proceedings in the appeal No. 6 of 2005 file, the said appeal was dismissed because of the non-appearance of the appellant (now the respondent). That is, the said appeal was not heard on merit. I have also looked at the record of miscellaneous application No. 190 of 2011, and I allowed that application under my own discretion and in the interests of justice so that the said appeal be heard on its merits interparties.

On 20th January, 2012 when the parties appeared for the hearing of the said appeal, Counsel for the application, Mr. Ebert Byenkya raised the same concerns and intimated to Court that he intended to appeal against my ruling. In reply, Counsel or the respondent, Mr. S. Lutaakome, stated that:

“I would suggest that instead of wasting time I would agreed that the application be reinstated and we argue it interparties”.

In reply to the submissions by Counsel for respondent, Counsel for the application, Mr. Ebert Byenkya, stated that:-

“ The only workable solution from what I have heard from him is to have the order of re-instatement be set aside. The application be served on us and we argue it interparties. That is my prayer.”

On 31/01/12, when the parties appeared in Court for hearing the appeal, appeal No. 6 of 2005, Counsel for the application informed Court that:

“After consulting my client, I came to the conclusion that we would like to appeal against your ruling. We have duly filed an application seeking leave to appeal”.

From my considerations hereinabove of the proceedings on record between the parties, the best way forward was as Mr. Lutaakome, Counsel for the respondent had agreed to have the disputed order set aside, and the application be reinstated and heard interparties on merit. I agree with Mr. Lutaakome, Counsel for the respondent that the intended appeal is wastage of time.

Further, considering the application and its affidavit evidence and the affidavit in reply by the respondent and my arguments hereinabove, I find that this application has no merit. It ought to fail. Accordingly, this application is dismissed with costs to the respondent.

Dated at Kampala this 29th day of February, 2012.

Sgd
MURANGIRA JOSEPH
JUDGE

