

IN THE HIGH COURT OF UGANDA AT MPIGI

(ARISING OUT OF CIVIL APPEAL NO.27 OF 2018 & MPIGI CIVIL SUIT NO.31 OF 2012)

VERSUS

2. NAKAFEERO MARGARET :::::::::::::::::::: RESPONDENTS

BEFORE: HIS LORDSHIP HON.JUSTICE OYUKO ANTHONY OJOK, JUDGE

The Applicant brought this application under Section 96, 79(1)(a) and 98 of the Civil Procedure Act, Order 51 rules 1 & 3, Order 52 rules 1 & 3 of the Civil Procedure rules and Section 33 of the Judicature Act against the Respondents for the following orders;

1. That the time within which to file a Notice of Appeal against the judgment and decree in HCCA No. 27 of 2018 be enlarged.
2. Costs of this application be in the cause.

The application is supported by an affidavit sworn by the Applicant Nabaasa Robinah and is premised on the following grounds;

1. That the Applicant was the unsuccessful party in HCCA No. 27 of 2018.
2. That the Applicant has never been served with a copy of the judgment and decree and the same has never been brought to her attention.
3. That the Applicant only learnt about the execution proceedings, judgment and decree on the 16th day of November 2021 when she went to Mpigi High court to check on the progress of her case.
4. That the Applicant is dissatisfied by the judgment and decree of his lordship Hon Justice Oyuko Anthony Ojok and wants to appeal the against the same. ✓

5. That the Applicant was prevented by sufficient reason from lodging an appeal against the above judgment and decree.
6. That it is in the best interests of justice that this application extension of time sought be granted.

The application was opposed by an affidavit in reply sworn by Muchotara Philimon, one of the respondents who was the successful party in the appeal to this court wherein he deposed that after judgment was given by the High Court in Civil Appeal No. 27 of 2018, the respondents' counsel who were the appellants at that time filed a bill of costs and attached the decree which was served on counsel for the applicant who was the respondents at that time. That at all material times the applicant was served with court process through her known lawyers then, Mwebesa & Company Advocates as she had never revoked her instructions. That the applicant's delay to file this application cannot be explained and if this application of extension is granted it will be prejudicial to the respondent as the applicant is already disposing off part of the suit land. That this honorable court lacks jurisdiction to entertain this application as such applications are governed and entertained by the court of appeal. That this application is intended to delay the respondents from enjoying the fruits of their judgment.

Representation;

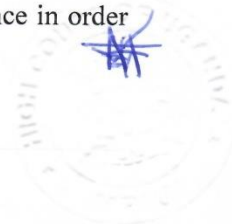
- 20 Messrs. Katende, Ssempebwa and Company Advocates represented the applicant and M/S Kakona & Kwotek Advocates represented the respondents.

Analysis of this court;

Both parties made oral submissions.

Duty of the 1st Appellant court

It is the duty of the first appellate Court to appreciate the evidence adduced in the trial Court, subject it to exhaustive scrutiny and re- evaluate the evidence in order to reach its own conclusion.



I will first determine the preliminary points of law raised by both Counsel for the Applicant and the Respondents.

Counsel for the Applicant first raised a preliminary objection that they were served with an affidavit without a jurat yet one of the respondents is an illiterate. She supported her argument with Section 3 of the Illiterates Protection Act which states that any person who shall write any document for or at the request, on behalf or in the name of any illiterate shall also write on the document his or her own true and full name as the writer of the document and his or her true and full address, and his or her so doing shall imply a statement that he or she was instructed to write the document by the person for whom it purports to have been written and that it fully and correctly represents his or her instructions and was read over and explained to him or her.

Counsel for the Respondents in reply proved that there was a jurat on the affidavit served on Counsel for the Applicant, the same which was evidently on the court file.

I agree with Counsel for the Respondents that Counsel for the applicant was served with an affidavit which had a jurat as the same has been proved to be on the Court file. There is no way counsel for the Respondents would have anticipated that the applicant would raise such a preliminary objection to that effect. And even if there was no jurat on the affidavit upon service, Counsel for the Applicant would have taken due diligence when they were served with the affidavit.

Therefore, this preliminary objection fails with Costs awarded to the Respondents.

Counsel for the Respondents also raised a preliminary objection that the applicant cannot file this application in this court as Rule 5 of the Judicature Court of Appeal rules confers jurisdiction to only the Court of Appeal to hear such applications for extension of time to appeal. Counsel relied on the authority of **Attorney General V Dan Rubombora Misc. Application No. 0041 of 2008** in which court held "that for the extension of time for the lodgment of notice of appeal, it is the Court of Appeal to which recourse must be heard."

Counsel for the respondents further argued that Section 98 of the CPA which the applicants have relied on to bring this application is only applicable in ambiguous situations where there is no clear provision of the law available to provide a remedy in the matter. That where there are clear provisions of the law to cover the dispute like in this case that law should be applied as in this case Rule 5 of the Judicature Court of Appeal rules is very clear.

That the application is premised on Section 79(1) of the CPA which states that Except as otherwise specifically provided in any other law, every appeal shall be entered—
10 (a) within thirty days of the date of the decree or order of the court; or (b) within seven days of the date of the order of a registrar, as the case may be, appealed against; but the appellate court may for good cause admit an appeal though the
period of limitation prescribed by this section has elapsed. That in the present
circumstances the appellate court would be the Court of the Appeal and that the
application should be struck out with costs to the Respondents.

In reply counsel for the applicant argued that this application is premised on section 96 of the CPA which states that where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge that period, even though the period originally fixed or granted may have expired. That basing on this section the High Court has
20 power to hear this application of extension of time to appeal.

In rejoinder, counsel for the respondent reiterated his argument that section 98 of the CPA only applies to instances where there is no particular provision of the law that is applicable and in this particular instance Rule 5 of the Judicature Court of Appeal Rules is clear and gives only the court of appeal jurisdiction to try such applications for extension.

I have carefully heard from both counsels' submissions, the law and authorities quoted, and I find that for an application for extension of time for the lodgment of notice of appeal, it is the Court of Appeal to which recourse must be had and that the Applicant cannot apply to this Court for the extension of time for lodging the notice

of appeal. In the premises, it is evident that this application for extension of time to lodge notice of appeal is misplaced.

I agree with the submission of Counsel for the Respondents when he stated that Section 79 of the Act provides for time limitations with regard to appeals; but also provides that where any other law makes specific provision for limitation for appeal, it is that other law that shall apply. In the present circumstances Rule 5 of the Judicature Court of Appeal Rules clearly gives power to only the Court of Appeal to hear such applications for extension and recourse cannot be made to the High Court.

Section 96 of the CPA which was cited by the Counsel for the Applicant is inapplicable in this case and it only applies in circumstances when the High Court is acting as the appellate court which isn't the case in this Application as it is now the Court of Appeal that would be acting as the Appellate court.

This Court would be acting ultra vires in deciding on the merits of this application, which is the preserve of the Court of Appeal. Therefore, this preliminary objection is upheld and the Application is dismissed with Costs to the Respondents.

I So Order

Right of Appeal explained.

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Oyuko Anthony Ojok

Judge

27/01/2022