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The Republic of Uganda

High Court of Uganda Holden at Soroti

High Court Miscellaneous Application No. 35 of 2022

[Arising from High Court Civil Appeal No. 52 of 2018]

[Arising from Serere Original Civil Suit No. 008 of 2015]

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Otim William Applicant

VS

Akwanu Silver Respondent

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Before: Hon Justice Dr Henry Peter Adonyo

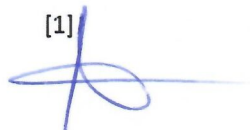
Ruling

Background:

20 The applicant brought this application under Section 98 of the CPA CAP 71. Section 33 of the Judicature Act Cap and Order 52 rule 1 of the CPR SI 71-1 seeking for orders that the order dismissing civil appeal No.52 of 2018 to be set aside and the applicant be granted leave to file and serve a memorandum of appeal out of time against the Judgement of Serere Magistrate Court Vide Civil suit N0.08 of 2015 and costs of and incidental to this application be in the cause.

25 The respondent filled civil suit NO. 008 of 2015 against the applicant for recovery of 4 acres of land situated at Abuket village, Abuket Parish, Kyere sub-county in

[1]



Serere District, vacant possession, general damages and costs of the suit and Judgement was passed against the applicant on the 31st day of October, 2018. The applicant on the 6th day of November, 2018 filled a notice of appeal vide Appeal No. 30 52 of 2018 and the same was dismissed with costs as there was no memorandum of appeal.

The grounds of the application have been set out briefly in the application and the affidavit in support of the application attached to the application and sworn by Otim William stating that;

- 35 a) In 2015, the respondent filled a case against the applicant at the Magistrate Court of Serere for recovery of 4 acres of land
- b) On 31st day of October 2018, the aforementioned court passed Judgement in favor of the respondent.
- 40 c) On 6th day of November 2018, he filled a notice of appeal vide Civil Appeal No.52 of 2018, arising from Serere Civil Suit No. 08 of 2015 before this honorable court.
- d) He then became sick of high blood pressure and Kidney problems which prevented him from taking the necessary steps to pursue the appeal.
- 45 e) Being a lay person, who had no legal representative did not know that he was supposed to fill his appeal within thirty days as provided for by the law which as not a deliberate omission.
- f) Civil Appeal No. 52 of 2018 was dismissed on 4th day of June 2021 without him being given notice.
- g) That he should be excused from the punishment resulting from the delay.
- 50 h) That he is a vigilant litigant who is willing and ready to appeal against the whole Judgement vide Civil Suit No. 08 of 2015.

The respondent in opposition of the application stated that;

- 55 1) The applicant has never taken any step to inform court that he has allegedly been sick not until the appeal was dismissed is that when he woke up like a dog been bitten on the title to have the same prosecuted and with that conduct the respondent is inclined to believe that the application is willfully telling lies in front of the pate of justice.
- 60 2) The respondent avers that during the reading or deliverance of Judgement in court against the applicant on the 31st day of October, 2018 but all the same the applicant abundantly ignored and failed to appeal within the stipulated period but only filled a notice of appeal on the 6th day of November 2018 without a memorandum of appeal thus having the appeal dismissed.
- 65 3) That the applicant has not sufficiently expressed to court that he is a vigilant litigant to prosecute the appeal and have the same order dismissing the appeal aside but rather an afterthought after the taxation process in court on the 2nd March, 2022 is when he woke up and cogitated to appeal out of time.

70 Counsel for the applicant submitted that, for a dismissal order to be set aside, it must be proved that the applicant was prevented from prosecuting his case by sufficient cause. He contends that there is sufficient cause to warrant the setting aside of the dismissal Order of this honorable court vide Civil Appeal No. 52 of 2018. He cited the case of *Abel Belemesa vs Mugenyi Yesero, HCT Misc. Application No. 126 of 2019* where Justice Gadenya Paul Wolimbwa at Page 14 stated that;

“What constitutes sufficient cause is left to the courts discretion”

75 He further stated that the applicant in paragraph 4 of his affidavit cited that, on 6th day of November, 2018, he filled a notice of appeal vide civil Appeal N0. 52 of 2018, arising from Serere Civil Suit No. 08 of 2015.

That he then became sick of high blood pressure and kidney problems in paragraph 5 of his affidavit in support which prevented him from taking the necessary steps to pursue the appeal.

80 Counsel for the respondent in reply submitted that, in an application premised on fairness and in an application premised on fairness and in an application of such nature, court must balance considerations of access to justice on the one hand and the desire to have finality t litigation on the other hand. That the respondent contends that the application for extension of time is deliberately a strategy designed to
85 frustrate the respondent from realizing the fruits of litigation.

He further submitted that, when an application is made for leave to file and serve a memorandum of appeal out of time, it should be granted as a matter of course. Grant of extension of time is discretionary and depends on proof of "good cause" showing that the justice of the matter warrants such an extension. The court is required to
90 carefully scrutinize the application to determine whether it presents proper grounds justifying the grant.

Resolution:

The appellant seeks court to set aside the dismissal of the appeal and grant him leave to file the memorandum of appeal out of time.

95 The right to appeal is a creature of statute, for one to appeal he or she must have a right to appeal granted by law. The same was held in the case of Alinyo vs R [1974] EA 544.

Order 43 rule 1 provides for form of appeal that every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her
100 advocate and presented to the court or to such officer as it shall appoint for that purpose. The memorandum shall set forth, concisely and under distinct heads, the

grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively.

105 **Article 139 of the Constitution of the Republic of Uganda** provides that the High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law.

Section 220 (1) of the Magistrates Courts Act provides as follows: -

110 **“Subject to any written law and except as provided in this Section an Appeal shall lie from the decrees or any part of the decrees and from the orders of Magistrates’ court presided over by a Chief Magistrate or Magistrate Grade 1 in the exercise of its original civil jurisdiction to the High Court.”**

115 Under **Section 79 (1) (a) of the Civil Procedure Act**, every Appeal from the Magistrates court to the High Court is supposed to be entered within thirty days from the date of the decree or order of the court.

In the case of *Luzinda George vs Edward Wasswa HCCA No. 39 of 2009* it was held:

120 ***“Appeal from the Magistrate Grade One and Chief Magistrate shall be lodged in the High Court within 30 days from the date of the decree or order.....This Appeal thus has no merit. It is accordingly missed.”***

In the case of *Mbambu Stella vs Monday Nicholas HCCS No. 10 of 2016*, court stated that:

125 ***“It is a requirement of the law that the documents namely (decree or order and memorandum of appeal) must be filed together when the Appeal is***

lodged. A decree or order from which an Appeal is lodged must be extracted and filed together with the memorandum of appeal. Failure to do so renders the appeal incompetent.”

130 Section 79 (2) of the **Civil Procedure Act** provides that where good cause is shown, court can admit an appeal even after the lapse of the prescribed time. Reference was made to **Section 79 (3)** of the **Civil Procedure Act** to the effect that the time taken to prepare a certified copy of the record of appeal is not reckonable in computation of the thirty days within which an Appeal should be filed.

135 It should be noted that the appellant should show sufficient cause in order for court to consider to set aside the dismissal.

The term sufficient cause has received extensive adjudication on its meaning. In the case of *The Registered Trustees of the Archdiocese of Dar es Salaam vs The Chairman Bunju Village Government & Others* quoted in *Gideon Mosa Onchwati vs Kenya Oil Co. Ltd & Another [2017] eKLR* discussing what constitutes *sufficient*
140 *cause* had this to say: -

“It is difficult to attempt to define the meaning of the words ‘sufficient cause’. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the appellant.”

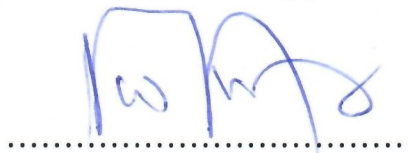
145 In the instant case, the applicant avers that on 6th day of November 2018, he filed a notice of appeal vide Civil Appeal No.52 of 2018, arising from Serere Civil Suit No. 08 of 2015 before this honorable court. He then became sick of high blood pressure and kidney problems which prevented him from taking the necessary steps to pursue the appeal. He has adduced medical evidence annexed as “A” in that respect to prove

150 this point which I have studied and found as cause for the reinstatement of Civil Appeal No. 52 of 2018 arising from Civil Suit No. 08 of 2015.

Accordingly, the dismissal of Civil Appeal No. 52 of 2018 arising from Civil Suit No. 08 of 2015 is set aside with costs to be in the cause.

The applicant is directed to ensure that the said appeal is pursued within two months
155 from the date of this ruling otherwise the said appeal will lapse automatically.

I so order.



Hon. Justice Dr Henry Peter Adonyo

Judge

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25th August 2022