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The Republic of Uganda

In The High Court of Uganda

Holden at Soroti

Miscellaneous Application No. 0095 of 2022

(Arising Out of Civil Appeal No. 17 of 2022)

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(Arising from Civil Suit 44 of 2015)

Emalu Benson Applicant

Versus

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Etalu Simon Respondent

Before: Hon. Justice Dr. Henry Peter Adonyo

Ruling

20 This is an application for leave to be granted to file an appeal out of time and in
or in the alternative for the court validate the late filing and service of
Memorandum of Appeal and the whole process of Civil Appeal No. 17 of 2022.

The grounds of this application are contained in the affidavit supporting this
application.

25 On 01/04/2022 judgment in Civil Appeal No. 17 of 2022 in the lower trial court
was delivered against the applicant. The applicant instructed M/S Prudens Law
Advocates to pursue the appeal.



5 On 11/04/2022 counsel for the applicant filed a notice of appeal in the lower trial court and requested for the records of proceedings. Thirty (30) days elapsed in before a Memorandum of Appeal could be filed in the High Court. The applicant's former lawyers mistakenly filed a memorandum of appeal without leave to appeal out of time.

10 The applicant then instructed M/s Omongole and Co. Advocates to take over and pursue the appeal.

The applicant being a lay person left legal matters to be undertaken by his counsels as he was not conversant with court procedures which the lawyers did. Applicant now seek leave to appeal out of time and or in the alternative that the court validates the late filing and service of Notice of Appeal and the
15 Memorandum of Appeal on the basis that the applicant at all times has sought to pursue the appeal which he believes has a high likelihood of success and if this application is not allowed then gross injustice would be rendered to him.

The respondent in reply, agreed that indeed the applicant was the unsuccessful
20 party in Civil Suit No. 44 of 2015 and that indeed the Notice of Appeal was filed in the lower court which was not the proper procedure and he had never been served with any Memorandum of Appeal.

Counsel for the respondent additionally sought to cross-examine the deponent on the affidavit in support of this application which he alludes was defective.

25 From the perusal of this application and the affidavits for and against it, it is clear that the issues herein majorly deal with adopted wrong procedures which this application seeks to cure for the applicant to pursue an appeal.

The records show that the applicant was the unsuccessful party in Civil Suit No. 44 of 2015 and has the intention to appeal. This intention is manifested vide the
30 various applications filed in court including HCMA No. 95 of 2022 (This application), HCMA No. 96 of 2022, HCMA No. 97 of 2022 and HCMA No. 189 of 2022.

5 The gist of all these applications is that the applicant is seeking to ultimately be allowed to appeal out of time the decisions of the lower trial court in Civil Suit No. 44 of 2015.

I have perused the judgment and orders of the lower trial court in Civil Suit No. 44 of 2015 and find that the dispute between the parties therein anchors on land.

10 The applicant lost Civil Suit No. 44 of 2015 and orders were issued that vacant possession issue.

The applicant is not satisfied with that decision and insists that he is the rightful owner of the suit land.

15 This strong assertion by the applicant manifests a latent continuous dispute in regards to the decreed ownership of the suit land.

The justice of this matter entails that the applicant be afforded another chance to be heard so that the latent dispute possibly may be set to rest.

Accordingly, this court upon taking into account that there is already a judgment and decree of the court in Civil Suit No. 44 of 2015 doth exercise its powers under
20 Section 98 of the Civil Procedure Act and especially Section 33 of the Judicature Act which provides the High Court with powers to grant remedies to any of the parties to a cause or matter in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal
25 proceedings concerning any of those matters avoided.

Ultimately, I do allow this application based on the following conditions;

- a) The applicant to deposit in court as security for costs the taxed amount of the of Shs. 16,834,000/= as per Certificate of Taxation dated 16/06/2022.
- b) The said security for costs to be deposited within one (1) month from the date
30 of this ruling.

5 c) Upon the depositing security for costs, the applicant shall file afresh his Notice of Appeal and Memorandum of Appeal within 15 days thereof and serve the respondent with an affidavit to that effect filed on record.

d) The applicant to further cause to be set for hearing the intended appeal no later than two months thereafter.

10 I so order.



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Hon. Justice Dr. Henry Peter Adonyo

Judge

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09/11/2023