

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISC. APPLICATION NO. 052 OF 2023

(ARISING FROM HCT – 01 – CV – CA – 007 OF 2003)

5 **(ARISING FROM CIVIL CASE NO. KAS 00 – CV – CS – 49 OF 2001)**

CYRIL GRACE BWAMBALE :::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

PHILIP RWABWOGO :::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

10 **RULING**

The applicant brought this application under Section 96 and 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 51 rule 1 & 3 of the Civil Procedure Rules for orders that:

15 **(a) An order for extension of the time within which to appeal from the judgment of HON. Justice Rugadya Atwoki of 3rd April 2009 in HCT – 02 – CV – CS No. 007 of 2003 be issued.**

(b) That the costs of taking out the application be provided for.

Background:

20 The background as could be ascertained from the pleadings is that the applicant was the Respondent in Civil Appeal No. 07 of 2003 which was dismissed with costs to the Respondent. That he was advised by the lawyer to consider filing a second

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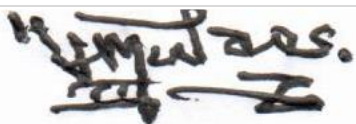
appeal. That he instructed the lawyer to follow up on the appeal. That on 29th June 1993, his contract with Public Service as a Veterinary Field Assistant, Kasese District was terminated which incapacitated the applicant financially as such he could not follow up on the appeal.

5 That he has also suffered from organ failures, heart diseases and was diagnosed at the Uganda Heart Institute, Mulago on several occasions making it impossible for him to proceed with the appeal. That he is dissatisfied with the decision of the trial Court and thus seeks for an extension of time within which to appeal since the 30 days within which he was meant to appeal expired. That the intended appeal has
10 merit and that he will suffer irreparable damages if the application for extension is not granted. That it was just and equitable to allow the application.

The Respondent opposed the application and contended that the same has no merit and that the affidavit in support was tainted with falsehoods. That the applicant lost the appeal the case having been dismissed on 3rd April 2009 and that the reasons
15 fronted by the applicants of financial incapacity and sickness do not warrant grant of the application.

That the applicant was aware of limitation and chose not to file the application within time. That after the dismissal of the appeal, both bills in the Chief Magistrate's Court of Kasese and that of the High Court were taxed and the applicant has failed to pay
20 the same and resorted to filing the current application that has no merit. That it is just and fair that the same is rejected.

In rejoinder the applicant insisted that the court has the discretion to extend the time within which to appeal and the delay did not extinguish the applicants right of appeal That the application was brought without undue delay and thus should granted.



Issues:

1. Whether the applicant has demonstrated sufficient cause to warrant the grant of leave to appeal out of time.
2. Remedies available to the parties.

Representation and hearing:

M/s Lufunya Associated Advocates appeared for the applicant while *M/s Magezi, Ibale & Co. Advocates* appeared for the Respondent. A schedule to file submissions was issued out by Court on 20th July 2023 and only the applicant's counsel complied.

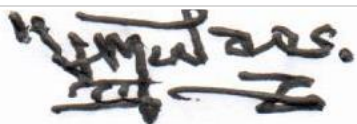
I have considered the pleadings and the submissions of counsel for the applicant.

RESOLUTION:

Appeals against the decisions of the High Court to the Court of Appeal must be lodged within 14 days from the date of the decree. Rule 76 (1) and 2 of the Judicature (Court of Appeal) Rules provides that:

- (1) Any person who desires to appeal to the court shall give notice in writing, which shall be lodged in duplicate with the registrar of the High Court.*
- (2) Every notice under subrule (1) of this rule shall, subject to rules 83 and 95 of these Rules, be lodged within fourteen days after the date of the decision against which it is desired to appeal.*

Therefore, where a party desires to lodge an appeal against the decision of the High Court beyond 14 days as provided for under rule 76 of the Court of Appeal Rules, he or she must do so with leave of Court. The Civil Procedure Rules and the Court



of Appeals rules do not state the guiding principle which Court must navigate through in making a finding whether to grant leave to appeal out of time or not.

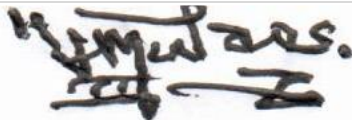
However, Courts have over time laid down the basic principles governing grant of leave to appeal out of time in a plethora of Authorities. *Mwangusya JSC in Criminal Application No. 8 of 2019, Uganda v Ntambi Vincent*, citing the decision in *Molly Kyalukinda Turinawe & 4 Others vs Turinawe Ephraim & Another (Supreme Court Civil Application. No. 27 of 2010*, observed thus:

“These principles have been re-echoed by this court in various cases, for example in the case of Molly Kyalukinda Turinawe & 4 Others vs Turinawe Ephraim & Another (Supreme Court Civil Application. No. 27 of 2010, where my sister Lady Justice Dr. Esther Kisaakye stated I quote; “It is therefore important to consider the following three questions before I can dispose of this application;

- i. Whether the applicants have established sufficient reasons for this court to extend the time in which they may lodge their appeal.*
- ii. Whether the applicants are guilty of dilatory conduct?*
- iii. Whether any injustice would be caused if this application is not granted?*

In this case learned counsel for the applicant asserted that due to the several illnesses that the applicant had been through, he was unable to access the wheels of justice and file the application within the required time and that this constituted sufficient cause to warrant admission of the appeal out of time.

I have examined the application and the record of this Court in Civil Appeal No. 007 of 2003. The decision in the above case was delivered on 16th April 2009 by His Worship Bonifance Wamala who was a Deputy Registrar then in the presence of



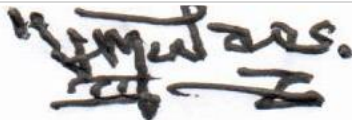
Learned Counsel Nyamutale who represented the applicant. Since 2009, the applicant did not channel any effort per the affidavit in support of the application to cause an appeal against the decision of this Court. The applicant was represented by an attorney at law who had full knowledge of the time within which to lodge an appeal and the learned Deputy Registrar took the trouble to explain to his counsel the right of appeal.

I am not convinced by the reasons fronted by the applicant as justification to admit an appeal against the decision of this court out of time. He did not at all, make any effort or even do any act that can be interpreted as an insinuation that he intended to lodge an appeal against the decision of this Court. He never applied for a record of proceedings or even made a prayer to that effect. The applicant went home and slept and only woke up from his slumbers after execution was commenced to commence an appeal process which in my view was an afterthought.

In *Uganda v Ntambi (Supra) Mwangusya JSC* in rejecting the application for leave to appeal observed inter-alia:

(a) “In the first place the reason for delay advanced in ground five of the application is a demonstration of sheer negligence on the part of the Directorate of Public Prosecution and it cannot be sustained by this court. I do not understand as to how a judgment delivered in presence of an officer of the Directorate takes this long before the Directorate realizes that there is an error or of law.”

In this case the judgment that the applicant seeks to appeal against was delivered in the presence of his attorney and he chose not to appeal. He did not attach to his application any evidence of instructions to a lawyer to pursue the appeal. It is



inconceivable how the applicant who was represented took nearly fourteen years to appeal. I find that the application has not demonstrated sufficient cause to warrant grant of leave to appeal out of time.

Further, it is my finding that this application has been brought with inordinate delay.

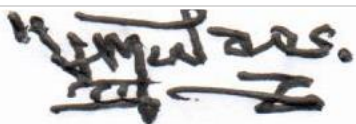
5 It is my considered opinion that where an applicant is guilty of inordinate delay in presenting an application for leave, court should be reluctant to grant the same. I am not convinced by the narration put forward by counsel for the applicant to account for the delay. The decision was delivered on 16th April 2009 and the appeal was lodged on 4th July 2023 after 14 years. I believe the delay is inordinate and not
10 excusable.

Mwangusya JSC *Uganda v Ntambi (supra)* in rejecting the application further observed thus;

*“Secondly, and arising out of the above observation the applicant was guilty of dilatory conduct. An officer who had instructed another officer to receive
15 the judgment should have exercised more vigilance to not only find out the result but also study the judgment to find out if there was an error so that it is appealed against within the time allowed.*

I find that the applicant who was represented at the time the decision he seeks to appeal against was delivered, is guilty of inordinate delay. Thus he does not deserve
20 the mercy of Court and the application ought to fail.

Lastly, it is my opinion that grating this application would deny the Respondent the fruits of his judgment which he has been pursuing since 2003. No injustice shall be suffered by the applicant who chose to sleep and snore on his rights as time went by. He should be left to sleep so as to allow the Respondent reap the fruits of his

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litigation. His Lordship Mwangusya in **Uganda V Ntambi (supra)** while commenting on this ground observed thus;

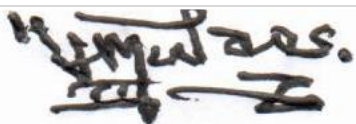
5 *“Thirdly no injustice would be caused to the applicant if the application is not granted. On the contrary it would be the respondent to suffer an injustice if the case which was resolved more than eight months ago would be re-opened whatever the outcome.”*

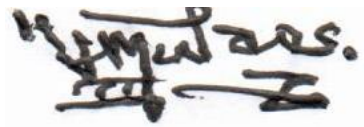
Further in *Charles Kangamiteto vs Uganda, Court of Appeal Criminal Application No.1 of 1978*, cited with approval in **Uganda V Ntambi (supra)** where The Chief Justice Saied, held that;

10 (b) *“Besides these matters, the learned counsel for the appellant has been unable to put forward a single valid reason why he should have time extended at this late stage except his belief that the appeal has reasonable prospects of succeeding. As has been consistently held by the Court of Appeal, that is a factor for consideration in applications of this nature but*
15 *the main factor, and the burden is on the applicant in this respect, is that the court must be satisfied that for sufficient reason it was not possible for the appeal to be lodged in the time prescribed.”*

I have equally not been able to find any valid reason to warrant an extension of time within which to appeal. The application was filed as an afterthought by the applicant
20 to shield himself from the execution process commenced by the Respondent. I thus find that this application has no merit and it is hereby dismissed with costs awarded to the Respondent.

It is so ordered.

A handwritten signature in black ink, appearing to read 'Mwangusya' with a flourish underneath.



Vincent Wagona

High Court Judge

FORT-PORTAL

5 **DATE: 18/10/2023**

