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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALA

MISCELLANEOUS APPLICATION NO. 0014 OF 2022

(Arising from civil Suit No. 0061 of 2021 formerly Civil Suit No. 0012 of 2011)

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HEREBERT BUSHUYU::: APPLICANT

VERSUS

1. ERICK JOHN TWINOMUGISHA

2. WINFRED MBABAZI:::RESPONDENTS

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BEFORE: HON. JUSTICE SAMUEL EMOKOR

RULING

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The Applicant brings this Application by Notice of Motion under **Section 98 of the Civil Procedure Act** and **Order 52 Rule 1 of Civil Procedure Rules** seeking orders that the Court extends time within which to file an Appeal against the order of the Taxing Master in Civil Appeal No. 0013 of 2021 and that an order of Stay of Execution be granted pending the hearing and disposal of the intended Appeal and that provision be made for costs.

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The grounds upon which this Application is premised is that a taxing Ruling was given by the Taxing Master on 05/10/2021 in which the Respondents were directed to pay 9,540,000/= and that the Applicant was aggrieved by the decision of the Taxing Master and intend to Appeal against the same but that the Respondents intends to execute the order and has issued a Notice to Show Cause why a Warrant of Arrest should not issue against the Applicant and that if Execution is not stayed it will render the Appeal nugatory.

5 Further that the Application has been made without a reasonable delay and it is in the interest of Justice that it is granted.

The Application is supported by the affidavit of the Applicant who in brief avers that the Respondents filed a bill in Civil Appeal No. 0031 of 2019 which was taxed and allowed at UgX 9,540,000/= and that being aggrieved by the award the
10 Applicant instructed his Lawyers to Appeal against the same but that the record of proceedings which the Applicant has applied for has not been supplied to enable his Lawyers formulate the grounds of Appeal which Appeal has a high likelihood of success in that the Bill of costs was manifestly excessive in the circumstances. Further that the Applicant was prevented from filing the Appeal
15 within time due to the Covid restrictions at the material time and that it is just and equitable that the orders being sought are granted.

The Respondent filed an affidavit in opposition to this Application and in brief avers that the Instant Application is an abuse of Court process intended to delay the Execution of an order of Court and that the Applicants' failure and inordinate
20 delay to file the alleged Appeal within time is inexcusable as it was not due to Covid 19 restrictions as alleged and that it is just and equitable that the orders sought by the Applicant are denied.

Representation.

The Applicant is represented by Messrs Akampurira & Partners while the
25 Respondents are represented Messrs MRK Advocates.

5 The Court did provide a schedule for Counsel to file Written Submissions and this
in the presence of Counsel and the parties but only the Respondents complied
with the schedule.

I have carefully studied the averments of the parties as contained in their
affidavits and I have also perused the Submissions of Counsel for Respondents. I
10 do not find it necessary to reproduce verbatim the same since they all form a part
of the Court record.

Order 51 Rule 6 Civil Procedures Rules provides that:

*“Where a limited time has been fixed for doing any act or by order of the Court,
the Court shall have power to enlarge the time upon such terms if any as the Justice
15 of the case may require and the enlargement may be ordered although the
Application for it is not made until after the expiration of the time appointed or
allowed except that the costs of any Application to extend the time and any order
made on the Application shall be borne by the parties marking the Application
unless the Court shall otherwise direct”*

20 It therefore follows that the power to grant or not to grant an extension of time
is discretionary. The primary consideration should be seeing to it that substantive
Justice is done without undue regard to lapses mistakes or faults.

The Court in **Hadondi Daniel versus Yolam Egondi, CACA No. Appeal No. 67
of 2003** held that: *“...sufficient cause must relate to the inability or failure to take
25 necessary steps within the prescribed time. It does not relate to taking a wrong
decision. If the Applicant is found to be guilty of dilatory conduct, the time will not
be extended”*

5 **Section 62(1)** of the **Advocates Act** provides that:

“Any person affected by an order or decision of a Taxing Officer made under this part of this Act or any regulations made under this part may Appeal within 30 days to a Judge of the High Court who on that Appeal may make an order that the Taxing Officer might have made”

10 In the instant case the Taxing Master made his decision on the 05/10/2021 in the presence of the parties and as such the Applicant had until the 05/11/2021 to Appeal against the decision but did not and filed the Instant Application on the 19/04/2022 a period spanning over five months from the cutoff date.

The Supreme Court in **Andrew Bamanya versus Shamisherali Zaver:** SC Civil
15 Application No. 0070 of 2001 and **Samite Kachope & 03 others** versus Margret Kamuje SC Civil Application No. 0031 of 1997 [1999] KLR 238 the Court granted Applications for extension of time within which to Appeal filed after 2 years from the dates of Judgment after the Applicants accounted for the delay.

The Instant Applicant advances his reason for the five months delay as being
20 caused by the Covid-19 pandemic and restrictions that followed the same and in this regard relied on the Chief Justice’s revised guidelines issued on the 21/06/2021 that scaled down physical presence at the Courts to only 10% for operations.

This Court is alive to the inconveniences caused to Litigants during this time
25 because of travel restrictions. The Applicant however it must be observed having been present at the taxing of the Suit on the 05/10/2021 ought to have taken more serious steps in filing his Appeal and not wait for five months before filing the

5 same. The instant scenario would therefore have been avoided. I will therefore not entirely look favorably upon the same.

In the final result I would allow this Application with the following orders issuing;

1. The Applicant is hereby given an extension of 15 days within which to file an Appeal against the order of the Taxing Master in HCCA No. 0003 of 2021.
- 10 2. An order of stay of execution is hereby granted against the award in the taxation vide HCCA No. 0003 of 2021 pending the hearing and disposal of the intended Appeal.
3. The costs of this Application are awarded to the Respondents.

It is so ordered.

15 Before me,

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Samuel Emokor
Judge
01/06/2023

20 **01/06/2023**

2nd Respondent present

Applicant present.

Clerk: Vianney.

25 **Court:** Ruling delivered in open Court.

Before me,

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Samuel Emokor
Judge
01/06/2023

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