

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT IGANGA
MISCELLANEOUS APPLICATION NO. 135 OF 2023
(Arising from Civil Suit No. 028 of 2010)

AKOTH BENA ===== APPLICANT
VERSUS
OKIRING VALENTIONO ===== RESPONDENT

BEFORE: HON. MR. JUSTICE BATEMA N.D.A, JUDGE.

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RULING:

Introduction:

This is an application for enlargement of time within which to appeal a taxed bill of costs in Civil suit No. 28 of 2010. It is by Notice of Motion dated 29th August 2023 brought under Section 96 & 98 of the Civil Procedure Act, Section 63 of the Advocates' Act, Section 33 of the Judicature Act, Order 51 Rule 6 and Order 52 Rule 1, 2 & 3 of the Civil Procedure Rules for orders that;

- 20 1. The time be enlarged to allow the Applicant to file Taxation Appeal to the High Court against the contested taxed bill of cost of UGX. 14,722,300/= (Uganda Shillings Fourteen Million Seven Hundred Twenty Two Thousand Three Hundred Only) in Civil Suit No. 28 of 2010 at Bugiri Chief Magistrate's Court and costs of the application be in the cause.

30 The application highlights grounds contained in the affidavit sworn by the Applicant, Akoth Bena key among which is that, while the Applicant instructed his lawyer to file a taxation appeal in the High Court and indeed the same was filed vide Taxation Appeal Reference No. 07 of 2023, the said reference was filed by Notion of Motion instead of filing it by Chamber Summons.

And as a result of the above, the said lawyer had to withdraw the matter with costs when the same came up for hearing on 28th August 2023. It is therefore the Applicant's prayer to this Court to

enlarge time within which to appeal the taxed bill of costs since the 30 days within which a reference should have been preferred had already passed.

40 The Respondent opposed the application through an affidavit in reply sworn by himself on 6th September 2023, wherein the Respondent contends that it is not enough for the Applicant to base on withdrawal of the Notice of Motion as a ground for granting the instant application for enlargement of time since he opted for the wrong procedure knowing it would prejudice her case.

Representation:

When this application came up for hearing on 2nd October 2023, the Applicant was represented by Counsel Opok Paskali while the Respondent was represented by Counsel Ngobi Balidawa.

Submissions of Counsel:

50 At hearing, Counsel for the Applicant submitted that this application ought to be granted by this Court for reasons that a mistake of counsel should not be visited on her client. In support of his position, counsel relied on the authority of Sentamu Moses & Ors Vs Kenanansi Jackline M.A No. 681 of 2020. Counsel for the Applicant contended that this factor constitutes a good cause for which this application ought to succeed.

60 Counsel for the Applicant further submitted that this instant application was filed without delay, the same having been lodged in this Court on 29th August 2023, a day after the taxation appeal reference had been withdrawn.

In opposition to this application, Counsel for the Respondent submitted *inter alia* that the instant application has been brought with inordinate delay since the Bill was taxed in March 2023 and the Appeal reference was filed after four (4) solid months and therefore it was brought in bad faith. Counsel for the Respondent relied on the authority of Makula International Vs Cardinal Nsubuga & Anor. (1982 HCB 11) in support of his position.

70 Counsel for the Respondent also argued that the taxation of the Bill of Costs in Civil Suit No. 28 of 2010 was done *ex parte* upon satisfaction that the applicant had been served successfully and properly but did not turn up for taxation. Counsel however did not furnish Court with the relevant Affidavit of service in proof of the said Court process.

Counsel for the Respondent finally appealed to this Court that should it in the unlikely event find merit in this application, the Applicant should be ordered to deposit security for costs worth UGX. 7,000,000/= because taxation followed the law religiously.

80 In rejoinder, Counsel for the Applicant argued that no taxation hearing notice was ever served upon him since he was the one in personal conduct of the matter. Counsel further submitted that Courts are duty bound to administer justice for all without regard to social standing of the Applicant and therefore ordering the Applicant to pay UGX. 7,000,000/= will flatly deny her a chance to be heard since the amount is a lot and has already been penalized in costs as a result of withdrawing Taxation Appeal Reference No. 7 of 2023.

Analysis:

90 The position of the law is that enlargement of time is a discretion of Court which must however be exercised judiciously. The Applicant seeking to enlarge time must satisfy Court that there is a good cause for which Court ought to enlarge time for leave to appeal out of time.

Conversely, the Application for enlargement of time will not be granted if the delay is inexcusably long and where injustice will be occasioned to the other party or where there is no reasonable justification.

100 According to Section 79 (1) (b) of the Civil Procedure Act, an appellate Court may for good cause admit an appeal though the period of limitation of 30 days has elapsed. Court is therefore duty bound to carefully scrutinize the application to determine whether

it presents sound grounds justifying the grant of such enlargement.

I have laboured to canvass the evidence on record and the submissions made by both parties and therefore move to resolve as such.

110 Firstly, it is trite law that Mistakes, faults/ lapses of counsel should not be visited on the litigant. In the case of **Andrew Bamanya Vs Shamsherali Zaver, S.C.C.A No. 70 of 2001**, there had been a delay of two and a half years in filing the application for leave to appeal out of time. The delay had been occasioned by the Applicant's lawyers. However the supreme Court decided that it had inherent powers under its own rules to administer substantive justice.

120 In the present case, the Bill of costs arising out of Civil Suit No. 28 of 2010 was taxed and allowed at UGX. 14,722,300/= (Fourteen Million Seven Hundred Twenty Two Thousand Three Hundred Uganda Shillings Only) on **24th March 2023**. Aggrieved by the costs allowed, the Applicant through her lawyers of M/s Waigo & Co. Advocates purportedly filed the impugned Taxation Appeal vide Ref; 07 of 2023 on **5th April 2023** before this Court by Notice of Motion.

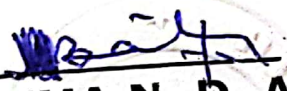
It is my finding that although the Applicant had the intention and desire to appeal; her counsel used the wrong procedure for filing the impugned Taxation Appeal to the detriment of the Applicant.

It is also my finding that this being a claim of 2010, there should be some certainty of recovery of the Judgment debt at the end of the litigation process for the successful party even as one party seeks further redress through fresh applications/ Appeal.

130 I therefore conditionally grant this application and make the following orders:

1. The Applicant is to deposit in this Court UGX. 7,000,000/= (Uganda Shillings Seven Million only) as security for costs within 30 days from the date of this order.

2. That should he fail to comply with the order in (1) above, execution shall automatically issue.
3. Costs shall be in the cause.


BATEMA N. D. A.
JUDGE
31/01/2024

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