

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASAKA
MISCELLANEOUS APPLICATION NO. 03 OF 2023
(ARISING OUT OF MASAKA CIVIL SUIT NO. 101 OF 2015)

SERUWUGE CHARLES ===== APPLICANTS

VERSUS

KINONI TRADERS FARMERS CO-OPERATIVE SAVINGS &

CREDIT SOCIETY LTD =====RESPONDENT

Before: HON JUSTICE LAWRENCE TWEYANZE

RULING

Introduction.

1. The Applicant brought this Application under Section 98 of the Civil Procedure Act (CPA), Section 62 of the Advocates Act and Order 32 rules 1&3 Civil Procedure Rules (CPR) seeking for unconditional leave to appeal out of time against the decision of the Taxing Officer in Civil Suit No. 101 of 2015, passed on the 7th day of October 2022.
2. The grounds of this Application are contained in both the Notice of Motion and the supporting Affidavit but briefly are: That the Applicant is dissatisfied with the decision of the Taxing Officer in Civil Suit No. 101 of 2015 passed on the 7th day of October 2022; That said bill of costs was taxed in the absence of the Applicant's Advocates Advocate Yawe Lawrence of M/s Nyanzi & Co. Advocates at a sum of Ugx: 9,800,000/= .
3. That that the Applicant instructed his Advocate to appeal against the decision of the Taxing Officer in Civil Suit No. 101 of 2015 on the 7th day of October 2022; That the Applicant was later informed by his Advocates that he did not file the said appeal against the Taxing Officer's decision and the time to file the same had since passed when he was informed by his Advocates.
4. That the Applicant's appeal has higher chances of success as the Taxing Officer is faulted on the law of taxation, granted an excessive award without justification/ reason and contrary to the law and principles of taxation; That the Applicant is still willing to appeal against the decision of the Taxing Officer in Civil Suit No. 101 of 2015 passed on the 7th day of October 2022.



5. That the award was granted excessively with no good reason and against the principles of taxation; That the Applicant should not be condemned for the negligence of his Advocates; That it's just and equitable to allow the Applicant leave to appeal out of time against the decision of the Taxing Officer for the purpose of having the matter determined judiciously.

The Affidavit in Reply.

6. The Respondent through an Affidavit in reply deposed by Nakakande Sylvia, the Respondent's Manager opposed the Application that the Application is an afterthought and that the Applicant is guilty of unexplained and inordinate delay in seeking the indulgence of Court for extension of time to file an appeal. That there is neither any mistake by any such Advocate for the Applicant nor negligence as such as the Applicant never instructed any Advocate to conduct appeal proceedings as alleged.
7. That the Applicant has not presented any sufficient cause and is guilty of dilatory conduct as he failed neither to appeal in the prescribed time but only filed this Application after the lapse of three months from the 7th October 2022 when the taxation ruling was handed down in his presence. That the Applicant is not a bonafide litigant and is only changing to blame lawyers to suit his interest caused by his dilatory conduct in filing his intended appeal.

Representation.

1. The Applicant was self-represented while the Respondent was represented by M/s Jawass Associated Advocates.

Submissions

2. The parties were directed to file written submissions. Counsel for the Applicant filed their submissions and as well as Counsel for the Respondent. I have read and appreciated the contents of the Affidavit in support of the Application, the Respondents' Affidavits in reply, the record of the Lower Court and the submissions of the parties. I will refer to the submissions as and when I find it necessary since they majorly repeat the contents of the Affidavits save for the cited authorities.

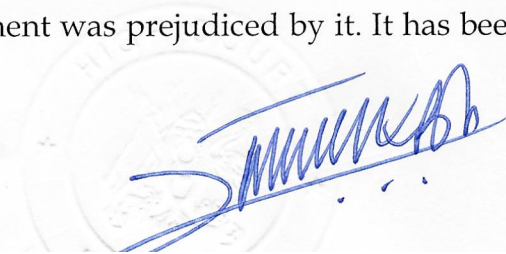
Issue.

The only issue for determination is whether the Applicant has satisfied the requirements for grant of leave to appeal against the decision of a Taxing Officer out of time.

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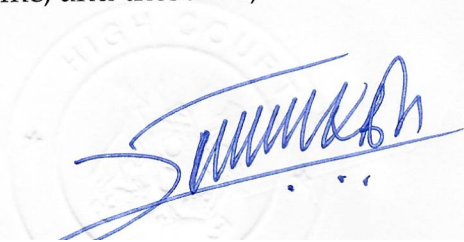
Decision of Court.

3. I have carefully perused the submissions of both Counsel in this Application; the law has been properly cited and argued by both Counsel.
4. Section 79 (1) of the Civil Procedure Act Cap. 71 provides for limitation of appeals and states that: (1) Except as otherwise specifically provided in any other law, every appeal shall be entered – (a) within thirty days of the date of the decree or order of the Court; or (b) within seven days of the date of the order of a Registrar, as the case may be, appealed against; but the appellate Court may for good cause admit an appeal though the period of limitation prescribed by this Section has elapsed.
5. Section 79 of the Civil Procedure Act must be read together with Section 62 of the Advocates Act Cap. Section 62 (1) 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 of this Act may appeal within thirty days to a Judge of the High Court who on that appeal may make any order that the Taxing Officer might have made.”
6. Any other appeal after the 30 days must be with leave of Court. This position was considered by Justice Egonda Ntende in *Uganda Electronics & Computer Ltd Vs. Katuuma - Magala & Co. Advocates, HCT - 00 - CC - MC 04 of 2006 arising from HCT - 00 - CC - CS - 0466 of 2005*.
7. In this case, the bill of costs and certificate of taxation appealed against was considered on 7th October 2022 and the certificate of taxation was issued on the same date. This Application for unconditional leave to file an appeal against the Taxing Officer’s decision was out of time as it was filed on 12th January 2023.
8. The legal position in regard to an Application of this nature is that an Application for an order for enlargement of time to file the appeal should ordinarily be granted unless the Applicant is guilty of unexplained and inordinate delay in seeking the indulgence of the Court, has not presented a reasonable explanation of his failure to file the appeal within the time prescribed by Act, or where the extension will be prejudicial to the Respondent or the Court is otherwise satisfied that the intended appeal is not an arguable one.
9. It would thus be wrong to shut an Applicant out of Court and deny him or her the right of appeal unless it can fairly be said that his or her action was in the circumstances inexcusable and his or her opponent was prejudiced by it. It has been



held that in an Application of this nature, the Court must balance considerations of access to justice on the one hand and the desire to have finality to litigation on the other. When an Application is made for enlargement of time, good cause showing that justice warrants such an extension must be proved by the Applicant before Court can exercise its discretionary powers and grant the extension.

10. The above legal requirements were re-echoed in *Tight Security Ltd v. Chartis Uganda Insurance Company Limited and another H.C. Misc Application No 8 of 2014* where it was held that for an Application of this kind to be allowed, the Applicant must show good cause.
11. "Good cause" that justifies the grant of Applications of this nature has been the subject of several decisions of Courts and these include; *Mugo v. Wanjiri [1970] EA 481 and Pinnacle Projects Limited V. Business in Motion Consultants Limited, H.C. Misc. Appl. No 362 of 2010*, where it was held that the sufficient reason must relate to the inability or failure to take a particular step in time. Other similar cases include those of *Roussos v. Gulam Hussein Habib Virani, Nasmudin Habib Virani, S.C. Civil Appeal No. 9 of 1993* in which it was decided that a mistake by an Advocate, though negligent, may be accepted as a sufficient cause, ignorance of procedure by an unrepresented Defendant may amount to sufficient cause, illness by a party may also constitute sufficient cause. The failure to instruct an Advocate in time is not sufficient cause, as was held in *Andrew Bamanya v. Shamsherali Zaver, C.A Civil Application No. 70 of 2001*.
12. However, the Courts have taken note of the fact that where there are serious issues to be tried, then a Court ought to grant an Application of this nature. *See: Sango Bay Estates Ltd v. Dresdner Bank [1971] EA 17 and G M Combined (U) Limited v. A. K. Detergents (U) Limited S.C 25 Civil Appeal No. 34 of 1995*).
13. However, an Application for enlargement of time will not be granted if there is inordinate delay in filing it. *See: Rossette Kizito vs. Administrator General and Others, S.C. Civil Application No. 9 of 1986[199315 KALR 4*.
14. The considerations which guide Courts in arriving at the appropriate decision in an Application for the enlargement of time were outlined in the case of *Tiberio Okeny and Another v. The Attorney General and two others C. A. Civil Appeal No. 51 of 2001*. In that case, the following conditions were laid down which must be satisfied before any grant of an order for enlargement of time; and these are;



- a. *First and foremost, the Application must show sufficient reason related to the liability or failure to take some particular step within the prescribed time. The general requirement notwithstanding each case must be decided on its facts.*
- b. *The administration of justice normally requires that substance of all disputes should be investigated and decided on the merits and that error and lapses should not necessarily debar a litigant from pursuit of his rights.*
- c. *Whilst mistakes of Counsel sometimes may amount to sufficient reason this is only if they amount to an error of judgment but not inordinate delay or negligence to observe or ascertain plain requirements of the law.*
- d. *Unless the Applicant was guilty of dilatory conduct in the instructions of his lawyer, errors or omission on the part of Counsel should not be visited on the litigant.*
- e. *Where an Applicant instructed a lawyer in time, his rights should not be blocked on the grounds of his lawyer's negligence or omission to comply with the requirements of the law.*

15. Hon. Justice Twinomujuni in the above case went further to hold that it is only after "sufficient reason" has been advanced that a Court considers, before exercising its discretion, whether or not to grant extension, the question of prejudice, or the possibility of success and such other factors.

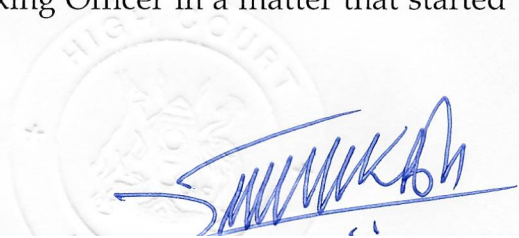
16. In this Application, the Applicant's just cause is that the said bill of costs was taxed in absence of the Applicant's Advocate, Yawe Lawrence of M/s Nyanzi & Co. Advocates at sum of Ugx: 9,880,000/= and that the Applicant instructed his Advocate to appeal against the decision of the Taxing Officer in Civil Suit No. 101 of 2015 on the 7th day of October 2022; That the Applicant was later informed by his Advocates that he did not file the said appeal against the Taxing Officer's decision and the time to file the same had since passed when he was informed by his Advocates. He relies on mistake of Counsel as a reason for failure to file an Appeal in time.

17. The record of proceedings indicates that on the 30th of September 2022, the Applicant was in Court but his Advocate was not in Court and Court granted him the last date to come for a full representation. On the 7th day of October 2022, again the Applicant was in Court but his Advocate did not show up and no justifiable reason was given. Court proceeded with the taxation in the absence of the Applicant's Advocate on grounds that the matter had been in the system for 5 years and could not condone



delaying tactics of the Applicant. However, the Applicant was in Court. Thereafter, the bill was taxed inter-parties and allowed at Ugx: 9,880,000/= on that same date of 7th October 2022 and the certificate of taxation was issued that very day.

18. From the record of proceedings and the dates extracted above it is clear that the Applicant/Defendant was always in Court and his Advocate largely absent from Court to the extent that the taxation was done in the presence of the Applicant and in the absence of his lawyer. This indicates that the Applicant showed interest in this matter and was always almost present at all times and for this matter was always aware of all dates set by Court.
19. The Applicant is basing this Application on good cause on the ground of negligence of Counsel since he immediately instructed his Advocate on the 7th day of October 2022 to file an Appeal and he did not. However, from the record of proceedings clearly, the Applicant never showed any seriousness on the matter as the said lawyer did not appear twice whenever the case was adjourned. Moreover, the Applicant intimated to Court of his willingness to pay the said costs and he as well requested that he would be granted chance to pay installments of UGX 500,000/= per month, which the Respondent's lawyers rejected. It is therefore surprising that the same person now seeks leave to Appeal against the said taxed costs.
20. Even after the Applicant personally became aware of the taxed costs and the decision of the Taxing Officer dated on 7th October 2022, it took the Applicant approximately 3 months to file this Application for extension of time. There is no proof that the Applicant bothered to take any steps to follow up with Court to ascertain if his lawyer filed the said Appeal if at all he was instructed. This would have been done if at all the Applicant was really serious about the Appeal since by himself, he was in Court on the date of the taxation. There was not even a follow-up in time by the Applicant. For avoidance of doubt, the Application was filed on 12th January 2023.
21. I find that the conduct of the Applicant and his Advocate during the process of the taxation and the delay in filing the Application after they became aware of the certificate of taxation, unconscionable yet the Respondent consistently had to wait for over five years to receive a decision on the claim against the Applicant that was filed in 2015.
22. Given the conduct of the Applicant in the Lower Court, allowing time within which the Applicant would appeal the decision of a Taxing Officer in a matter that started

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in 2015 and the Applicant filing this Application after three months from the date when the decision on taxed costs was made is an afterthought by the Applicant which Court shall not condone. In my view, granting the Applicant leave to Appeal out of time would prejudice the Respondent in a matter that has been litigated for many years.

23. I am not satisfied with the argument of the Applicant that he has sufficient cause of mistake of Counsel within the meaning of the decision in *Captain Philip Ongom versus Catherine Nyero Owota SCCA No. 14 of 2001*. Therefore, it would be unjust to allow an Application of this nature where the party seeking remedy in Court has shown such high propensity of laziness after the bill was taxed and at the same time seek Court's indulgence only after he personally attended the proceedings in taxation of costs.

24. Premised on the above, this Application fails and it is accordingly dismissed with costs to the Respondent.

I so order.

Ruling signed and delivered by email this 3rd day of April, 2024



LAWRENCE TWEYANZE

JUDGE.

3rd April, 2024.