

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISCELLANEOUS APPLICATION NO. 072 OF 2023
(ARISING FROM CIVIL APPEAL NO. 002 of 2016)

5 **(ALL ARISING FROM KASESE CHIEF MAGISTRATE CIVIL SUIT NO. 201 OF 2013)**

NEW UGANDA SECURIKO LTD=====APPLICANTS

VERSUS

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BAKWANYE TRADING CO. LTD=====RESPONDENTS

BEFORE HON. JUSTICE DAVID S.L. MAKUMBI

15 Applicant represented by Mwesigye, Mugisha and Co. Advocates

Respondent represented by M/S MRK Advocates

RULING:

This is a ruling on an application for orders that:

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- 1) The applicant be granted leave to lodge an appeal out of time by extending time within which to file and serve the Notice of Appeal and other documents for commencing the appeal against a judgment in Civil Appeal No. 002 of 2016 which is dated 17th May 2022.
 - 2) Costs of the application be provided for.

25 **LAW APPLICABLE:**

- 1) Civil Procedure Act
- 2) Judicature Act
- 3) Judicature (Court of Appeal) Rules

APPLICANT'S CASE:

30 The application is supported by the affidavit of Zubairi Mukwaya, the Managing
Director of the Applicant, who in summary lays out the grounds upon which he
believes that this court should grant leave to lodge an appeal out of time
before the Court of Appeal. The Applicant's Managing Director deponed that
the appeal which arises from decisions of the Kasese Chief Magistrate in Civil
35 Suit No. 201 of 2013 and of this court in Civil Appeal No. 002 of 2016. He
further averred that the delay in lodging the appeal was occasioned by the
abrupt departure without notice to the applicant of Counsel Enock Bwesigye
who was in personal conduct of their matter. He went on to depone that the
appeal had high chances of success.

40 RESPONDENT'S CASE:

For their part the Respondents filed written submission in response to the
application and essentially contended that the application was misconceived
having been improperly filed before the High Court whereas the High Court
lacked jurisdiction to hear the same.

45 Learned Counsel for the Respondent argued that the process of appeal is a
creature of statute and contended that civil appeals to the Court of Appeal
from decisions of the High Court are governed by the Civil Procedure Act Cap
71 and the Judicature (Court of Appeal Rules) Directions SI 13-10.

To the extent of the argument above, Counsel cited Rules 3, 5, 76 and 78 of the
50 aforementioned rules to establish that this court has no jurisdiction to
entertain this matter. Counsel further made reference to the decisions of Lady
Justice Henrietta Wolayo in *Namakula v Mibirizi Mohammed and 2 Others -*
Misc. Application No 81 of 2020 (arising from Civil Suit No 35 of 2013) and
Justice Egonda Ntende as he then was In the Matter of *Ranch on the Lake Ltd*
55 (In Receivership) *Misc. Application No. 0537 of 2005* arising from HCT-00-CC-
CI-0009-2005.

In both of the matters above the Learned Justices held that applications for
leave to extend time to appeal to the Court of Appeal were incompetent.

Counsel for the Respondents argued in the alternative but without prejudice to
60 their initial arguments that the application lacked merit and had no likelihood
of success in as much as it related to matters of mixed law and fact on a second
appeal which should be restricted to matters of law only.

RESOLUTION:

Section 72(1) of the Civil Procedure Act provides that,

65 “Except where otherwise expressly provided in this Act or by any other law for
the time being in force, **an appeal shall lie to the Court of Appeal from every
decree passed in appeal by the High Court ...**”.

The provision above goes on to lay out the grounds for the said appeals which
are not relevant for purposes of this ruling. However, what is clear is that in
70 matters such as this one which involves a second appeal to the Court of Appeal
against the Appellate decision of this court, jurisdiction to hear the appeal is
vested in the Court of Appeal.

The procedure before the Court of Appeal is provided for in the Judicature
(Court of Appeal Rules) Directions and the question of extension of time to
75 lodge appeals before the Court of Appeal is provided under Rule 5 as follows.

“The court may, for sufficient reason, extend the time limited by these Rules or
by any decision of the court or of the High Court for the doing of any act
authorised or required by these Rules, whether before or after the expiration of
that time and whether before or after the doing of the act; and any reference in
80 these Rules to any such time shall be construed as a reference to the time as
extended.”

Rule 3(g) thereunder provides that,

“... ‘court’ means the Court of Appeal of Uganda established under article 129
of the Constitution, and includes any division of the court and a single judge
85 exercising any power vested in him or her sitting alone;”

In the exercise of its powers under Section 72(1) of the Civil Procedure Act the
Court of Appeal places reliance upon the above-mentioned rules. For this court
to entertain the application for extension of time in such a matter would not
only be a violation of the Judicature (Court of Appeal Rules) Directions but it
90 would also be a violation of Section 72(1) of the Civil Procedure Act as the rules
serve to operationalize the aforementioned section of the law.

To the extent of the above I do agree with Learned Counsel for the Respondent
that this court has no jurisdiction to handle this application. To do otherwise
would be tantamount to irregularly vesting this court with the power to
95 determine the business of the Court of Appeal in matters of extension of time

contrary to both the Civil Procedure Act and the Judicature (Court of Appeal Rules) Directions.

100 It is also noteworthy that affidavit in support of the application is incurably defective as the intended Memorandum of Appeal attached as Annex "B" refers to a judgment of His Lordship Justice Dr. Flavian Zeija (as he then was) of the Land Division dated 4th June 2020 whereas the matter in issue relates to a judgment of Her Ladyship Elizabeth Jane Alividza dated 17th May 2022 which is attached to the same affidavit as Annex "A".

105 I need not traverse the arguments of the Respondent in the alternative as I find the initial arguments concerning lack of jurisdiction valid and I accordingly rule that this application fails.

ORDERS:

Costs in this matter are awarded to the Respondent.

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David S.L. Makumbi
JUDGE
7th March 2024

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