

**IN THE HIGH COURT OF UGANDA AT SOROTI**

**CIVIL APPLICATION 28 OF 2012**

**ARISING FROM MISC. APPLICATION 10 OF 2010,**

**ARISING FROM CIVIL APPEAL 12 OF 2007 AND MORUNGATUNY LC III COURT  
CASE 001 OF 2007**

**EGWEDI BASIL .....APPLICANT**

**V**

**EROKU JAMES.....RESPONDENT**

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**RULING**

In this application, the applicant seeks extension of time within which to appeal to the High Court against the decision of the Chief Magistrate in CA 12 of 2007 dated 15<sup>th</sup> February, 2010. The application is brought under order 51 r 6, order 52 rr 1,2, & 3 of the PR and section 98 of the CPA.

The grounds of the application are reproduced below:

1. Because the applicant had instructed his counsel Echipu who filed the application No. 10/2010 before the chief magistrate Soroti and the same was dismissed for none appearance of the lawyer.
2. The appeal involves a sensitive subject matter which is land and the applicant wishes to pursue his claim in land.
3. The applicant wishes to exhaust his constitutional right of appeal to the High Court.
4. It is just , fair and equitable to grant this application.

The application filed by Ms Owori & Co. Advocates is supported by the affidavit of Engwedu Basil.

Counsel for the respondent Mr. Oyoit did not file an affidavit in reply but raised a preliminary objection in his written submissions. Needless to say, counsel ought to have raised the matters therein, in an affidavit in reply. However, article 126 of the Constitution directs courts to administer justice without undue regard to technicalities. As the matters raised are part of the court record, I will proceed to consider the preliminary objection.

Counsel submits that the grounds of this application are a replica of the grounds raised in Civil Application 57 of 2010 that was disposed of by Lady Justice M. Oguli on 10<sup>th</sup> April 2010. That therefore, this court is functus officio.

I have examined the record of proceedings in civil Application 57 of 2010 between the same parties and also read the ruling of Lady Justice M. Oguli.

I agree with counsel for the respondent that the grounds are the same and the learned dismissed the application for extension of time within which to appeal the decision of the chief magistrate dated 15<sup>th</sup> February 2010. The chief magistrate in those proceedings quashed judgment of morugantuny LCIII that had been in favour of the present applicant.

In this application, the applicant is seeking extension of time within which to appeal the same decision of the chief magistrate dated 15<sup>th</sup> February 2010. Whichever way counsel for the applicant puts it, the fact remains that section 220 of the MCA regulates appeals from judgments of the Chief Magistrate. Lady Justice discussed the procedure and disallowed the application for extension of time within which to appeal.

Counsel for the applicant attempted to argue that this court is not functus officio and that the matter is not res judicata. I fail to appreciate the application of res judicata in the present case.

As for functus officio, counsel correctly sums up the principle when he cites Osborn's concise Law dictionary . To quote counsel, ' the doctrine is to the effect that once a judicial officer such as in this case, has made a decision, he or she is deemed to have exhausted his or her powers and he or she cannot act again on the same matter'. I entirely agree. The High court presided over by Lady Justice Oguli dismissed the application for extension of time within which to file an appeal. The same application is now before me. The High court is functus officio.

This application is dismissed with costs to the respondent.

**DATED THIS 11<sup>th</sup> DAY OF MARCH 2014.**

**HON. LADY JUSTICE H. WOLAYO**