

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**MISC. APPLICATION NO. 160 OF 2014**

5 (Arising from Misc. Application No. 170/2012)  
(Arising from Civil Suit No. 106/2007)

**B.W.**

10 **KAPIRIRI :.....APPLICA  
NT**

**VERSUS**

15 **1. INTERNATIONAL INVESTMENTS LTD.  
2. KALIISA KARANGWA MOSES  
3. ELIZABETH MWIGUNDU  
4. MITALA BULUBA MOSES  
5. MUKUNGU BALATI  
20 6. BULUBA JULIUS  
MICHAEL:.....RESPONDENT**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

25 **JUDGMENT**

This Application combines two Applications, one for grant of extension of time within which to lodge an application for  
30 leave to appeal against a Ruling of this Court in Misc. Application 170/2012 and two: leave to appeal against the

decision of this Court dismissing the Applicant's Application to amend the Plaint, delivered on 19<sup>th</sup> February, 2014.

The Applicant also prays for costs.

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It is brought under Order 44 Rules 1, 2, 3 and 4, Order 51 Rule 6 of the Civil Procedure Rules and Section 96 and 98 of the Civil Procedure Act and Section 33 of the Judicature Act and Article 126 (2) (e) of the Constitution of Uganda.

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The grounds are contained in both the Notice of Motion and the affidavit in support sworn by the Applicant B.W. Kapingiri. The said grounds are in two categories:

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**1. Failure to lodge application for leave in time:**

(a) The Applicant's Lawyers failed to exercise due diligence in seeking leave to appeal until the prescribed time elapsed.

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(b) The Applicant relied on his former Lawyers who only filed a Notice of Appeal and did not seek leave to appeal within the prescribed time and is therefore not to blame for his Lawyers misconduct of his case.

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5 (c) The Applicants former Lawyers through an error of Judgment or inadvertent omission upon lodgment of a Notice of Appeal failed to lodge the Application for leave within the prescribed time, which would render the Notice of Appeal liable to be struck out.

**2. Justification for grant of leave to appeal:**

10 (a) Misdirection of the Court in the exercise of its discretion and application of principles relating to amendment of pleadings leading to a wrong conclusion that the application for leave to amend had no merit.

15 (b) Failure by the Court to consider the interest of justice thereby occasioning a miscarriage of justice.

20 (c) Adopting a very rigid approach and failure to apply liberal rules sanctioned by the Supreme Court on the amendment of pleadings.

25 (d) That the requirement for Statutory Notice to the Commissioner Land Registration and the Land Board is no longer a mandatory requirement under the Law.

(e) Failure by the Court to allow the amendment to enable it investigate the substance of a dispute especially where fraud is involved among others, and thus abdicated from its duty to render substantive justice.

The second Respondent, Moses Kaliisa Karangwa filed an affidavit in reply. Therein he avers that the application is misconceived. Further, that the litigants' Lawyers are answerable and responsible for the outcome of their representation and the Applicant is thus bound by the deeds of his Lawyers.

That the same Law Firm - Balikuddembe & Co. Advocates that handled the application for leave to amend and jointly filed a Notice of Appeal are the same lawyers who have filed the instant application jointly with M/S Kyazze & Co. Advocates.

It is also averred that this Court has no jurisdiction to strike out the Notice of Appeal which was filed before leave to appeal is granted. That since the said Notice of Appeal has not been withdrawn, then this Court cannot entertain this application as the matter is already in the Court of Appeal for determination.

The affidavit also states that the Applicant pursuing two different applications and procedures for the same matter is an abuse of Court process. That the dismissed application  
5 was ruled upon especially paragraphs 12, 13, 14, 15, 16 17 and 18 of the Applicant's affidavit and this therefore amounts to abuse of process for this Court to repronounce itself on the same matters which should be determined by the appellate Court.

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Finally, it is deponed that the application does not disclose any reasonable grounds for extension of time.

On the first leg of this application (Leave to extend time), it  
15 is submitted for the Applicant that the application (Omnibus) is properly before Court.

This is because where the applications are of the same nature, the rationale is to avoid a multiplicity of suits and to  
20 facilitate expeditious disposal of the matters.

Ref: 1. **Magemu Enterprises Vrs. Uganda Breweries Ltd; HCCS 462/1991.**

2. **Dr. Sheikh Ahmed Muhammed Kisuule Vrs. Greenland Bank in Liquidation; HCMA No. 2/2012.**

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Regarding the extension of time within which to seek leave to appeal, it is submitted that the Applicant was prevented by sufficient cause from lodging the application within the prescribed time.

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That the Applicant relied on his lawyers to take appropriate action. That through an error of Judgment or inadvertent omission, the said lawyers failed to apply for leave within the prescribed time.

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It is submitted that under Section 96 CPA, the Court is required to concern itself with whether the Applicant was prevented from lodging the application in time by sufficient cause. Reference has also been made to sections 33  
15 Judicature Act and Section 98 of the CPA which empower the Court to exercise jurisdiction in the interests of justice.

It is further submitted that mistake, errors of Judgment, lapses and negligence of Counsel constitute sufficient cause  
20 and these should not be visited on the innocent Applicant who relied on his Counsel.

Ref: **1. Julius Rwabinumi Vrs. Hope Bahimbisomwi  
SCCA 14/2009;**

**2. Dr. Sheikh Ahmed Muhammed Kisuule Vrs.  
25 Greenland Bank (supra).**

It is also submitted that lodging a Notice of Appeal before leave is not fatal to this application within the provisions of Rule 76 (4) of the Judicature, Court of Appeal Rules and on the authority of **Peter Muramira Vrs. Brian Kaggwa CA.**  
5 **Application 104/2009.** That the grant of leave only operates to validate the Notice of Appeal.

Regarding the second leg of the Application (Leave to appeal). It is submitted that in an application for leave to  
10 appeal, the Court is enjoined to consider whether prima facie, it appears that there are grounds of appeal which merits serious judicial consideration, but does not require Court to consider the merits of the intended appeal or its chances of success. Ref: **Dr. Sheikh Ahmed Muhammed**  
15 **Kisuule Vrs. Greenland Bank (supra).** That the Applicant has an arguable case worth considering on its own merits and that there are serious matters of law and fact which deserve to be addressed by the appellate Court.

20 The Applicant's Counsel then goes further to submit on the grounds raised in the Notice of Motion. He refers to the case of **Mulwooza & Brothers Ltd. Vrs. N. Shah & Co. Ltd SCCA 26/10.** It is submitted that this authority should have been brought to the attention of Court.

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The said authority in effect lays out that amendments to pleadings allowing introduction of a new cause of action will be allowed so that the real controversy between the parties is determined and justice is administered without undue regard to technicalities. (Article 126 (2) (e) of the Constitution). Reference was also made to the case of **Kabandize & 20 others Vrs. Kampala Capital City Authority CACA No. 2011.**

10 The 2<sup>nd</sup> Respondent through his Counsel has opposed the application on grounds that:

1. **Inordinate delay in filing the application:**

15 Firstly that the application was filed after 3 months from the Ruling. That this is an old matter that was filed in 2007 and the Plaintiff's case was at a very advanced stage.

20 That the Application does not explain the 3 months delay. That the claim that the delay was a result of the Advocates is not tenable.

25 It is submitted that the dismissed application was made by 2 Advocates namely M/S Balikuddembe and M/S G.W. Kanyeihamba. That the instant application was



filed by 2 Firms one of them M/S Balikuddembe one of the Firms in the first application.

5 It is submitted that if the previous Advocates made a mistake or were negligent, why is this very application made jointly with one of the same Firms which was party to the alleged mistake or negligence in the previous application. There is no evidence as to why this same firm did not file the application in time.

10

It is submitted further that the Applicant has a duty to show that the delay has not been caused or contributed to by dilatory conduct on his part to enable Court exercise its discretion to extend time.

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The Applicant had 2 Advocates, if one made a mistake what did the Applicant do with the other Advocate - M/S Balikuddembe & Co. Advocates. Reference was made to **Ruwenzori Investments Ltd Vrs. NPART (1996) HCB 14** where the Applicant attempted to put the blame on his past lawyer for not taking necessary steps. The application was dismissed due to dilatory conduct. Referring to the case of **Dr. Sheikh Ahmed Muhammed Kisuule & Another Vrs. Greenland Bank (supra)**. It was submitted that in that case, Court was not addressed on inordinate delay.

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2. **Alleged error by Advocate:**

It is submitted that it is not trite law that the errors of Advocates should not be visited on the client but rather each case should be dealt with on its facts. Reference was made to various cases including

- **Ruwenzori Investments Vrs. NPART.**

- **Keshwala Vrs. M. M. Sheik Dawood MA. 543/11.**

- **Muhamad Kasasa Vrs. Jaspar Sirasi**

The import of the decisions therein is that a Client is bound by the actions of his Counsel, negligently drafting the Plaint, or incompetence is not an excuse for the Client to escape being bound by his Counsel's action. It was submitted further that in **Trust Bank Vrs. Portway Stores (1977) LLR 119**; it was held that the errors of a duly instructed Advocate who is obviously an agent of the instructing party can be visited on the principal.

3. **Leave to appeal:**

It has been submitted for the Respondent that the grounds set out in his application relate to the same matter that the dismissed Application was ruled upon.

That the Respondent declared the existence of a Certificate of ownership that he did not insist on seeing and only waited for the conclusion of the case to seek leave to amend the Plaint - claiming fraud, a clear  
5 delaying tactic to defeat the ends of justice.

Finally that the Applicant filed a Notice of Appeal which has not been withdrawn by the Applicant as a delaying tactic.  
10

The Applicant's rejoinder is to the effect that the 3 months delay has not been explained as being unreasonable. That the fact that the head suit is in advanced stages is no bar to  
15 the grant of leave as the amendments are crucial to the Applicant's case.

Further that this application is filed on the sole advice of the new Counsel M/S Kyazze & Co. Advocate, M/S Balikuddembe  
20 Only remaining as having participated in the head suit. I have considered the pleadings and submissions by both Counsel which in my view are compelling.

I would observe that applications of this nature i.e. extension  
25 of time and grant of leave to appeal are greatly determined on the exercise of the discretion of the Court which deals

with each case on the basis of its own peculiar facts and circumstances.

The decision is not mechanical or that the application must  
5 be granted once filed. That would do away with the Court's discretion.

Firstly, the issue of the application being omnibus was adequately handled by the Justice Abura in the **Dr. Sheikh**  
10 **Ahmed Kasuule Vrs. Greenland Bank**, where similar applications were filed omnibus.

She allowed the matter to proceed on grounds that it mitigated the multiplicity of applications, one was a  
15 consequence of the other, and finally that no injustice would be occasioned by handling both applications.

This application is similar to that authority and I find no fault in handling both matters omnibus.

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**Extension of time:**

The basis for the application to extend time is that the Applicant's lawyers were negligent, committed errors or mistakes in not having filed the Application in time.

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Both Counsel have cited authorities which I need not reproduce. The Cardinal principle is that the Applicant must satisfy Court that there was sufficient cause justifying the delay. The Courts have held that the mistakes of Counsel  
5 should **ordinarily** not be visited on the litigant. **(Ref: Julius Rwabimuni (supra)).**

Further, this Court is alive to the need to administer substantive justice. But each case must be handled on its  
10 own peculiar facts.

In the instant case, the Applicant was represented by 2 Firms of Advocates who in my view are very senior Lawyers who ought to have known the procedure of the requirement for  
15 leave. They instead filed a Notice of Appeal in the Court of Appeal and sat back. This is a matter that has been pending for a long time and should be determined as soon as possible.

20 The Court considers the justice of the whole case. Should the opposite party be indefinitely inconvenienced because of the laxity and or incompetence of the other party's Counsel?

In **Banco Arabe Espanol Vrs. Bank of Uganda SCCA**  
25 **8/98;** it was observed **"The question of whether an 'oversight' or 'error' as the case may be on the part**

of Counsel should be visited on a party the Counsel represents and whether it constitutes 'sufficient reasons' or 'sufficient cause' justifying sufficient remedies from Courts has been discussed in numerous authorities." Those authorities deal with different circumstances; and may not relate to extension of time for doing a particular act, frequently in cases where time has run out..... The above case read together with the case of **Ruwenzori Investments Ltd. Vrs. NPART (supra)** must mean that much as substantive justice should be the overriding consideration, litigants and their Counsel should not hide unnecessarily in the flexibility of the Courts to fail to do or observe basic procedures, thus clogging the Court system with unnecessary applications and multiplicity of cases.

At the time the Ruling in the dismissed application was delivered, the Applicant's Counsel who was in Court had the opportunity to ask for leave to appeal. Probably it could have been granted.

However, they went and indulged in other undertakings and only woke up to the reality 3 months later.

Given the circumstances of this case, this was inordinate delay and Counsel and the Applicant are faulted for dilatory conduct.

- 5 The application for leave to extend time accordingly fails.

Regarding the application for leave to appeal, this Court does not have to determine whether there are grounds of appeal with a likelihood of success. That would be usurping  
10 the role of the appellate Court.

The Applicant must however demonstrate that there are arguable grounds worth consideration by the appellate Court. Ref: **Dr. Sheikh Ahamed Kisuule Vrs. Greenland**  
15 **(supra)**. Counsel for the Applicant outlined and argued on the grounds laid out in the Notice of Motion but in summary argues that the Court in dismissing the application to amend misapplied the principles on amendment of pleadings and did not consider the interest of justice.

20

For the Respondent, it was submitted that the instant application sets out grounds which relate to the same matters ruled upon in the dismissed application.

- 25 I have considered the above positions, the submissions and the law.

Suffice it to say that this Court was alive to the principles governing leave to amendment of pleadings and they were well articulated in that Ruling. The Supreme Court case of  
5 **GASO Transport Ltd. Vrs. Martin Adala Obene SCCA 4/94** was relied upon and lays down the considerations for allowing amendment of pleadings. To the best of my knowledge that authority has not been overruled.

10 The fact that the Court relied on this authority and not the one cited by Counsel for the Applicant does not water down the law or the principles laid down in that authority.

The overriding principle is that the intended amendments  
15 will be allowed if the said amendment does not prejudice the other party.

The Court looked at all the circumstances of the case, the stage at which the trial had reached, the way the said  
20 proceedings were conducted and came to the conclusion that that application was malafide and allowing the same would prejudice the Respondent.

This Court finds that nothing has changed that position in  
25 the instant application.



I accordingly find that there is no justification for granting leave to appeal against that Ruling. The omnibus application for extension of time and leave to appeal is disallowed on the grounds articulated above. The Applicant will meet the  
5 costs of this Application.

**Godfrey Namundi**

10 **JUDGE**

**20/04/2015**