

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CV-MA-0017-2015

(ARISING FROM CIVIL REVISION NO. 04 OF 2014)

RWAKATARAKA MUNIRU.....APPLICANT

VERSUS

OLUK ANDERA.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

The applicant made this application under O.44 r.1, (2), 3 and 4 of the Civil Procedure Rules and Section 39 (2) and 41 (1) of the Judicature Statute Court of Appeal Rules Directions 1996.

The grounds were that:

1. Applicant is aggrieved by the order of 18th December 2014.
2. Applicant Counsel did not make informal application to court to seek leave to appeal at the time the ruling was delivered by court.
3. The said order placed the Applicant in serious hardship due to lapse of time or other causes and therefore it would result into injustice and breach of peace if the order is left to stand.
4. The application has been brought without delay.

The application is supported by the affidavit of **Rwakataraka Muniru**.

In reply the respondent in his affidavit opposed the application.

Counsel for applicant addressed court on the application stating that the applicant's application is made because the order sought to be appealed from has placed applicant in hardship and if left will lead to a breach of the peace. Applicant states that the order has resulted into hardship and hence the desire to appeal to the Court of Appeal.

In reply respondent opposed the application pointing out several procedural mishaps which in his view were fatal.

He faulted the applicant for failing to prove that the intended appeal is of public interest.

In cross reply applicant argued that the application for leave to appeal need not plead public interest. He reiterated his grounds.

I will not divulge into the technical issues raised because they are irrelevant to this application. The issues for consideration in an application for leave to appeal are:

1. Whether the application is time barred.
2. Whether there are prima facie grounds of appeal which merit consideration.
3. Whether the intended appeal has reasonable chances of success.
4. Whether applicant is guilty of dilatory conduct.

The above issues were considered in a number of authorities, for instance:

Haji Mumani Mubii v. Riends Estates Ltd CA-Civil Appeal 241/2011 where it was

held that:

“In exercising jurisdiction to grant or not to grant leave to appeal, court will first determine whether or not prima facie

there appears to be grounds of appeal requiring serious consideration by this court.”

Also see: Sango Bay Estates and Others versus Dregner Bank A.G. [1971] E.A. 17

where Spray J, held:

“As I understand it, leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious consideration. All that this court is thus required to do is determine whether or not prima facie there are grounds of appeal that merit serious consideration.”

Also in G.M. Combined (U) Ltd vs A.K. Detergents (U) Ltd Supreme Court Civil Appeal No. 23 of 1994.

Also see: Kayaga v. Waligo Misc. App. 80/2012 (CA) it was held that:

“Applicant must prove existence of prima facie grounds of appeal which merit serious consideration.”

The import of the above cases is that an applicant seeking leave to appeal must show either that his intended appeal has reasonable chances of success or that he has arguable grounds of appeal and has not been guilty of dilatory conduct.

The facts before me reveal the following:

Issue 1:

a) No Step to apply for leave to appeal was taken by the applicant within the mandatory 14 days allowed by the law. The conduct of counsel who represented applicant, did not act diligently as pointed out in paragraph 7 of Respondent's affidavit in reply. The explanation by the applicant's counsel in submission as to why this happened is not convincing. The law be as it is, the conduct of applicant was dilatory.

Issue 2:

The applicant does not in his pleadings and submission refer to any grounds of appeal. The pleadings are complaining about the effect of the order of court which was likely to result in hardship. The pleadings are silent on what grounds of appeal are being taken to the court of appeal. It is not even possible to construe from the pleadings which areas of the court orders or judgment are being challenged. This is contrary to the requirement of the law as held in Sango Bay Estates and Ors vrs Dregner Bank A.G. [1971] EA 77,- that:

“There must be grounds of appeal which merit serious consideration.”

In this application no grounds have been put forward. As stated by respondent in his submissions, the applicant appears to be intending to use the intended appeal as a stay of execution. (See paragraph 7 of the affidavit in support where he deposes that:

“If Respondent is allowed to execute the said order and evict my tenants from suit premises, a serious breach of the peacewill be caused.”

The issue terminates in the negative.

Issue 3:

Whether the intended appeal has reasonable chances of success.

Applicant never addressed court on this issue. The pleadings are also silent on the same. It is therefore impossible to assess if any grounds of appeal do exist worth proving in the Court of Appeal. As held in *G.M. Combined (U) Ltd v. A.K. Detergents (U) Ltd (SPCCA 23/1994)*:

“An applicant seeking leave to appeal must show that his intended appeal has reasonable chances of success.”

In this appeal no such evidence exists. I am also sure that the Ruling being sought to be appealed from does not pose any possible breach of the peace. The issues under consideration in the Revision were premised on procedural irregularities which this court thoroughly considered. I do not envisage appealable issues worth of consideration by the Court of Appeal resulting from the said Ruling. This issue also fails.

Issue 4: Whether applicant is guilty of dilatory conduct.

I have already alluded to this issue in the discussion of issue 1. The finding under issue 1, shows that applicant acted with “unclean hands”, did not file the appeal in time, never served the respondent with the court papers, (as argued by him on 17.3.2015 in court, and found so by court.) This offends the rule of equity. The holding in Kayaga v. Waligo Misc. App. So.2012 (CA) which is that:

“An applicant seeking leave to appeal must show that he has not been guilty of dilatory conduct.”

In all these grounds I have found that applicant has failed to satisfy all conditions necessary for grant of leave to appeal. The application fails and is dismissed with costs to Respondent. I so order.

Henry I. Kawesa

JUDGE

31.03.2015