

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

MISC. APPLICATION NO. 40 OF 2017

(Arising from civil suit No. 146 of 2015)

MATOVU CHARLES KIDIMBO:.....APPLICANT

VERSUS

- 1. LUKWATA YUSUF**
- 2. MAGEMBE HASSAN KIBI**
- 3. GOLOOBA HASSAN:.....RESPONDENTS**

BEFORE: HON. JUSTICE WILSON MASALU MUSENE

RULING

This was an application by **Matovu Charles Kidimbo**, against the Applicants, **Lukwata Yusuf, Magembe Hassan Kibi and Golooba Hassan**. It is an application under Section 79 (1), and 98 of the Civil Procedure Act and Order 51 r.6 and O. 52 rules 1,2 and 3 of the Civil Procedure Rules.

The Applicant is seeking orders that:-

- a) Leave be granted to the Applicant to file his appeal out of time against the Ruling and orders of the Magistrate Grade One in **Civil Suit No. 146 of 2013**.
- b) Costs be in the cause.

The grounds in support of the application are contained in the affidavit of the Applicant, but briefly are:

- i) The Applicant filed Civil Suit No. 146 of 2013 in the Chief Magistrate's Court which was dismissed following a preliminary point of law raised by the Respondents.
- ii) The Applicant's Lawyers in advertently failed to file an appeal against the said ruling despite instructions from the Applicant.
- iii) That the 30 days within which to appeal to this court elapsed.
- iv) That the Lawyer's mistake and dilatory conduct though negligent should not be visited on the Applicant.
- v) That it is just and equitable that the orders sought be granted.

The Applicant was represented by M/s Nassuna & Co. Advocates, while the Respondents were represented by M/s Mwesigye Associated Advocates.

The Respondents, in an affirmation in reply by Magembe Hassan Kibi, opposed the application as devoid of merit. They added that the Applicant has not shown sufficient cause for failing to file his appeal in time, and that he sat on his rights. The Respondents added that too long a time has elapsed since November, 2015. When the ruling was delivered up to now when this application is brought.

Both sides were directed to file written submissions.

Counsel for Applicant submitted that the applicant is entitled to a fair hearing under **Article 28 (1)** of the Constitution.

They added that Applicant instructed his then Lawyers, M/S Tropical Law Advocates to appeal against the said ruling but 30 days elapsed without the appeal being filed up to now, whereby the blame is on the previous lawyers. It was further submitted, quoting the case of **Mutaba Barisa Kweterana LTD VS. Bazirakye Yeremiya and Another, C.A C.A No. 158 of 2014**. That a mistake or in advertence of counsel should not be visited on the litigants. They concluded that justifiable reason has been given for failing to appeal in time.

In reply, counsel for the Respondents submitted that cases belong to litigants and not Advocates, and that a litigant has a legal obligation to follow up his/her case.

Counsel added that no evidence of negligence of former lawyers for Applicant, (M/S Tropical Law Advocates) has been brought forward, such as disciplinary measures taken out by Applicant.

It was further submitted that the Applicant, who filed Civil Suit No. 146 of 2013, took no steps to prosecute the same and was himself negligent and not his lawyers as alleged.

Counsel for the Respondents also submitted that they raised a preliminary point of law which led to the dismissal of the case without any reply from Applicant's lawyer. On availability of records, it was submitted that records must be requested or asked for, and since there is no evidence of Applicant's request for record of proceedings, then there is no convincing ground for extension of time.

I have carefully considered the submissions on both sides and the pleadings on record. I have also read the Ruling of the Grade One Magistrate, where extension of time is being sought. The objection in Civil Suit No. 146 of 2013 were upheld and the suit was dismissed on 3.11.2015. It is now almost two years since, moreover the Applicant was supposed to appeal within 30 days. There is no evidence of delay either because the Applicant applied for a record of proceedings which were supplied late.

Whereas it is true it has been held in a number of cases including **Mutaba Barisa Kweterana LTD vs Bazirakye yeremiya C.A.CA. NO. 158 of 2014**, that mistake or negligence of an Advocate should not be visited on the litigant, the question is for how long should a litigant hold on the mistake of his/her Advocate. Is it for one month, two months, six months or one year. In my humble view, there has to be a time limit within which a litigant can be excused due to the mistake of his/her Advocate. It would be understandable if the delay was say between one month to six months, it would amount to abuse of court process if one is allowed extension of time after a delay of a whole year or two years as was apparent in the present Application. Time lines were set by the legislature with a purpose and not for fun.

One of the purposes is in my view that there has to be an end to court process. Court process including travelling to and from, expenses must all be curtailed. And it would be unfair for one to be subjected to Court attendance and processes indefinitely. In the present case, and as submitted by counsel for the Respondents, it is not clear whether the delay can be attributed to mistake of counsel or the Applicant himself who now wants to take over under mistake or negligence of counsel? A period of 1 ½ years delay is too much and I cannot grant extension of time as if someone was incapacitated by long illness or had gone out of the country. I find no justifiable reason for so much delay and I accordingly do hereby dismiss this application. Costs in the cause.

W. Masalu Musene

Judge

27.7.2017:

Applicant present

2nd Respondent present

Advocates absent

Betty Lunkuse, court clerk present.

Court: Ruling read in chambers.

W. Masalu Musene

Judge

27/7/2017.