

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
MISCELLANEOUS CAUSE No. 0078 OF 2017

AWONGO YUSUF **APPLICANT**

VERSUS

THE BOARD OF GOVERNORS OF }
KOBOKO SECONDARY SCHOOL } **RESPONDENTS**

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for leave to appeal an interlocutory decision of the Magistrate Grade One by which he dismissed a similar oral application made before him by the applicant, who is the Plaintiff in those proceedings. The application is made under the provisions of section 98 of *The Civil procedure Act*, section 33 of *The Judicature Act*, Order 44 rules 2, 3, 4, and Order 52 rules 1 and 3 of *The Civil Procedure Rules*. It is contended by the applicant that the decision in the court below that dismissed his oral application for leave to appeal an interlocutory ruling, was erroneous in principle and on the ground that the error necessitating that application was made by counsel which should not be visited onto him as a litigant.

In his affidavit in reply, the respondent opposes the application, contending that the application is misconceived, lacks merit and is only intended to prolong the trial and make it more costly for the respondent. It is prayed by the respondent that the application should be dismissed with costs.

Submitting in support of the application, Mr. Madira Jimmy argued that an application for leave to appeal to the High Court can be oral. Relief was sought orally on 22nd November 2017. Under Order 44 rules 2 and 3 of *The Civil Procedure Rules*, applications for leave to appeal should be made first to the trial court and it was brought orally yet the trial court declined to grant leave. The trial magistrate instead considered the fact that the appellate court may allow additional evidence. In paragraph 5 of the affidavit in support, the applicant deposes that the advocate made

an error. It was an omission of the advocate to close the case before putting the applicant on the stand. The plaintiff is to testify about the act of rescinding the contract and the subsequent claim for recovery of land. The applicant was in court and ready to testify but the court declined to grant him the opportunity to do so thereby denying him his right to be heard.

In response, counsel for the respondent, Mr. Bundu Richard submitted that although oral applications can be made, counsel for the applicant did not advance any reasons for seeking leave to appeal and therefore the court was justified in dismissing the oral application. The law sets procedures that must be followed regarding the progress of a civil trial. The applicant could not seek to re-open his case after closure of the defence case. There is nothing new the plaintiff will bring on board. He led witnesses who testified. An interlocutory appeal will only extend the duration of the trial unnecessarily. The trial should have closed by November last year and now if the application is granted, other defence witnesses may need to be called. It is costly to call more witnesses. The plaintiff was always in court and was never denied an opportunity of being heard. An advocate is an agent of the litigant and therefore the applicant cannot rely on an argument of mistake of counsel. He was never presented as a witness and cannot seek to do so after closure of the defence case. The application is intended to pave way for the applicant to unfairly fill gaps in the plaintiff's evidence and therefore should be dismissed with costs.

In reply, counsel for the applicant submitted that the grounds supporting the oral application were advanced but were not captured on the court record. The plaintiff is coming to make clarifications on the issues before court, and not to fill gaps in the evidence. In the interests of substantive justice the application should be allowed since there is nothing that is going to be opened as fresh evidence which was not pleaded or which the respondents are not aware of. There is no likelihood of re-opening the defence since the plaintiff is only coming to clarify a few things. He this reiterated his prayers.

As regards the question whether oral applications for leave to appeal are competent, it was decided in *Sango Bay Estates Ltd and others v. Dresdner Bank [1992] E. A. 17*, by the East African Court of Appeal that applications for leave to appeal may be made informally. The court though has the discretion to demand that the application be made formally. I have perused the

record of the court below and have not found that it was an improper exercise of the court's discretion considering that counsel did not back up his oral application with any reasons. Nevertheless, this application is independent of what transpired in the court below. It is considered as a fresh application before this court and its determination does not depend on what transpired in the court below

An applicant seeking leave to appeal must show either that his or intended appeal has reasonable chances of success or that he or she has arguable grounds of appeal and has not been guilty of dilatory conduct (see *Degeya Trading Stores (U) Ltd. v. Uganda Revenue Authority, C. A. Civil Application No 16 of 1996*). Having perused the pleadings and listened to the submissions of counsel, I find that the question as to whether or not a trial court properly exercised its discretion not to allow a plaintiff re-open his or her case after the closure of the defence is a point that is arguable on appeal.

On the other hand, according to section 220 (4) of the Magistrates Courts Act, an application for leave to appeal when made to the High Court should be made within a period of fourteen days beginning with the date on which the application is refused by the chief magistrate (applied by analogy to the Grade One Magistrate in this case). The decision sought to be appealed was made on 22nd November, 2017 and the instant application was filed on 6th December, 2017 within the stipulated time. I have not found any dilatory conduct on the part of the applicant.

In the final result, the application is allowed. The applicant is granted leave to appeal to this court. The applicant is to file the appeal within fourteen days from the date of this ruling. The costs of this application will abide the results of that appeal.

Dated at Arua this 11th day of January, 2018

.....

Stephen Mubiru
Judge,
11th January, 2018.