

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

**MISCELLANEOUS APPLICATION NO. 360 OF 2017
(ARISING FROM MISCELLANEOUS APPLICATION NO. 33 OF 2013)**

BADAZA GEORGE.....APPLICANT

VERSUS

MWENDE YEKO.....RESPONDENT

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

The applicant presented this application by motion seeking for an order to extend time within which to appeal the ruling of Her Worship Amoko Patricia, Magistrate Grade one, delivered on 14/4/14 in Miscellaneous. The brief grounds of the application are as follows:-

1. The applicant was the plaintiff in the **Civil Suit No. 04 of 2011** (hereafter called the main suit) as well as the Applicant in the **Misc. Application No. 33 of 2013** file at Jinja Chief Magistrate's Court.
2. That Civil Suit No. 33 of 2013 was dismissed by **Her Worship Amoko Patricia, Magistrate Grade One** for want of prosecution under **Order 9 Rule 22 of the Civil Procedure Rules** on the 29/3/2013.
3. The Applicant being aggrieved and dissatisfied with the said ruling, he applied for reinstatement of the said suit vide Miscellaneous Application No. 33 of 2013 which was too dismissed by **Her Worship Amoko Patricia, Magistrate Grade** on the 14/4/2014.
4. The Applicant being aggrieved and dissatisfied with the said ruling of **Her Worship Anoko Patricia, Magistrate Grade one**, personally appealed against the dismissal order

in Civil Suit No. 04 of 2011 instead of appealing against the ruling in the reinstatement application vide Misc. Application No.33 of 2013.

5. That when the appeal vide **Civil Appeal No. 048 of 2014** came up for hearing, it was dismissed on a point of law by **Her Lordship Eva Luswata** for being incurably irregular.
6. The Applicant is dissatisfied and aggrieved that his main suit was never heard on merit and in the interest of substantive justice and equity, seeks for extension of time within which to appeal against orders vide Misc. Application No. 33 of 2013.

Those grounds were repeated and expanded in the applicant's affidavit in support. Both counsel filed written submissions as directed. That evidence and submissions shall form the basis of my decision.

Issues raised:

1. Whether the application reveals sufficient grounds to support the prayers sought?
2. What remedies are available to the parties?

- i) **Whether the application reveals sufficient grounds to support the prayers sought?**

The Law

Limitations for appeals is provided for under Section 79 of the Civil Procedure Act (CPA). It is provided that:-

(i) Except as otherwise specifically provided in any other law, every appeal shall be entered-

(a) Within thirty days of the date of the decree or order of the court;

or

(b) Within seven days of the date of the order of a Registrar, as the case may be, appealed against; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.

The limitation period for appeals is strict and any late appeal can only be filled after leave of Court is obtained. See for example **Mukasa Vrs APAS Finance Service Limited (2002) (2014) UGHCCD 88**. It is emphasized that leave will only be granted where good cause is shown.

Justice Madrama's decision is instructive on the issue of good cause. He held in **Tight Security Ltd Vrs Chatis Uganda Insurance Co. Ltd & Anor M/A No. 8/2014 (2014) UGCOMMC 89(27/6/2014)** that:-

“.....what is “good cause” is not defined. Good cause must relate to and include the factors which caused inability to file the appeal within the prescribed period of 30 days. The phrase “good cause” is however wider and includes other causes other than causes of delay such as the public importance of an appeal and the court should not restrict the meaning of “good cause”. It should depend on the facts and circumstances of each case and prior precedents of appellate courts on extension of time.”

The submissions

Applicant's counsel argued that her client had shown good cause to merit extension of time within which to appeal the decision in refusing reinstatement of the main suit on 14/4/2014. The main reason advanced is that the applicant was vigilant in responding to that decision but being unrepresented, he instead filed Civil Appeal No. 48/14. It was a case of ignorance of the correct procedure and the law. Secondly, that although he made an application for a certified copy of the ruling (the subject of his attended appeal) on 14/4/14, it was only availed on 1/11/17, which prevented him from lodging the appeal in time.

Respondent's counsel disagreed. He argued that M/A was dismissed because the Learned Magistrate found no merit in the reasons advanced for the applicant's absence on 29/1/2013 to prosecute the main suit. That this instant application for extension of time was filed on 4/12/17, 3 years, 8 months and 10 days after M/A 33/2013 was filed. That infact the main suit was an afterthought since it was filed six years after the applicant was as a result of a judgment in a

criminal suit, fully compensated for the sugar cane he had lost as a result of the respondent's actions. That by failing to exercise his right of appeal in time he abused the opportunity and should not be a beneficiary of the equity principles which aid the vigilant and not the indolent. Counsel further distinguished the facts in the **Tight Security Ltd case (Supra)** and summarized that ignorance of the law is no defence.

My decision

I would agree with applicant's counsel that the applicant had an automatic right of appeal against the decision of the Learned Magistrate in dismissing M/A 33/2013. The applicant did not exercise that right and instead chose to appeal dismissal of the suit which was procedurally wrong. That issue was resolved when I dismissed his appeal (Appeal No. 48/14) on 14/9/2017.

I see nothing in our law to indicate that ignorance of the law would suffice as inability to take a certain step in law. As indicated by respondent's counsel, the applicant was represented in the main suit and should have sought counsel on the right procedure to follow as relief against the decision of the Learned Magistrate in dismissing M/A 33/2013. He did not do so to his Peril. However, as shown in the **Tight Security Ltd Vrs Chartis Uganda Insurance Co., (supra)** decision, "good cause" has a wider meaning and should depend on the facts and circumstances of each case.

The applicant stated but did not show that he applied for the ruling in M/A 33/2013. Annexure B to his affidavit indicates he received a copy of the ruling on 1/11/17. Whether or not he applied for that ruling or record, it appears that after making that request, he lost interest in pursuing an appeal against the decision of the Magistrate and instead, filed the memorandum of Appeal in CA No. 48/14 to the High Court in May 2014. He appeared to have turned all his attention to following up the appeal until its dismissal on 14/9/2017. He must have realized then or even advised by his new lawyers that, the only option open to him was to pursue an appeal against the decision in M/A 33/2013, which by then was well out of time. It would explain thus explain filing of this application on 4/12/12 nearly five years after that decision.

The applicant has to be blamed by this lapse of time. It would not serve the interests of justice, equity or public to allow extension of time under such circumstances.

I would conclude that no sufficient cause has been shown to merit the success of this application, and it fails.

The applicant shall meet the costs of the application.

I so order.

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EVA K. LUSWATA

JUDGE

DATED: 04/04/19