

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO. 725 OF 2018
(ARISING OUT OF CIVIL APPEAL NO. 125 OF 2016)

THE COMMISSIONER CUSTOMS, UGANDA REVENUE AUTHORITY---- APPLICANT

VERSUS

SENTONGO ROBERT..... RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for Civil Appeal No. 125 of 2016 be reinstated and decided on merit against a dismissal order for non-appearance delivered against the applicants on the 18th day of October 2018 brought under Section 98 of the Civil Procedure Act , Section 33 of the Judicature Act and Order 52 of the Civil Procedure Rules.

The respondent filed an affidavit in reply opposing the said application on 06th May 2019.

The applicants were represented by Tonny Kalungi and the respondent was represented by Belinda Nakiganda. In the interest of time court directed the counsel for both parties to file written submissions.

The main ground for this application is that the applicant was on 18th October 2018 prevented by sufficient cause to appear and prosecute the appeal as he was appearing in the Court of Appeal.

The respondent opposed the application on the main basis that the appeal process and procedure was not followed and thus the application to reinstate has no basis in law.

That the hearing date was obtained by both counsel a month prior to the hearing and the Legal department is not a one person department and the applicant has not set out sufficient grounds.

The respondent has raised an issue of competency of the said appeal that the applicant wants to reinstate. The applicant initiated the appeal by way of a Notice of Appeal filed on 28th January 2016 in Chief Magistrates Court of Nakawa at Nakawa and the same was served on the respondent's counsel on 1st February 2016.

I wish to note that the applicant erroneously initiated an appeal in a manner not envisaged under the Civil Procedure Rules. This procedure is not envisaged under the appeal process from a Magistrate court. Therefore the filing of the said Notice of Appeal could not initiate any appeal. Order 43 rule provides that;

Every appeal to the High Court shall be preferred in the form of a Memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for that purpose.

This therefore means that no appeal was ever presented to court or essential step was taken in presenting the appeal.

The applicant later filed a memorandum of appeal on 29th August 2016 and duly served the same on the respondents on the 29th September 2016. The applicant filed the memorandum of Appeal after about 7 months.

The Law requires that an appeal shall be filed within 30 days from the date of the decree. It is clear the applicant never extracted the decree or sought the court's assistance to extract one in order to facilitate his appeal process.

The applicant did not make any application for extension of time to file an appeal out of time and has not advanced any reasons for late filing of the Memorandum of appeal after over 6 months.

The main reason or excuse is that the 30 days does begin to run from the time of receipt of proceedings. I find this reason very unsatisfactory for the simple reason that there is no requirement or need to file a record of Appeal in the appeals from the magistrates court to High court. The law requires the whole file to be transmitted to the appellate court.

That explains why the applicant claims to have filed the Memorandum of Appeal before he had actually received the record of proceedings because the filing of the memorandum of Appeal is not pegged on the record of proceedings. The appellant should have been able to peruse and generate a memorandum of Appeal to be filed within the prescribed time of 30 days.

The applicant has failed to demonstrate that it has good cause to have the appeal admitted out of time. Good cause must relate and include the factors which caused inability to file the appeal within the prescribed period of 30 days. See ***Tight Security Ltd vs Chartis Uganda Insurance Co. Ltd HCMA 8 of 2014***

The applicant has not shown any proof that they followed up the record of proceedings from the Magistrates court in order to be able to lodge the memorandum of Appeal in the stipulated time.

I agree with the submission of counsel for the respondent. The applicant has not shown any sufficient cause for the failure to file a memorandum of appeal within the prescribed time. It is indeed true that this was not mistake of counsel for the failure to file a memorandum of Appeal but rather taking a wrong decision in refusing to rely on the record of proceedings to lodge the appeal or file an appeal by way of a Notice of Appeal not provided for in the rules. In the case of ***Hadondi Daniel vs Yolam Egondi Court of Appeal Civil Appeal No 67 of 2003*** court held that;

“ it is trite law that time can only be extended if sufficient cause is shown. The sufficient cause must relate to the inability or failure to take necessary step within the prescribed time. It does not relate to taking a wrong decision. If the applicant is found to be guilty of dilatory conduct, the time will not be extended.”

In the same case while citing ***Capt Phillip Ongom vs Catherine Nyero Owota SCCA No. 14 of 2001***, Justice Mpagi-Bahigeine agreeing with Justice Mulenga stated that:

“ it would be absurd or ridiculous that every time an advocate takes a wrong step, thereby losing a case, his client would seek to be exonerated. This is not what litigation is all about. Counsel applied a wrong strategy....no sufficient cause has been shown to entitle the applicant relief sought.”

This application to reinstate an appeal which is incompetent for being initiated by Notice of Appeal or for being filed out of time cannot succeed and this court shall not delve in the merits and demerits of an application to reinstate the same.

Litigation should come to an end and a party who chooses to appeal must be seen to do the right thing lest the successful party may be denied a right to enjoy the fruits of litigation through endless litigation.

In the circumstances, the application is dismissed with costs to the respondent.

I so Order

SSEKAANA MUSA

JUDGE

5th/07/2019