

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

MISCELLANEOUS APPLICATION NO. 333 OF 2018.

(ARISING FROM CIVIL SUIT NO.84 OF 2010

AND CIVIL SUIT NO.82 OF 2011)

IGNATIUS KAYIGA ::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

1. MUTYABA CHARLES

2. NAMUSISI JUSTINE

3. BBOSA SYLVIA.

4. JANE H.LUGOLOBI::::::::::::::::::::::::::::::::::::: RESPONDENTS

RULING

BEFORE HONOURABLE JUSTICE EVA LUSWATA.

Introduction

1] By a Notice of Motion, the applicant sought for an order of Court extending time within which to file an appeal, under Article 126(2) (e) of the 1995 Constitution, section 96 and 98 of the civil procedure Act Cap 71, Order 51 Rule 6 of the Civil Procedure Rules and Order 52Rule 1 and 3 of the CPR S.171 -1].

2] The grounds of the application as set out in the motion are that:-

- i. That the applicant was prevented by sufficient cause from filing the appeal within time.
- ii. That the failure by the applicant to file the appeal in the Court of Appeal within time was as a result of the inadvertent omission, mistake and negligence of the applicant’s former lawyers and officials of this court which should not be visited upon him.

- iii. That the applicant duly instructed his former lawyers to file an appeal in the court of Appeal and they filed a Notice of appeal to that effect and also wrote a letter applying for certified copy of the proceedings.
- iv. That the applicant's formal lawyers always informed the applicant that they could not file the appeal until they obtain the proceedings from this court and they formulate the grounds of appeal.
- v. That the applicant always visited the court to obtain proceedings but in vain.
- vi. That the applicant only managed to obtain the proceedings after lodging a complaint with the office of the Chief Inspectorate of Courts.
- vii. That the application has been brought within a reasonable time without inordinate delay after finding out that the proceedings were allegedly served upon the applicant's former lawyers M/s Kaggwa Owoyesigire & Co. Advocates who neither informed the applicant nor filed the appeal in the Court of Appeal.
- viii. This Court has the discretion to extend the time within which to appeal.
- ix. That the intended appeal has high chances of success.
- x. The applicant is not guilty of dilatory conduct in bringing this application.
- xi. That it is only fair, just, equitable and in the interest of justice that the application is allowed and the applicant is granted leave to appeal out of time.

Evidence and submissions of counsel

- 3] Counsel for the applicant stated in his submissions that the applicant was the plaintiff in Civil Suit No.84 of 2010 where he sued the 1st and 2nd respondents and was also the defendant in Civil Suit No.82 of 2011 where he was sued by the 2nd, 3rd and 4th respondent. That the above two suits were consolidated. (To be referred to as the consolidated suits).
- 4] According to counsel for the applicant and the supporting affidavit of Ignatius Kayiga, the applicant was not satisfied with the judgment of the High court in the consolidated suits delivered on 9/5/17. He lodged a Notice of Appeal in the Court of Appeal on 25/5/17, within the time prescribed by the law for lodging a Notice of Appeal.

- 5] That on 31/5/17, the Notice of Appeal was served on lawyers of the 1st respondent M/s Legal Aid Project and on the 2/6/17, it was served on the lawyers of the 2nd, 3rd and 4th respondent.
- 6] That on the 25/5/17, his former lawyers M/s Mangeni Law Chambers &Co. Advocates wrote to the Registrar of the High Court at Jinja applying for typed and certified copies of proceedings and judgment to enable them lodge an appeal and that when they failed to obtain the proceedings, he instructed new lawyers M/s Kaggwa Owoyesigine & Co. Advocates to pursue the intended appeal and also help him stay execution.
- 7] That when they also failed, in March 2018, he decided again to change lawyers and instructed M/s F. Aogon & Co. Advocates to help him to get proceedings and file an appeal in the Court of Appeal. That after observing that all the lawyers had failed to file an appeal in the court of Appeal reason being failure to obtain proceedings, he went to the High Court at Jinja himself and made necessary inquiries. He was informed by the staff at the High Court Registry that the court file was missing and proceedings could thus not be typed. He was constrained to write to the Chief Inspector of courts on two occasions who in turn wrote to the Deputy Registrar of the High Court at Jinja. He was eventually able to receive a copy of the proceedings from the Deputy Registrar.
- 8] In response to the application, Mutyaba Charles the 1st respondent stated that the judgment having been delivered way back in May 2017, the application was filed way out of time and had been over taken by events especially when it had already been disposed of. That the applicant had previously filed and lost numerous applications and thus should the Court be inclined to grant him leave, then he should be ordered to pay security for costs to avert more losses that he was unlikely to recover.
- 8] Counsel for the respondent argued that they extracted certified copies of the record of proceedings and served them upon the applicant's lawyers M/s Kaggwa Owoyesigire &Co Advocates on the 11/8/17 together with a letter where they prayed that they file an appeal and serve the same. That it was after eviction from the suit property on 23/3/18, that the applicant started filing complaints and applications. That the subject matter is already disposed of.

9] I note that much of what submitted by respondent's counsel was not born of evidence in Mr. Mutyaba's affidavit. It would be regarded merely as evidence and submissions from the bar, and therefore, with no legal force.

My decision

9] Under **Rule 83 of the Judicature Court of Appeal Rules**, an appeal must be lodged within 60 days of filing the notice of appeal. The issue in contention in this matter therefore would be whether the applicant had shown sufficient cause to warrant an extension of time within which to file his appeal in the Court of Appeal.

10] The applicant's complaint is that he was diligent in his efforts to obtain a certified copy of the record of proceedings from the Jinja High Court but was frustrated by reports that the file was misplaced. He was forced to write to the Inspector of Courts on two occasions, and the Inspector of Courts in turn wrote to the Registrar who eventually gave him a copy. The explanation of the Registrar was that he too received a copy from M/s Legal Aid Project, the 1st respondent's lawyers, because a copy could not be traced on the court file. That the copy of the record of proceedings he received from the Duty Registrar indicated that the proceedings were certified by the Registrar on the 10/8/17 and the same were received by his former lawyers M/s Kaggwa Owoyesigire & Co. Advocates on the 11/8/17. Ordinarily, the applicant's lawyers, and their receipt of the proceedings would be imputed on the applicant. I note that no proof of change of lawyers was filed and the respondents would have no notice that M/s Kaggwa Owoyesigire had ceased to represent the applicant.

11] It was the decision in the **case of Eriga v Vuzzi & 2 Ors (Miscellaneous Civil Application No. 0009 OF 2017) [2017] UGHCCD 41 (27 April 2017)** that an order for enlargement of time to file the appeal should ordinarily be granted unless the applicant is guilty of unexplained and inordinate delay in seeking the indulgence of the Court, has not presented a reasonable explanation of his failure to file the appeal within the time prescribed by Act, or where the extension will be prejudicial to the respondent or the Court is otherwise satisfied that the intended appeal is not an arguable one. It was also held in **Roussos v. Gulam Hussein Habib Virani, Nasmudin Habib Virani, S.C. Civil Appeal No. 9 of 1993** that a

mistake by an advocate, though negligent, may be accepted as a sufficient cause and that ignorance of procedure by an unrepresented defendant may amount to sufficient cause.

12] In **Banco Arabe Espanol v. Bank of Uganda [1999] 2 EA 22**, the Supreme Court of Uganda held that the administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors or lapses should not necessarily debar a litigant from the pursuit of his rights and unless a lack of adherence to rules renders the appeal process difficult and inoperative, it would seem that the main purpose of litigation, namely the hearing and determination of disputes, should be fostered rather than hindered.

13] In the instant case, it is clear that the applicant acted promptly when he instructed his first lawyers to lodge a notice of appeal which they did on 28/5/17. On that same day, he applied for the typed and certified copy of the judgment and proceedings and thereafter put effort in obtaining them to the extent that he had to change lawyers twice and even made personal inquiries at the High Court himself. He was informed at the Court that the file was missing, which compelled him to write two formal complaints to the Inspector of Courts on 15/5/18 and 6/6/18 respectively. Only then did he receive a copy from the Registrar with an indication that his lawyers had been served well before on 11/8/17. He claims that he conferred with Mudawa Geoffrey who had personal conduct of the matter under M/s M/s Kaggwa Owoyesigire & Co. Advocates who confirmed in writing that neither he nor any other person at that firm had signed for them. By then, he has run out of time within which to file the appeal, thus his instructions to his current lawyers to lodge this application.

14] My evaluation is that the applicant was not at fault for not obtaining the certified proceedings and judgment in time. It was the duty of the Court, principally the Registrar, to avail them within a reasonable time from when they were formerly requested for. It is conceivable that the applicant was frustrated at the Court otherwise he would not have taken the drastic step to lodge two complaints with the Inspector of Courts. It appears that the file and the required record was availed only after the Inspector's intervention. His former lawyers denied ever receiving the record in time and even if they did, the applicant cannot be blamed for their

failure to inform him in time or to file the appeal in time as requested. The facts of this case warrant that justice be served by allowing the applicant leave to file his appeal out of time.

15] I accordingly allow the application. The applicant is allowed 30 days from the date of this order to file his appeal in the Court of Appeal.

16] The applicant shall meet the costs of the application.

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EVA K. LUSWATA

JUDGE

21/5/2019