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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(CIVIL DIVISION)**

**MISCELLANEOUS APPLICATION NO. 362 OF 2019**

**(ARISING FROM MAKERERE UNIVERSITY STAFF TRIBUNAL**

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**APPEAL NO. 06 OF 2018)**

**ELIAS            NUWAGABA            ::**

**APPLICANT**

**VERSUS**

**MAKERERE            UNIVERSITY            ::**

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**RESPONDENT**

**BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW**

**RULING:**

Elias Nuwagaba (*hereinafter referred to as the “Applicant”*) brought this application against Makerere University (*hereinafter referred to as the “Respondent”*) under Section 96 of Civil Procedure Act Cap 71; Section 3 (7) of the Judicature (Amendment) Act 2002; Rule 5 of the Judicature (Judicial Review) Rules 2009; and Order 52 rule 1 of the Civil Procedure Rules SI 71 – 1; seeking for orders that;

5 **1. The Applicant be granted an order of extension of time to  
appeal to the High Court against the decision of Makerere  
University Staff Tribunal delivered on 16/4/2019.**

**2. Costs of this Application be provided for.**

The grounds of the application are amplified in the supporting  
10 affidavit sworn by the Applicant but are briefly that;

**a) The Applicant was the Appellant in Makerere University  
Staff Tribunal Appeal No. 06 of 2018 which was heard inter  
parties and the decision delivered on 16/4/2019.**

15 **b) The decision was delivered together with 13 others in late  
afternoon and only the concluding part of the ruling  
decision containing the terms of the ruling was read.**

**c) Dissatisfied with the decision the Appellant wanted to  
appeal but could not formulate the grounds of appeal  
because he did not access his copy of the decision in time.**

20 **d) When delivering the ruling the Chairman said the ruling  
was still in draft form and the Applicant would access his  
copy after it has been proof-read and endorsed by the panel.**

- 5 **e) The Staff Tribunal released the ruling to the Applicant after the period provided by law within which to file the appeal had passed.**
- f) The decision was delivered on 16/4/2019 and the Applicant was given a copy on 21/5/2019.**
- 10 **g) This application is seeking an order of the Court extending time in which to Appeal to the High Court against the decision of Makerere University Staff Tribunal.**
- h) The time within which to Appeal to the High Court against the Appeal Staff Tribunal decision as provided by law run**
- 15 **out because the Applicant could not appeal reading the ruling first.**
- i) The Applicant was in constant telephone sms communication several times with the Registrar of the Tribunal Mr. Eneru Peter right from 2<sup>nd</sup> May 2019, seeking**
- 20 **to know whether the ruling was ready for collection but all was in vain.**
- j) The Appellant failed to appeal within the prescribed time due to failure by the Tribunal and the Tribunal Registrar to avail him with a copy of the decision and this constitutes**

5        ***sufficient reason why he did not appeal in time provided by law.***

***k) It is fair and in the interest of justice that the Application be granted.***

In his affidavit in support the Applicant basically states, as far as is  
10 relevant to this application, that he is an employee of the Respondent. That on 23<sup>rd</sup> May 2018, he was dismissed from the Respondent's service but successfully appealed to the Respondent's Staff Tribunal challenging the dismissal and the Tribunal found that he was not treated justly and fairly by the Respondent's  
15 Appointments Board. Further in the ruling delivered by its Chairman, the tribunal held that a dismissal was arrived at in breach of the principle of natural justice. (*copy of the ruling is marked "A"*).

The Applicant contends that the Tribunal delivered its decision on  
20 16/4/2019 late in the afternoon and on that day it had lined up fourteen cases for ruling including that of the Applicant to be read from 2.00p.m. That however, the ruling could not deliver on time, but the reading started at around 4.00p.m. and his was not the one

5 that was read first. That they had arrived at the Respondent's  
tribunal registry before time and took waiting until when they were  
called together with his lawyer entered the Board Room at around  
4.30p.m and found the Chairman of Makerere Appeals Staff  
Tribunal Mr. Omunyakol George delivering a ruling of one of the  
10 dismissed workers whose case was called before that of the  
Applicant. That in delivering the ruling, the Chairman said that due  
to time constraint, he was not going to read the whole decision but  
will only read out the terms of the decision only and left out the rest  
and said the Appellant in that case would read for herself the rest of  
15 the ruling later when the tribunal releases corrected copies. That  
what surprised the Applicant in that decision is that although the  
tribunal had allowed the appeal and returned her to office, it  
directed that the same person whose appeal had been allowed  
should be subjected to investigations and prosecution by the  
20 Appointments Board which, ironically, is the same Board that had  
dismissed her contrary to the law.

That when the Applicant's case was called, the same process was  
followed and though the tribunal found that he was unjustly and

5 unfairly treated when appearing before the Appointments Board  
and that the rules of natural justice were violated when he was  
dismissed; the tribunal set aside the dismissal and directed the said  
Board to conduct a fresh disciplinary hearing against the Applicant  
within a period of 60 days from the date of the decision. That the  
10 terms of the decision were read and the Chairman told the  
Applicant that the ruling was to be availed after necessary  
corrections have been done. That the ruling was delivered on  
16/04/2019 and corrected and a copy of it was not released to him  
until 21/05/2019. That from 02/05/2019 going forward, the  
15 Applicant became concerned that the ruling was delaying in being  
availed to him and he had to send several SMS messages to the  
Registrar of the tribunal Mr. Erenu Peter on his cellphone numbers  
0782884926 and 0702230335. That all in he sent seven SMS  
messages and the responses were negative until the Applicant  
20 finally got the ruling after the statutory days in which to appeal had  
already run out.

That the statutory days in which he should have appealed to this  
court from the date of the ruling ended on 17/05/2019. That he did

5 not appeal in time prescribed by law due to delay in receiving the  
court decision and this that constitutes sufficient reason. That he is  
still desirous of appealing against the tribunal's decision and delay  
in availing him a copy of the ruling has been prejudicial to his right  
of appeal. That it is proper and in the interest of justice that he be  
10 granted extension of time to appeal to the High Court.

The Respondent filed an affidavit in reply sworn by Yusufu Kiranda,  
the Acting University Secretary of the Respondent opposing the  
application. He mainly states that the ruling of the Respondent  
Staff tribunal delivered on 16<sup>th</sup> April 2019, in the presence of the  
15 Applicant and his counsel; and as such the contents therein were  
made known to the Applicant sufficiently enough to enable him to  
file an appeal, if aggrieved. That the Applicant did not file a notice of  
appeal against that decision in this court and did not apply to the  
Registrar of the Respondent Staff Appeals tribunal for a record of  
20 proceedings and nothing prevented him from taking the above  
necessary steps to pursue his intended appeal. That all this is  
attributable and can only be explained that the Applicant is guilty  
of dilatory conduct, which must not be used to keep the

5 Respondent in unnecessary litigation. That the Applicant has not shown reasonable ground to justify the basis of this application and that the justice of this case demands that this application be dismissed with costs.

At the hearing the Applicant was represented by Mr. Henry  
10 Rwaganika while the Respondent was represented by Mr. Hudson Musoke. Counsel made submissions which court has had occasion to read and internalize.

**Opinion:**

The position of the law on application for extension of time within  
15 which to file an appeal is well settled. In ***Mugo and Others vs. Wanjiru [197] EA 481***, it was held that court may for sufficient reason extend the time limited to do an act. Normally, sufficient reason for extension of time must relate to the inability or failure to take a particular step. Further in ***Delvi vs. Diamond Concrete***  
20 ***Company [1974] EA 493***, the court held that the applicant for extension of time bears the burden of proving to court's satisfaction that for sufficient reason it was not possible for the appeal to be lodged in the prescribed time. The discretion of court can be



5 exercised to grant an application for extension of time in order for  
the appeal to be heard on its merits so that the dispute could be  
settled. As was held in **J. Hannington Wasswa vs. Onyango**  
**Ochola [1992 – 1993] HCB 103 (SC)** the discretion must, however,  
be exercised judicially on proper analysis of the facts and proper  
10 application of the law to the facts.

Applying the above principles to facts of the instant application, the  
Applicant essentially contends that he was at all times an employee  
of Respondent and was in 2018 working as a Chief Custodian. He  
was charged and brought before the said tribunal and later on  
15 dismissed by the Appointments Board but the dismissal was  
subsequently set aside by the Respondent's Strike Tribunal whose  
ruling was delivered on 16/04/2019 and the tribunal made some  
orders which the Applicant was aggrieved with and is desirous of  
appealing against.

20 The Applicant avers that on the date the ruling was delivered, it was  
late in the day and even then the whole of the ruling could not be  
read. That Chairman only read the part containing the decision and  
promised that they would deliver to the Applicant a copy as soon as

5 possible. The Applicant states that he kept waiting for a copy, ringing and also contacting the Respondent to avail him with a copy but to no avail. That by the time the copy was delivered, time for appealing provided by the law, under the Universities and Other Tertiary Institutions Act had already expired.

10 There are several reasons advanced by the Applicant as to why would wish to appeal the merits of tribunal's decision. However, what is of relevance at this stage in this application for the consideration of extension of time is whether; on basis of what the Applicant has put across in this application, sufficient reasons have  
15 been demonstrated to warrant the extension of time within which to file an appeal.

The Respondent for its part opposes the applicant. Counsel for the Respondent also submitted that the ruling of the tribunal was delivered on 16<sup>th</sup> April 2019 in presence of the Applicant and his  
20 counsel and that it means they knew the decision of the tribunal. That was enough for them to have formulated grounds of appeal, which was not done. Besides, that in the procedure of appealing, a party files a notice of appeal even without getting the whole ruling,

5 but that this too was not done. Further, that the Applicant alleges  
that he applied for the record but there is no evidence showing that  
he applied to the Registrar of the tribunal for the record. That in  
view of that, nothing prevented the Applicant to file the notice of  
appeal and probably later the memorandum of appeal in time.  
10 Counsel argued that the Applicant is guilty of dilatory conduct  
intended to keep the Respondent in court unnecessarily. That no  
sufficient reason has been advanced and the application should be  
dismissed.

The starting point to resolve the issue is to note that this  
15 application is brought by way of notice of motion. For a party  
seeking to appeal to frame the grounds of appeal, the party needs to  
have had opportunity to hear the decision being read and availed  
copies of the same in time. Needless to emphasize, that the  
decision/order takes effect immediately it is delivered, but the time  
20 for preparation of the record of appeal shall not be reckoned with in  
the computation of time for appealing.

In the instant case, evidence of the Applicant demonstrates that he  
was not given that opportunity because the whole ruling was not

5 read to him. Only the final part of the ruling was read and even  
then he was not availed with a copy thereof to enable him appraise  
himself with the content of the entire decision and frame grounds of  
appeal. It is only when he got a copy that he was able to attach it to  
this application to show exactly what was decided and what he  
10 wished to appeal against in the ruling.

The Applicant could not be so sure and merely file grounds of  
appeal based on what he heard read by the Chairman of the  
tribunal because it is his copy which inform him to frame the  
grounds; which was not given to him at the time.

15 Worthy of note is also that in all their depositions, the Respondent  
has not disputed that they did not avail the Applicant with copy of  
the proceedings and the ruling. Uncontroverted evidence of the  
Applicant goes further to show that when the chairman finished  
reading the tail- end of the ruling, he promised to avail the  
20 Applicant with corrected copies of the ruling but did not give them  
to him in time to allow him file his appeal. Also to note is that the  
Respondent does not dispute that the Applicant kept on contacting

5 the Respondent especially using telephone and emails, among others, to get copy of the ruling, but still it was not availed.

Therefore, the Respondent's argument that the Applicant should have filed a notice of appeal does not have much weight. In any case, this being a procedure by notice of motion, there is no  
10 provision for a notice of appeal to be filed. The appeal is by notice of motion because the law provides for appeal by way of judicial review. That renders the argument that the Applicant should have filed the notice of motion to indicate that he was appealing unsustainable.

It would also not have been possible for the Applicant to file an  
15 appeal when he did not know what exactly he was appealing against. There was no way he could have framed the grounds of appeal in the circumstances when he did not know exactly what he was appealing against. That also renders the argument that the Applicant exhibited dilatory conduct untenable.

20 The Applicant has ably demonstrated to the satisfaction of court that he was prevented by sufficient reason from filing the appeal in the time prescribed by law. This court invokes its inherent power under Section 98 of the Civil Procedure Act and allows the

5 application and extends the time accordingly. Costs shall be in the  
cause.

***BASHAIJA K. ANDREW***

***JUDGE***

***13/03/2020***

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