

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)**

**MISCELLANEOUS APPLICATION NO. 853 OF 2019
(ARISING OUT OF CIVIL APPEAL NO. 09 OF 2019)
Arising out of CIVIL SUIT NO. 08 OF 2015**

MUKWANO INDUSTRIES LTD----- APPLICANT

VERSUS

**1. KATUSHABE AMINA
2. LUBEGA COLLIN----- RESPONDENT**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for extension of time within which to file and serve a Memorandum of Appeal or leave to appeal out of time against the Judgment of the Chief Magistrates Court of Mengo delivered on against the applicants on the 19th day of December 2018. The applicant also seeks to validate the Memorandum of Appeal filed out of time brought under Section 96 and 98 of the Civil Procedure Act and Order 52 rule 1,2 & 3 of the Civil Procedure Rules.

The respondent filed an affidavit in reply opposing the said application on 30th January 2020.

The applicants were represented by Mr. Magezi John and the respondents were represented by Mr. Mulumba Hannington. 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 instructed its lawyers to file an appeal and on 19th February 2019 the former lawyer's M/s Impala Legal

Advocates and Consultants filed the Memorandum of Appeal dated 18th February 2019 out of time prescribed by law.

The applicant contended that Negligence and Mistake of the applicant's former lawyers should not be visited on the applicant. In addition, the former lawyers acted without instructions and filed miscellaneous application No. 768 of 2018 seeking to set aside judgment which they failed to prosecute and it was dismissed for want of prosecution. On 19th February 2019 without instructions commenced Civil Appeal No. 09 of 2019 by way of memorandum of Appeal out of time.

The respondents contended that the application for extension of time is deliberately designed to frustrate them from realizing the fruits of litigation.

Similar applications have been filed for stay of execution and setting aside judgment deliberately to frustrate the respondents' efforts to execute a decree.

The applicant's counsel submitted that section 96 of the Civil Procedure Act gives court discretionary power to enlarge time within which to do or perform an act. According to counsel the only issue for determination in an application of this nature is whether the applicant has shown requisite sufficient reason to justify grant of extension of time and validation sought.

The respondent's counsel submitted extensively opposing the application for extension of time and this court has realised he introduced a lot of facts not set out in the affidavits about the conduct of proceedings from the lower court.

Determination

The applicant's deponent stated that;

"the former lawyers without instructions from the applicant filed miscellaneous Application No. 768 of 2018 seeking to set aside the judgment which they however failed to prosecute and the application was consequently dismissed.

That on the 19th February 2019, without instructions from the Applicant/defendant's former lawyers commenced civil appeal No. 09 of

2019 by way of Memorandum of Appeal which Memorandum of Appeal was file out of time prescribed by the law”.

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

The applicant has not explained to court under what circumstances did they get to know about the case being determined and when did they instruct the new lawyers. When did they realise the mistake or negligence of counsel in order to know whether there was dilatory conduct on their part as clients.

In absence of any information about the former lawyer’s conduct of the case and failure to lead any evidence as stated in the affidavit leaves this court without cogent evidence to prove the negligence of counsel.

This application is premised on negligence and mistake of counsel but the evidence adduced is about lack of instructions to file and lodge an appeal.

I would not think that a lawyer who has not been instructed would be held responsible for negligence. But rather his actions would be bordering on professional misconduct and is better addressed through the appropriate bodies like Law Council.

Surprisingly, the applicant wants to validate the same Memorandum of Appeal which was filed allegedly without instructions. The applicant wants to distance himself from the actions of the former lawyers and the same time ride on the same documents duly filed in court without instructions.

The Civil Procedure Act and the rules thereunder do not provide for validation of Appeals but rather if the court is satisfied it may give consequential orders depending on the circumstances of the case. It would be wrong and erroneous to file an application to validity what was done against the law. Anything done outside the law remains unlawful unless the court is satisfied to give such consequential orders in the interest of justice.

The delay in filing the appeal out of time has not been explained to this court since the former lawyer knows best why he took the steps he took in prosecuting the

case. In absence of such evidence it becomes a question of speculation and conjecture as to why he failed to take an essential step in lodging an appeal in time.

The reason availed by the applicant of the lawyer not having instructions seems to be an afterthought and this court has no clue on how the former lawyer was to execute his instructions in the conduct of the applicant's case before the trial Magistrate.

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***

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 negligence or mistake of counsel for the failure to file a memorandum of Appeal in a prescribed time but rather taking a wrong decision in filing an application to set aside a judgment which had not been delivered and later failing to prosecute the matter before the trial magistrate and failure to attend court and the case proceeded in absence of the applicant/defendant. 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 court needed to know why the applicant’s former lawyers failed to attend court in the Magistrates court since the matter proceeded in his absence and that culminated in failure to represent his client. Litigation ought to come to an end otherwise endless applications make it costly to the litigants in the long run.

This application for extension of time is devoid of merit and no sufficient cause has been shown by the applicant and it is only intended to delay execution of the judgment of the lower court.

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

Dated, signed and delivered be email at Kampala this 30th day of April 2020

**SSEKAANA MUSA
JUDGE**