

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
MISCELLANEOUS APPLICATION NO. 073 OF 2021.

(Arising from Nsangi Civil Suit No. 41 of 2017 which was consolidated with
Civil Suit No. 28 of 2017 and Civil Suit no. 45 of 2017 of Mpigi Court)

KAWOOYA GEORGE WILLIAM=====APPLICANT

VERSUS

1. MARGARET KYAFULANYI

2. NYANZI MEPHIBOSHETH

3. MIRIAM TALWISA

4. SAMUEL MIREMBE

5. JOSEPH KYAGULANYI

=====RESPONDENTS

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

RULING

The applicant Kawooya Goerge William brought the instant application under **Section 98** of the Civil Procedure Act, **Section 33** of the Judicature Act, **Order 43 Rule 27**, and **Order 52 Rules 1** of the Civil Procedure Rules as against the respondents seeking the following orders;

- a. That the time within which to file the Memorandum of appeal in this matter be extended.
- b. In the alternative, but without prejudice to the prayer in (a) above, that the court validates the Memorandum of appeal filed.
- c. That costs of this application be provided for.


The application is supported by the affidavit of the applicant and the grounds are briefly as follows;

- 1) That on the 18th day of April, 2019, His worship Gimugu Kabiri Kenneth, Magistrate Grade one delivered Judgment in Nsangi Grade One Magistrate's Court civil suit No. 041 of 2017 against the applicant.
- 2) That the applicant being dissatisfied with the orders of Court wrote a letter requesting for proceedings on the 29th April, 2019 to enable him prepare the memorandum of Appeal .
- 3) That the trial Magistrate was transferred immediately upon delivering of the Judgment and as such the applicant found it hard to get certified proceedings.
- 4) That the applicant was only recently able to get an unsigned copy of the court proceedings from which he was able to prepare his memorandum of Appeals hence this application.
- 5) That the above grounds are sufficient reason and/or cause for this Honourable Court to grant this application for extension of time within which to file the memorandum of appeal filed by the applicant.
- 6) That this application has been brought without any delay.
- 7) That it is in the best interest of justice, equity and fairness that the application for extension of time within which to file the Memorandum of appeal be granted.

The application was opposed by the Respondent through an affidavit in reply sworn by Miriam Talwisa and the pertinent paragraphs are as follows;

6. That it was during the application for execution of the decree of Court in February, 2021 that we learnt of the applicant's intention to appeal against the judgment after a period of over 2 year.
7. That 1st Respondent and I have been informed by our lawyers of M/s VERUS advocates , which information I verily believe to be true that the

applicant had to file his appeal within 30 days from the date of Judgment/ order.

- 5 8. That the 1st respondent and I have further been informed by our lawyers of M/s VERUS advocates, which information I verily believe to be true that if the applicant applied for the typed record of proceedings, he should have served the same on the 1st Respondent and I, to notify us of his intentions to appeal against the judgment.
- 10 9. That the 1st respondent and I have been informed by our Lawyers of M/s VERUS advocates, which information I verily believe to be true that, the failure by the applicant to serve us with the letter seeking the record of proceedings renders the same incompetent and invalid.
- 15 12. That we have been informed by our lawyers of VERUS advocates which information I verily believe to be true, that if indeed the applicant had filed and served a letter seeking for the record of proceedings within time, then his time to file the appeal would not run until he availed with the record and therefore filing this application is a waste of time and costs.
- 20 13. That the applicant has to date never filed a Memorandum of appeal. The Applicant therefore has no locus to make a prayer to Court to validate his memorandum of appeal.
- 25 14. That the 1st respondent and I contend the contents of paragraph 9 of the affidavit in support of the application. The applicant shall not suffer a miscarriage of justice since the decision of the Magistrate was based on proper evaluation of the facts and the applicant has no chances of success on appeal.
15. That the application is a mere waste of courts time and it is only just and equitable that it should be dismissed with cost. 

Representation:

Mr. Mudde John Bosco represented the Applicant while the 1st, 3rd, and 4th Respondents were represented by Mr. Arinaitwe Bernard and the 2nd and 5th Respondents were not represented.

5 **Resolution of the application:**

Counsel for the Respondents submitted that there was a letter attached to the affidavit of the Applicant marked "A" however, it did not indicate anywhere that it was received by Counsel or any of the Respondents. Thus, there was no proof any service.

- 10 Counsel for the Applicant on the other hand submitted that information regarding this case was known by the applicant who is outside the country and secondly he was the one to swear the affidavit explaining the circumstances surrounding that particular letter.

- 15 Counsel prayed that court gives him a benefit of doubt and in the alternative he prayed that consideration be made to the absence of proof of service of the letter requesting for proceedings to the Respondent and be treated as lapse or error on the part of counsel who was representing the litigant and should not debar the applicant from pursuing his right to its logical conclusion. That the appeal should therefore be heard on its merit.

- 20 Counsel for the Respondent in rejoinder submitted that it was a mistake of counsel not of the applicant as throughout the proceedings he was represented by his Attorney (Mr. Buwembo Joseph) , Mr. Buwembo Joseph is an advocate, the law firm that represented the applicant at the trial court was M/s Buwembo & Co. Advocates, the law firm in which the attorney of the applicant is partner,
25 therefore Buwembo was well versed with all the proceedings of court and cannot hide behind the bracket of an innocent litigant. Court should not

therefore rely on such submission by counsel in determining the merit of this application.

Counsel for the Applicant in rebuttal submitted that Mr. Buwembo was a partner in the law firm and he was not the one handling the case. He gave instruction to another lawyer in the firm.

Analysis of court:

I have carefully listened to the oral submissions made by both parties. It was not in dispute that Judgment was delivered on the 18th day of April, 2019. A letter marked Annexure "A" was attached to the affidavit of the applicant indicating that the applicant had applied for certified proceedings having intimated his intentions to lodge an appeal. However, there was no proof on the court record or an affidavit showing that this letter was ever served on to the Respondents.

I do agree with the submissions of counsel for the respondent that the Applicant was represented by an advocate who was well versed with the court process and owed a duty to his client to represent him to the best of his ability.

It cannot therefore be said that the applicant was an innocent litigant given the fact that the person he chose to give Powers of Attorney is an officer of court who is well versed with the court process as an advocate and know what the proper procedure of lodging an appeal entails.

I therefore find and hold that there was no sufficient reason(s) given by the applicant to satisfy this court to grant the instant application for extension of time with in which to file the Memorandum of appeal.

The application is found lacking in merit.



This application is hereby dismissed with costs.

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OYUKO ANTHONY OJOK

5 **JUDGE**

5/11/2021