

The Applicant filed written submissions in which he stated that he informed his lawyer to file an appeal which was never done and that substantive justice should be administered without undue regard to technicalities.

Consideration of the Application;

The general principle is that leave to appeal will be allowed where, prima facie, there are grounds of appeal that merit judicial consideration or the intended appeal has reasonable chance of success, or if the decision sought to be appealed conclusively determines the rights of the parties (*see Sango Bay Estates Ltd. and others v. Dresdener Bank [1971] EA 17*).

This is an application to grant leave to file an appeal out of time against the decision of the lower court in Civil Suit No. 122 of 2015.

In the case of *Sango Bay Estate vs Dresdner Bank & Attorney General [1971] EA 17Spry V.P* stated the principle upon which an application for leave to appeal may be granted as follows:

“As I understand it, leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration....”

On an application to file an appeal out of the statutory time specified by the law, the Applicant has to show that there is sufficient/just cause favouring the grant.

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 instant application, the Applicant claims to have instructed his former lawyer to file the appeal, a few days after the judgment had been delivered.

I have perused the record of proceedings from the lower court and established that the judgment was delivered on the 19th day of December, 2019. The statutory period for filing an appeal is thirty days according to the Civil Procedure Act Cap 71. This application was filed on the 11th day of February, 2020 which is outside the stipulated time for filing an appeal.

The Applicant claims that his lawyer did not file the appeal despite having been instructed to file the same. Does this amount to sufficient cause warranting the grant of this application?

Black's Law Dictionary 8th Edition at Page 231 defines “*sufficient cause*” to be analogous to “good cause” or “just cause”, which simply means “legally sufficient reason.” Sufficient cause is often the burden placed on a litigant by court rules or order to show why a request should be granted or action or inaction excused.

In the cases of: *Mugo v Wanjiri [1970] EA 481 at page 483. Njagi v Munyiri [1975]EA 179 at page 180 and Rosette Kizito v Administrator General and Others [Supreme Court Civil Application No. 9/86* reported in Kampala Law Report Volume 5 of 1993 at page 4] it was held that sufficient reason must relate to the **inability or failure to take the particular step in time.**

The Applicant has not adduced any evidence to show that he instructed his lawyer to file the appeal nor was a Notice of Appeal ever filed or a request for certificated proceedings.

It is trite that the mistakes, faults, lapses or dilatory conduct of Counsel should not be visited on the litigant (*see the Supreme Court decisions in Andrew Bamanya v. Shamsherali Zaver, S.C. Civil Appln. No. 70 of 2001; Ggoloba Godfrey v. Harriet Kizito S.C. Civil Appeal No.7 of 2006; and Zam Nalumansi v. Sulaiman Bale, S.C. Civil Application No. 2 of 1999*).

For mistake or negligence of counsel to amount to sufficient cause, it has to be established that there was no form of bad faith on the litigant's part and that the application has not been brought with inordinate delay.

This application was brought out of time and the Applicant seeks to rely on negligence of his counsel to warrant the grant. However, as already stated the Applicant has not adduced any evidence to prove that he indeed instructed his lawyers.

The Applicant attached a proposed memorandum of appeal to the application which I have perused and established that it does not raise any triable issues. The Applicant was able to take steps to file this application but did not request for certified proceedings nor file a notice of appeal. I find that relying on negligence of counsel is simply an afterthought in this case intended to delay the cause of justice.

This application is therefore devoid of merit and this application is hereby dismissed. No order as to costs since the Respondent did not enter appearance.

I so order.

Dated at Masaka this 17th day of January, 2022

Signed;  _____

Victoria Nakintu Nkwanga Katamba

Judge