

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISC APPLICATION NO. 055 OF 2022

[ARISING FROM MISC APPLICATION NO. 028 OF 2022]

[ALL ARISING FROM MISCELLANEOUS CAUSE NO. 001 OF 2022]

KIIZA JOSEPH ::: APPLICANT

VERSUS

1. KASESE DISTRICT LOCAL GOVERNMENT COUNCIL

2. KAMBASU ZEDEKIYA KAYIRI

3. KAHWA RUTH MUKIRANE

4. BWAMBALE CLARENCE ::: RESPONDENTS

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

RULING

This is an application brought under Order 44 of the Civil Procedure Rules seeking, Section 98 of the Civil Procedure Act Cap 71, for orders that the applicant be granted leave to appeal against the ruling and orders of this Court dismissing Miscellaneous Application No. 28/2022 delivered on the 18th day of May 2022 and that costs of the application be provided for.

The grounds of the application are contained in the affidavit deposed by the applicant who among others states that he is aggrieved by the ruling and orders of this court dismissing Miscellaneous Application No. 28/2022 and awarding costs against him and he intends to appeal to the Court of Appeal against the said dismissal. He also notes that he has serious questions to raise on appeal which include;

- a. Whether the learned trial judge administered substantive justice in dismissing Miscellaneous Application No. 28/2022

- b. Whether the applicant failed to exercise diligence to serve and prosecute Miscellaneous Cause No. 001/2022
- c. Whether it is constitutionally right to block the applicant from pursuing a public interest matter
- d. Whether the trial judge was just to award costs in a public interest matter.

The applicant prayed that this application be allowed and that he be granted leave to appeal to the court of appeal.

In reply, Mr. Masereka Amis Asuman deposed an affidavit in reply on behalf of the 1st respondent. He is the Chief Administrative Officer of the 1st respondent. He states inter alia that the present application was never served on the 1st respondent and for this reason, the same should be struck out against the 1st respondent. Further that Miscellaneous Application No. 28/2022 was justly dismissed after the applicant had failed to prosecute Miscellaneous Cause No. 001/2022 and that there are no serious questions of law presented by the applicant for consideration by the Court of Appeal.

The 2nd, 3rd and 4th respondents also opposed the application through their respective affidavits in reply. The gist of their reply is that first, the present application was served on them out of time when the same was served forty five days after it was endorsed by the registrar of the court. Secondly, that the applicant has not shown any serious questions that would warrant consideration by the court of appeal.

Background

The applicant herein was the applicant in Miscellaneous Cause No. 001 of 2022 wherein he sued the respondents claiming for various judicial review

remedies. The notice of motion in Miscellaneous Cause No. 001 of 2022 was received by court on 4th February 2022, it was signed by the registrar of this court on 7th February 2022 and scheduled for hearing on 10th March 2022. The motion was never served on any of the respondents and when it came up for hearing on the appointed date, none of the parties appeared. The cause was dismissed for want of prosecution. The applicant then filed Miscellaneous Application No. 28/2022 to reinstate the dismissed miscellaneous cause. The same was also dismissed with costs to the respondents. It is against this dismissal that the applicant now applies to this court for leave to appeal to the Court of Appeal.

Representation and hearing.

The applicant was self-represented. Mr. Samuel Kiriaghe represented the 1st respondent while Mr. Luke Kanyonyi represented the 2nd, 3rd and 4th respondents. The hearing proceeded by way of written submissions. All the parties filed submissions which have been considered in this ruling.

Consideration by court

The applicant relied on the case of ***Sango Bay Estate Vs Desdner Bank & Attorney General [1971] EA 17*** to submit that 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. He argued that leave to appeal should be granted where court considers that the appeal would have prospect of success or that there is some compelling reason why the appeal should be heard. Further that he has various questions and intended grounds of appeal as stated in his affidavit that would require consideration by the Court of Appeal.

In response, counsel for the 1st respondent argued that the applicant did not serve the notice of motion on the 1st respondent within the required

twenty one days in line with **Order 5 rule 1 of the Civil Procedure Rules**. As such, it ought to be struck out in the absence of an application for extension of time within which to serve the same. With respect to the merits of this application, counsel for the 1st respondent argued that the applicant has not demonstrated what questions of law would warrant consideration by the Court of Appeal. The applicant should not be allowed to appeal just for the sake of it and that the dismissal of Miscellaneous Application No. 28/2022 was in the judicious exercise of the court's discretion.

Counsel for the 2nd, 3rd and 4th respondents argued that this application is incompetent for failure on the applicant's part to serve the same upon the respondents within twenty one days in line with **Order 5 rule 1 of the Civil Procedure Rules**. Further that the present application lacks merit because the applicant has not demonstrated by affidavit or other evidence the grounds which this court could base on to grant leave to appeal.

I have considered the application and the affidavits as well as carefully considered the submissions of the applicant and both counsel and the cases relied upon. I will first deal with whether this application is proper before the court.

Upon perusal of the record of this application, it is true that the application was received by the court on 30th May 2022 and signed by the registrar on 6th June 2022. It was served upon counsel for the 2nd, 3rd and 4th respondents on 14th July 2022. That is approximately 38 days from the date it was endorsed by the registrar. There is no evidence to indicate that it was ever served upon the 1st respondent. In fact, the applicant has not refuted these facts.

The requirement to serve summons within 21 days under **Order 5 Rule 1(2)** of the Civil Procedure Rules is mandatory. An applicant who does not comply with this requirement does not entirely lose the right to serve the summons. He may apply to the court to extend the time under that rule within a period of 15 days from the date of expiry of the summons. The applicant is required to furnish sufficient reason for his failure to serve the summons within the stipulated time.

The omission to take these pertinent steps to serve the notice of motion within the required timelines without reason should not be condoned. The present application would on this ground alone fail. I will however delve into the merits of the application as if the same were properly served upon the respondents.

The applicant contends that the appeal raises arguable grounds and the respondents argued otherwise. In the case of **Sango Bay Estates Ltd & Others Vs Dresdner Bank AG (supra)** Spry V.P at page 40 stated the principle upon which leave to appeal can 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, but where as in the present case, the order from which it is sought to appeal was made in the exercise of a judicial discretion, a rather stronger case will have to be made out.”

The Supreme Court of Uganda in the case of **G.M. Combined (U) Ltd Vs A.K. Detergents (U) Ltd Civil Appeal No. 23 of 1994** alluded to this principle which was subsequently followed the Court of Appeal in **Degeya**

Trading Stores (U) Ltd Vs Uganda Revenue Authority, Civil Application No. 16 of 1996 where their Lordships stated;

“An applicant seeking leave to appeal must show either that his intended appeal has reasonable chance of success or that he has arguable grounds of appeal and has not been guilty of dilatory conduct”.

The same principle has been followed in various cases, see among others: **Alley Route Ltd vs UDB HCMA No 634 of 2006 (2), Spear Motors Ltd Vs Attorney General & 2 others High Court Civil Suit No, 692 of 2007** and others.

Therefore for this application to succeed, the applicant is required to show that there are grounds of appeal which merit serious judicial consideration. In my considered opinion, the ruling and orders sought to be appealed against were made by this Court in exercise of its discretion to dismiss suits for want of prosecution and to prevent the abuse of court process. Litigants like the applicant should be prevented from filing applications and sitting back without prosecuting them and clogging the court system with suits they are not interested in prosecuting.

It is clear that this Court is clothed with an unfettered discretion and inherent powers to prevent abuse of the process of the court by curtailing delays, including the power to limit and stay delayed prosecutions as may be necessary for achieving the ends of justice. See **Section 17(2) of the Judicature Act** Cap 13.

For this application to succeed, the applicant needs to satisfy this Court that there are matters whether of law or facts that deserve to be addressed by the appellate Court in the intended appeal. These include showing how this Court misdirected itself in the exercise of its discretion and as a result

arrived at a wrong decision or that this court was clearly wrong in the exercise of the discretion and that as a result there has been a miscarriage of justice.

To my mind the intended appeal is just an abuse of the court process which this Court is enjoined to prevent. While a party should in the normal course not be prevented from pursuing an appeal, it is also necessary to put in place mechanisms that prevent abuse of Court process as was observed by the Court of Appeal of Uganda in ***Asimwe Francis Vs Tumwongyeirwe Aflod Miscellaneous Application No. 103 of 2011.***

On the whole, taking into account the circumstances of this application, I do not find any arguable grounds of the intended appeal that merit granting this application and it is accordingly dismissed with no order as to costs.

I so order

Dated at Fort Portal this 28th day of October 2022



Vincent Emmy Mugabo

Judge.

Court: The Assistant Registrar shall deliver the Ruling to the parties.



Vincent Emmy Mugabo

Judge

28/10/2022