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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
MISCELLANEOUS APPLICATION NO. 003 OF 2023
(ARISING FROM LAND CIVIL SUIT NO. 012 OF 2018)**

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OKOT JOVINE.....APPLICANT

VERSUS

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- 1. OMARA BAPTIST ODOK**
- 2. ODONG ALFRED AREK**
- 3. NADIOPE CARLO.....RESPONDENTS**

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BEFORE: HON. MR. JUSTICE GEORGE OKELLO

RULING

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The Applicant applied for extension of time within which to appeal to this Court against the Judgment and Decree of His Worship Alioni Emmanuel Drajole, Magistrate Grade One of Chief Magistrates Court of Pader Holden at Patongo, given in Land Suit Number 012 of 2018. The Judgment was delivered on 5th October, 2022, in the presence of the parties, but in the absence of their respective Counsel.

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5 In the Judgment, it was decreed that the suit land, also known
as Olet Dog Lurok, measuring approximately 80 acres at
Anyena Central village, Agago Central Ward, Agago Town
Council, Agago District, is Community grazing land belonging
to the people of Ajali, Kiteny, Oyarotonge and Pampara; that the
10 Plaintiff is a trespasser on the suit land; An order of vacant
possession was issued; a permanent injunction; and taxed costs
with interest of 6% thereon.

In the present application which is anchored on section 33 of
15 the Judicature Act, section 98 of the CPA, and O.52 rules 1, 2
and 3 of the CPR, the Applicant avers that when the Judgment
was read on 5th October, 2022, he made oral application for
documents to enable him appeal the Judgment of Court. He
further averred that subsequently, his lawyers, Awino, Openy,
20 Nyafono Advocates and Legal Consultants were instructed to
handle the appeal process. The Lawyers requested for typed
proceedings, Judgment and Decree, but did not file a Notice of
Appeal. He contended that the trial Court failed to avail the
requested documents. He avers that time for appealing has run
25 out and seeks enlargement of time. He swore a supporting
affidavit, reiterating the above grounds.

The Application was opposed by the Respondents. Odong Alfred
Arek deposed an affidavit on his own behalf and on behalf of the
30 rest of the Respondents. The chief ground of the opposition is

5 that there is nothing to show that the Applicant was prevented from lodging an appeal in time. It was further deposed that the Judgment was read in the Applicant's presence and the Applicant never indicated that he wished to appeal, much as the right of appeal was explained to him by the trial Court.

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Representation

At the hearing, the Applicant was represented by Mr. Lobo-Akera Stephen, while the Respondents were represented by Mr. Walter Okidi Ladwar. The Applicant was in Court, while the 2nd and the 3rd Respondents were also present. Before the matter could be heard, both Learned Counsel informed Court that the parties, as advised by Counsel, were in agreement that the Application be allowed by consent; that the Applicant files the Appeal within 14 days from today (28/02/2023) and that costs of the Application is paid by the Applicant. That, the quantum of costs would also be agreed on, and failing of which, bill of costs would be lodged and taxed interparties.

25 Court drew the attention of both learned Counsel to the provision of section 79 (2) of the CPA, in which time required or taken for the preparation of the record of the trial Court, order appealed, and Judgment, is excluded from the computation of 30 days within which an intending appellant ought to appeal to this Court. Court also brought to Counsel's attention the fact

5 that a letter requesting for the record of the proceedings was
filed in time, within 30 days required for appealing to this Court.

Given the above state of affairs, this Court's view is that the
application was lodged under the erroneous belief that the
10 Applicant had run out of time for appealing. Once the request
for the record was made in time, and copied to the opposite
party, and the lower Court has not yet availed the record, time
cannot run against the intending appellant. In this case, it is
not strongly argued that the request was not communicated to
15 the opposite party or that the opposite party did not know about
it.

It has been held that once a record has been sought and not yet
availed, the requestor need not do anything, although that legal
20 position seem unfair to the successful party. See: **Wanume
David Kitamirike Vs. Uganda Revenue Authority, Civil
Application No. 138 of 2010 (COA)**, in which the Court of
Appeal considered the aspect of non-supply of the record of
proceedings to the intending appellant, and held to the effect
25 that, the application seeking to strike out the Appeal was
incompetent since the intending appellant had requested for the
record of the trial court and copied the opposite party. Court
underscored the duty of the trial court to avail record to an
intending appellant and that the requestor need not do
30 anything.


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5 There is no need for an intending appellant from a Magistrate
Court to lodge a Notice of Appeal, a practice which has grown in
our Magistrate Courts. See: **Lawino Christine Kijange Vs.
Akuru David, Misc. Application No. 141 of 2021.** See also the
decision of GM Okello, J., (as he then was) in **The Board of
10 Governors and the Headmaster Gulu Secondary School Vs.
Phinson E. Odong, High Court Civil Appeal No. MG 2 of
1990,**

Given the foregoing, the Application is incompetent before
15 Court, as the Applicant is still within time to appeal. The
Consent the parties wished to enter into to extend time, with
respect, is misconceived. Accordingly, the Application stands
dismissed with costs to the Respondents.

20 It is so ordered.

Delivered, dated and signed in court this 28th February, 2023.


25 *George Okello* 28/2/2023
George Okello

JUDGE HIGH COURT

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5 **10:05am**

Appearances

Ms. Grace Avola, Court Clerk

Mr. Lobo-Akera Stephen, Counsel for the Applicant.

10 Mr. Walter Okidi Ladwar, Counsel for the Respondents.

The Applicant in Court.

The 2nd and 3rd Respondent in Court

The 1st Respondent is absent.

15 Ruling delivered.



Handwritten signature and date: Hudson 28/2/2023

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George Okello

JUDGE HIGH COURT

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