

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CRIMINAL DIVISION
MISC. APPLICATION NO.181 OF 2022
ARISING FROM CN -002 OF 2010
ARISING FROM BUGANDA ROAD CRIMINAL CASE NO.325 OF 2017
SSIMWOGGERERE PAUL ALIAS SSEMWOGERE -----APPLICANT
VERSUS
UGANDA -----RESPONDENT

BEFORE HON: JUSTICE ISAAC MUWATA

RULING

This application is brought under article 28 of the Constitution, Section 33 of the Judicature Act, and Section 37(1) of the Criminal Procedure Code Act for orders;

- 1. That the dismissal order in Criminal Appeal No.002 of 2010 be set aside**
- 2. That Criminal Appeal No.002 of 2010 be reinstated to enable him exercise his right of Appeal**

The grounds of the application are contained in the affidavit of the applicant and are briefly,

- 1. That while in prison, the applicant appealed against the whole judgement and sentence in High Court Criminal Appeal No.002 of 2010 by the help of a prison warden.**
- 2. That at the time the appeal was fixed for hearing, he was serving the sentence in prison and could not attend court**
- 3. That although the court issued production warrants he was not produced to attend court**
- 4. That he had no other way to be present at the hearing of his appeal**

In response to the application, the respondent stated in his affidavit that the application was filed with unreasonable delay. Secondly, that there is no sufficient cause established because it has been more than five years since the applicant completed his sentence in both criminal case No.0486 of 2008 and Civil Case No.140 of 2010 where he was a civil prisoner.

She also stated that the application is a waste of court's time and should be dismissed.

Consideration

I have perused the applicant's application and the arguments, and I have also examined the record wherein the learned Judge in Criminal appeal no.02 of 2010 dismissed the appeal for want of prosecution.

According to the record, the applicant filed a notice of appeal on January 5, 2010, and the appeal was dismissed on February 13, 2012.

The applicant completed his three-year sentence and was released from prison on January 2, 2012. The case was brought up three times following his discharge, but he never appeared in court. It is therefore not true that the applicant was serving his sentence at the time the appeal came up for hearing.

Section 44 of the Criminal Procedure Code Act provides that,

The appellate court may dismiss an appeal for want of prosecution,

(b) if the appellant fails to take any necessary step in prosecuting his or her appeal within the time allowed and has not made an application for extension of time.

The record makes clear the reasons for dismissal in that the court found a 2-year delay to be excessive and for which there was no justification. The applicant did not take any necessary step in prosecuting his appeal within the time allowed, there was no evidence on record to also to indicate that he had made an application for extension of time.

The question to answer in this application therefore is whether the applicant had made out a sufficient reason for his appeal to be reinstated.

Reinstatement of a suit is at the discretion of the court, which discretion ought to be exercised in a just manner. The court in ***Shah vs. Mbogo & Another (1967) EA 116*** stated that,

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought

whether by evasion or otherwise to obstruct or delay the course of justice."

The applicant's explanations for why he didn't take the necessary action when it was necessary and why the case hasn't been prosecuted since it was first filed in 2010 and even later when he was released from prison in 2012 haven't fully convinced me. The duration of more than 10 years qualifies as unreasonable delay, which this court cannot entertain.

Cases must be handled expeditiously and efficiently, for the applicant to file this application after all that time in my view amounts to abuse of court process. The application cannot be allowed, and is accordingly dismissed.

I so order

JUDGE

21.12.2022