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The Republic of Uganda

Miscellaneous Application No. 0024 of 2022

(Arising from High Court Civil Suit No. 0019 of 2016)

The Registered Trustees of Soroti Catholic Diocese :::::::::::::: Applicant

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Vs

Imalingat John Peter :::::::::::::: Respondent

Before Hon Justice Dr Henry Peter Adonyo

Ruling:

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1. Background:

The respondent sued the applicant for trespass on surveyed land located at central cell, Madera ward, Northern Division, Soroti Municipal council in Soroti district. The respondent prayed for damages, permanent injunction and costs of the suit. Judgement was delivered on 15<sup>th</sup> July 2019 against the applicant in favour of the respondent.

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The applicant being aggrieved with the decision filed a notice of appeal in the Court of Appeal but did not file a memorandum of appeal hence this application.

2. Resolution:

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This is application by Notice of Motion filled under order 52 rule 1,2 and 3 of the Civil Procedure Rules seeking for leave to file an Appeal in the

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5 Court of Appeal of Uganda against the judgement and orders of His Lordship Hon. Justice Batema NDA, Resident Judge of High Court, Soroti dated 15<sup>th</sup> of July 2019.

The law in relations to appeals from the High Court to the Court of Appeal is as follows;

10 **Section 79 (b) of the Civil Procedure Act** provides that;

*(1) Except as otherwise specifically provided in any other law, every appeal shall be entered—*

*(a) within thirty days of the date of the decree or order of the court; or*

15 *(b) within seven days of the date of the order of a registrar, as the case may be, appealed against; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.*

20 *(2) In computing the period of limitation prescribed by this section, the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.*

**Section 98 of the Civil Procedure Act** provides that where an appeal from any order is allowed, it shall lie to the court to which an appeal would lie from the decree in the suit in which the order was made.

25 **Order 52 rule 1 of the Civil Procedure Rules** provides that, all applications to court, except where otherwise expressly provided for under these Rules, shall be by motion and shall be heard in open court.

5 **Rule 2 of Order 52** provides that no motion shall be made without notice to the parties affected by the motion; except that the court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order ex parte upon such terms as to costs or otherwise, and subject to subject to  
10 such undertaking, if any, as to the court may seem just, and any party affected by the order may move to set it aside.

**Rule 3 of Order 52** provides for contents of notice, and it states that every notice of motion shall state in general terms the grounds of the application, and, where any motion is grounded on evidence by affidavit,  
15 a copy of any affidavit intended to be used shall be served with the notice of motion.

The grounds for this application are stated as follows, that;

The Applicant filed Notice of Appeal to the Court of Appeal of Uganda on 15<sup>th</sup> July 2019 and applied for certified record of proceedings and  
20 judgement of the High Court to enable it prepare memorandum of appeal and other appeal documents. The request was received at the High Court Soroti Registry on 15<sup>th</sup> July 2019.

That the Assistant Registrar of the High Court at Soroti by his letter Ref. HCT/SRT/ADM/PFR8 dated 3<sup>rd</sup> October 2019 informed the counsel for  
25 the Applicants that the certified record of proceedings and judgement were ready for collection which were collected.

That Counsel for the Applicant, M/s Oboth Okumu & Co. (Advocates) then engaged Asante Business Centre in Tororo to work with them in the



5 preparation of the Memorandum of Appeal and other appeal documents as required by Law.

That then Corona virus –Covid 19 pandemic struck the world including Uganda with serious consequences on people and businesses and in Uganda lockdowns were declared by the government and Tororo district  
10 which is a border district with Kenya where the appeal documents were being lock down from the rest of the country making businesses including Asante Business Centre, to lay off their employees without the knowledge of their customers ahead of time.

That with all the applicant's appeal documents locked up at Asante  
15 Business Centre and a payment of UGX 470,000/= (Four Hundred Seventy Thousand shillings only) having been made by the applicant to them and the whereabouts of the laid off Asante Business Centre employee in-charge of the documents unknown, the work on the appeal documents stalled as nobody knew where the documents were kept.

20 That the Asante Business Centre employee who was laid off during the coronavirus Covid-19 pandemic has now reappeared and has been able to complete the work on Court of Appeal documents, hence this Application by the Applicant.

25 That it is in the interest of justice that the applicant be allowed time to file and pursue its appeal in court of Appeal of Uganda.

The respondent, Imalingat John Peter, in his affidavit in reply averred that the application was incompetent, time barred, lacked merits, did not disclose any sufficient reason, or just cause or any good reason whatsoever

5 for extension of time and that they intend to raise preliminary objections on the same grounds so that the application is dismissed with costs.

That the Covid-19 restrictions in Uganda were only imposed with effect from 18<sup>th</sup> March 2020 and as such the applicant had over 5 months before the first country wide lockdown within which to file either an appeal or  
10 application for extension of time.

That this application was an afterthought, and it is only calculated at wasting court's time and causing a miscarriage of justice to the respondent.

**Rule 83 of the Judicature (Court of Appeal Rules) Directions**  
15 provides for Institution of appeals thus:

*Subject to rule 113 of these Rules, an appeal shall be instituted in the court by lodging in the registry, within sixty days after the date when the notice of appeal was lodged—*

(a) a memorandum of appeal, in six copies, or as the registrar shall  
20 direct;

(b) the record of appeal, in six copies, or as the registrar shall direct;

(c) the prescribed fee; and

(d) security for the costs of the appeal.

(2) Where an application for a copy of the proceedings in the High Court  
25 has been made within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be



5 *certified by the registrar of the High Court as having been required for the preparation and delivery to the appellant of that copy.*

Relating the above provisions of the law to the instant matter, it of note that the applicant filed a notice of appeal to Court of Appeal on 15<sup>th</sup> July 2019 and also applied for certified record of proceedings which it received  
10 on 3<sup>rd</sup> October 2019. However, the applicant after receiving the record of proceedings, of the High Court did not file the memorandum of appeal within the required time to date.

**Rule 84 of the Judicature (Court of Appeal Rules) Directions** provides for effect of default in instituting appeal.

15 It states that if a party who has lodged a notice of appeal fails to institute an appeal within the prescribed time—

*(a) he or she shall be taken to have withdrawn his or her notice of appeal and shall, unless the court otherwise orders, be liable to pay the costs arising from it of any persons on whom the notice of appeal was served.*

20 **Rule 5 of the Judicature (Court of Appeal Rules) Directions** provides for extension of time. It states as follows;

*The court may, for sufficient reason, extend the time limited by these Rules or by any decision of the court or of the High Court for the doing of any act authorized or required by these Rules, whether before or after  
25 the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to the time as extended.*

The applicant herein grounds this application on the fact that corona virus lock down affected his filling of the appeal. It of note that the applicant

5 before the lockdown, the applicant had adequate time to file the memorandum of appeal or request for an extension of time to file the appeal which it did not do so given the fact of its obtaining this court's proceedings on 3<sup>rd</sup> October 2019 with the Corona 19 lockdown coming later on 18<sup>th</sup> March 2020!

10 Be that as it may, since no application was filed for extension of timer within the required time and the applicant having sat on its laurel, this court would find that this application lacks merit on the basis that the applicant had sufficient time within which to take sufficient action tin actualizing its appeal either by filing its memorandum of appeal in time  
15 or seeking for extension of time to do so but did not do, so leaving this court with no option but to find that this application is unmeritorious before this honorable court given the provisions of the **Judicature (Court of Appeal Rules) Directions** cited above which clearly provides for the mechanism and procedure to be used by a party such as  
20 the applicant in the circumstances which it is averring.

I would thus not only find that this application is unmeritorious but one which is filed in the wrong court as this court has no jurisdiction to hear the matter.

25 The High Court only has jurisdiction to hear and determine appeals which lie to it by virtue of **section 16 (1) of The Judicature Act and Article 134 of the Constitution.**

An application for extension of time within which to file relevant appeal documents by a party for any reason can only be addressed to the appropriate court which in this case is the Court of Appeal and not this  
30 Honorable Court given the fact that indeed a notice of appeal had

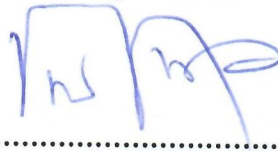
5 previously been filed before that court with the only remaining thing being  
the filing of the memorandum of appeal which the applicant now state it  
could not do so because of the lock down of the country due to the then  
rampaging COVID-19 pandemic.

10 That reason can only be assessed and determined by the appellate court  
and not this court which has no jurisdiction to determine the merit or not  
of an application for the extension of time which forms the basis of this  
application.

15 Accordingly, I would conclude and hold that this application for extension  
of time within which to file a memorandum of appeal was filed in the  
wrong court.

It is dismissed with costs to the respondent.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

20 Judge

14<sup>th</sup> July 2022