

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(EXECUTION AND BAILIFFS DIVISION)**

**HCMCA NO. 205 OF 2016
(ARISING FROM MISC. APPLICATION NO. 2031 OF 2015
AND MA 2030 OF 2015)**

COTTFIELD EAST AFRICA (U) LTD APPLICANT

VERSUS

- 1. DHL GLOBAL FORWARDING (U) LTD1ST RESPONDENT**
- 2. BARCLAYS BANK (U) LTD2ND RESPONDENT**

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

This is an application for extension of time within which to Appeal made under S.79 (1) (b) of the Civil Procedure Act and 0.52 r1 C.P.R.

Costs of the application were also applied for.

The application is supported by the affidavit of Bazibu Mwendha Ali, the Production Manager of the Applicant Company.

The grounds of the application as summarized are that:-

1) The Applicant was never served with the garnishee order absolute dated 18.10.2015 or the garnishee orders nisi and the application for garnishee orders in HCEX Application No. 2031/2015 and 2030/2015.

5 2) The Applicant learnt of the existence of the garnishee proceedings and the orders arising there from after learning that the garnishee bank had blocked one of its accounts and that of one of the Directors.

3) It is in the interests of justice that the application be granted.

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There is an affidavit in reply deponed on behalf of the First Respondent.

The Application was heard on 22.06.16.

15 Counsel for the Applicant gave the background to the application. He submitted that the Applicant was a Judgment Debtor and execution proceedings were commenced vide Miscellenous Application 2030 and 2031 of 2015 where the Registrar issued garnishee orders nisi that were made absolute on 01.10.15.

20 It is contended that the Applicant and his Counsel were never served with the orders and only learnt of them after the accounts of the Applicant with the Second Respondent were blocked on 06.10.15.

On 08.10.15, the Applicant's Counsel verified from court that garnishee orders had been issued
25 against the Applicant's accounts.

On 14.10.15, the Applicant filed an appeal that is C.A 06/15 on the advice of his Counsel. The Appeal was dismissed on the ground that it was filed out of time. The Applicant therefore filed this application seeking leave of court to file the appeal out of time.

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Counsel then went through the grounds of the application asserting that the Applicant genuinely wanted to appeal but did so without seeking leave to extend time within which to appeal, on the advice of his Counsel.

- 5 That the failure to file the appeal on time was because by the time the Applicant learnt of the garnishee orders, only two days remained within which to file the appeal. By the time appeal was filed, the time had expired.

10 Also that while this application was filed on 09.02.16, about four months from the date of the order sought to be appealed against, the delay was partly occasioned by Counsel who filed the appeal instead of seeking leave for extension of time.

It was argued that a court extends time if the Applicant shows good cause and that the Applicant in the present case had shown good cause.

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The case of **Sabiiti Kachope and 3 Others vs. Margaret Kamuje SCCCA 31/97 [1999] KLR 238** was cited in support. In that case an application for leave to extend time within which to appeal was filed after two years and five months after judgment was passed. The applicant accounted for the delay. The court held that the applicant had shown good cause for the extension of time.

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Counsel then stated that it was only fair and just that the present application be allowed and time within which to file the appeal extended and that costs be granted to the Applicant.

- 25 In reply, Counsel for the First Respondent submitted that the grounds upon which such applications are allowed have been laid down by court. He cited the case of **Godfrey Magezi and Another vs. Sudhir Ruparelia Miscellenous Application 10/02** where Justice Karokora as he then was held that *“applications for extension of time can only be granted by court where a) they are made before the expiration of limited time, before the act is done, after the act is*
- 30 *done.”*

It was then argued that the Applicant in this case does not fall with any of the four scenarios and the application should accordingly be dismissed.

5 However, Counsel then abandoned the authority and instead submitted that he relies on the provisions of S.79 (1) (b) CPA. And that the issue therefore is whether the Applicant has shown good cause for extension of time within which to appeal.

He stated that the Act does not define what amounts to good cause but that decided cases indicate that good cause is a question and a matter of the discretion of court.

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Counsel argued that the present application does not disclose good cause as the grounds indicated in the affidavit in support are arguments for the appeal itself. – paragraph 3 of the supporting affidavit.

15 He contended that the Applicant was served with the garnishee order nisi through its Counsel and shown by the affidavit of service dated 21.08.15, long before the garnishee order was made absolute.

20 The Second Respondent was also served with garnishee absolute although they did not appear in court and that court was therefore entitled to make the order absolute under 0.23 C.P.R.

As to not being served with the applications for the garnishee orders, it was contended that such applications are exparte and there is no law that required the Applicant to be served.

25 Further that, the Applicant has also not accounted for the time between 06.10.15 and 14.10.15 when the appeal was filed; there were still two days within which the appeal could have been filed.

30 Also that the application is an afterthought because it was brought two weeks after the dismissal of the appeal. Execution is complete and there is an appeal to the Court of Appeal filed by the Applicant against the judgment of the Commercial Court where the garnishee proceedings

originated and that the decision of the Court of Appeal can reverse the orders of the Registrar. And that therefore the application should be dismissed with costs to the Respondents.

5 In rejoinder, Counsel for the Applicant stated that the 06.10.15 was the date the Applicant's Directors became aware of the blockade of the account but he did not know why and he was out of the Country. He referred to the exchange of emails between the Applicant and the Bank Annexures D₄. But that the Second Respondent did not advise the Applicant and never appeared in court.

10 Counsel for the Applicants came to Kampala on 08.10.15, perused the court record of the garnishee proceedings and on 09.10.15 advised the Applicants to appeal and the appeal was filed on 14.10.15.

15 Vehemently denying that the Applicant was ever notified of the garnishee proceedings, Counsel referred to the affidavit in reply paragraphs 5 and 6 and argued that the person served was not identified and since Counsel in personal conduct of the matter was not there, there was no effective service.

20 Counsel dismissed the argument that no law requires service of the application of garnishee proceedings as incorrect, pointing out that 0.23 r 1 C.P.R requires the order to be served on the Judgment Debtor unless otherwise directed by court.

25 Emphasizing that this application was made within two weeks of the dismissal of the appeal, Counsel reiterated his earlier submissions, adding that the appeal in the Court of Appeal is against the decision of the judge and not the garnishee proceedings. And that the Applicant had shown good cause for the extension of time within which to appeal.

Whether the Applicant has shown good cause for extension of time within which to appeal

30 S.79 CPA provides for limitation of Appeals:-

(1) (b) Appeals against the order of a Registrar must be filed within seven days of the order of the Registrar.

5 **But the appellate court may for good cause admit an appeal though the period of limitation prescribed by the section has lapsed.**

That the Applicant in this case filed the appeal out of time is not in dispute as that was the reason it was dismissed by the court and hence this application for extension of time within which to appeal.

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For court to exercise its discretion to grant an application for extension of time within which to appeal, the Applicant must show good cause/ sufficient reason that prevented the filing of the appeal in time.

15 Decided cases have established that “**sufficient reason**” depends on *the circumstances of each case* – Refer to **Asiimwe Nelson vs. Uganda Airlines Corporation [2001] HALR.**

In this case, the Applicant contends that they did not get to know of the garnishee proceeds until their accounts were blocked by the bank. When their Counsel checked with the court record and
20 established that the orders had been issued, he advised them to appeal and filed an appeal after the seven days required by the law had expired.

As lay persons, it can be rightly said that the Applicants relied upon the advice of their Counsel. It has been repeatedly stated by the courts that “**an applicant should not be penalized for the
25 fault of Counsel**”. And that “**for applications of extension of time** like the present one, **a mistake or negligence of Applicant’s Counsel may be accepted as a proper ground for granting leave to file out of time.**” – Refer to **Asiimwe Nelson vs. Uganda Airlines Corporation (Supra)** and **Sabiiti Kachope & 3 Others vs. Margaret Kamuje (Supra)**.

30 Contrary to the argument of Counsel for the Respondent, the period between 06.10.15 and 14.10.15 was accounted for by the Applicant.

The date of 06.10.15 was when the Director of the Applicant became aware of the blockade of the accounts. While there was an exchange of mails between the Director and the Bank, the Bank never advised the Director of the situation. Counsel for the Applicant checked the record on 08.10.15 and on 09.10.15 advised the Applicants to appeal and filed appeal on 14.10.15.

As has been established by decided cases, the Applicant was entitled to rely on the advice of its Counsel.

The argument of Counsel for the Respondent that there is no law requiring to serve the Applicants with the garnishee applications cannot be sustained. As pointed out by Counsel for the Applicant, 0.23 C.P.R requires the order to be served on the Judgment Debtor unless otherwise directed by court. There does not appear to have been any such direction by court in the present case.

The contention by Counsel for the Respondent that this application is an afterthought since it was made within two weeks after the dismissal of the appeal is also not accepted. As already pointed in this ruling, the Applicants were all along relying upon the advice of their Counsel. Courts have made it clear that ***“litigants should not be penalized for the fault of their counsel.”***

And while there is an appeal pending before the Court of Appeal, Counsel for the Applicants made it clear that the appeal is against the judgment of the Commercial Court and not against the orders of the Registrar.

For all those reasons, this court finds that the Applicants have shown sufficient reason to justify this court to exercise its discretion to extend time within which to file their appeal.

The application is accordingly allowed. The time to file the appeal is extended and it should be filed within two weeks from the date of this ruling.

Costs will abide the outcome of the appeal.

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Flavia Senoga Anglin

Judge

10 **07.07.16**