THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO. 1466 OF 2020

ARISING FROM CIVIL SUIT NO. 1559 OF 2000

THE REGISTERED TRUSTEES OF

KAMPALA ARCHDIOCESE:: APPLICANT/PLAINTIFF

VERSUS

NABITETE NNUME MIXED

CO-OPERATIVE FARM LIMITED:::::::::::::::::::::::::: RESPONDENT/DEFENDANT

BEFORE: HON. JUSTICE JOHN EUDES KEITIRIMA

RULING

This is an application brought under **Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, Order 51 Rule 6 and Order 52 Rule 1, 2 and 3 of the Civil Procedure Rules.**

The Applicant is seeking for orders that:

i. Time be enlarged to enable the Applicant to file a Notice of Appeal and an appeal against the Judgment and Decree vide **Civil Suit No. 1559 of 2000.**

ii. That the costs of this application be in the cause.

The application is supported by the affidavit of **Paul K. Zziwa** who deposes inter alia:

i. That the failure by the Applicant to file a Notice of Appeal in **Civil Suit No. 1559 of 2000** within the mandatory time was due to the mistake and /or negligence of its former lawyers.

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ii. That the applicant had previously filed an application for leave to file a Notice of Appeal out of time vide **Miscellaneous Application No. 1104 of 2017** but unfortunately its former lawyer failed to professionally advise it on the appropriate /proper person to depose the affidavit in support on its behalf which led to the striking out of the Applicant's said application on technical grounds.

iii. That the Applicant is still very much interested in filing an appeal against the decision of the trial Judge in the main suit but since the time within which it was supposed to file a Notice of Appeal lapsed, the Applicant has to first obtain leave from court to file a Notice of Appeal out of time by enlargement of time in order to proceed with further steps of filing the said appeal.

iv. That the Applicant has got high chances of success in the appeal which it intends to file against the Respondent.

v. That in the interest of Substantive Justice, the applicant be granted leave to file a Notice of Appeal out of time.

In their affidavit in reply sworn by **Mawejje Benon**, he deposes inter alia:

i. That he is the treasurer of the Respondent herein.

ii. That he is aware that for all the time the suit was ongoing, the deponent never attended court and for that matter it is probable that he never knew what was going on but the Applicant's lawyer and some of its symphasizers or agents like **Luberenga** attended Court on most of the occasions.

iii. That he vividly recalls that at the time Judgement was delivered, he was in court together with Kabanda Joseph and he also saw Mr. Luberenga who had always moved on the side of the Applicant and has been a regular court attendant and in this particular case and after the judgment was read by the trial Judge he moved out of court with him and the said Kabanda Joseph.

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iv. That the claims of Paul K. Zziwa who was neither the Attorney of the Applicant nor one of its trustees in 2017 that the Applicant was not aware of the Court Judgement when the Applicant's lawyer was aware is simply an afterthought and unfounded which this court ought to reject summarily.

v. That in view of annexture "A" to the affidavit in support that the deponent Mr. Paul K. Zziwa was appointed by the Applicant in September 2019 to depose to affidavits, and in absence of any evidence from the Applicant that the same Paul K. Zziwa was an authorised agent or trustee of the applicant before 2019, all the averments by the deponent to any period before that date are simply speculative, hearsay baseless and unfounded and he is advised by the Respondent's lawyer Mr. Ambrose Tebyasa that such evidence ought to be rejected by this court.

vi. That the Applicant herein was the Plaintiff in the main suit which was filed in court in 2000 but surprisingly none of the persons mentioned in annexture "A" to the affidavit in support or those who signed it ever attended any court hearing and yet any vigilant litigant could not have failed to follow up the matter and know when the judgment was to be delivered.

vii. That he is aware that before the judgment was delivered on the 14th June 2017, two notices for the same had been issued out by court to both the applicant and the respondent's lawyers and he recalls that on the 2nd June 2017 when he appeared in court for the judgment, the same Luberenga, Hajati Nabukenya and Nakulabye Church Parish Priest (Rev. Fr, Peter Lule) who always moved with officials of Nakulabye Church were in Court but because the judgment was not ready it was fixed for 14th June 2017a date to which he also attended.

viii. That the applicant having left everything to their lawyer, they cannot turn around now to claim that their lawyer never notified them of the delivery of judgment or ruling in the earlier application.

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ix. That there is no evidence by the applicant to show that it was keenly following up its case either at court or through its lawyers or that it was keenly interested in prosecuting the suit relating to the suit property, and therefore they were making false allegations therein which were baseless and an afterthought.

x. That the applicant has not demonstrated the basis of its erroneous belief that it has high chances of succeeding in the intended appeal apart from occasioning prejudice to the respondent who has litigated over the suit property for over twenty years and there is dilatory conduct on part of the applicant in filing this application.

xi. That there is no strong reason advanced by the applicant as to why it never commenced the appeal in time and the instant application is simply an afterthought to unnecessarily keep the case dragging in court to the prejudice of the respondent.

xii. That it is not fair at all for the applicant who sat on its rights to be granted leave to appeal out of time when there is no strong reason for doing so.

In his affidavit in rejoinder Paul K Zziwa deposes inter alia:

i. That the Applicant established a department called Kampala Archdiocese Land Board for purposes of managing and handling the transactions pertaining to land/properties belonging to Kampala Archdiocese.

ii. That in his capacity as the Administrator Manager of Kampala Arch diocese Land Board since 2007 he has always obtained updates from the Applicant's lawyers instructed to conduct court suits on behalf of the Applicant and in as far as the instant suit is concerned he on various occasions received updates from the Applicant's previous lawyers and therefore the affidavit in support is not based on afterthoughts and neither is it speculative nor based on hearsay.

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iii. That the Applicant instructed lawyers of M/s Kizito Lumu and Co. Advocates to represent it in the main suit and he used to follow up on the main suit from the said lawyers on behalf of the Applicant and in as far as the judgment in the main suit is concerned, the said lawyers notified the Applicant's agents about the said judgment in the main suit through their letter dated 24th July 2017.

iv. That he has been advised by his lawyers that the Applicant is not liable for the professional mistakes or errors made by its previous lawyers.

v. That the Applicant has got high chances of success if granted an opportunity to file an appeal against the judgment of the trial Judge in the main suit.

Counsel for the Applicant and counsel for the Respondent filed written submissions the details of which are on record and which I have considered in determining this application.

The Issue to determine now is whether time can be enlarged to enable the Appellant to file a Notice of Appeal and an appeal against the Judgment and Decree vide Civil Suit No. 1559 of 2000.

Preliminary Objection raised by the Applicant.

Counsel for the Applicant raised a preliminary objection on the affidavit in reply to the instant application deposed by Mawejje Benon who alleges to be the treasurer of the Respondent. Counsel cited **Section 59 of the Companies Act 2012** which provides that documents or proceedings requiring authentication by a company should be signed by a Director, Secretary or other authorised officer of the company.

Counsel cited **Order 3 Rule 1 of the Civil Procedure Rules** which is to the effect that appearance in court proceedings shall be made or done by the party in person or a recognized agent or by an Advocate and that according to **Order 3 Rule 2**, a recognized agent of the parties by whom such appearances, applications and acts may be made or done should be a person holding Powers of Attorney authorizing him or her to make appearances and applications and do such acts on behalf of the parties. Counsel cited the cases of ***Freicca Pharmacy Limited versus Anthony***

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Natif-H.C.M.A No. 498 of 2019 and ***Niko Insurance (U) Limited versus Southern Union Insurance Brokers Limited and others –H.C.M.A No. 817 of 2015*** to buttress his submissions.

Counsel for the Applicant contended that the said Mawejje Benon stated under paragraph 1 of his affidavit in reply that he was the treasurer of the Respondent and swore in that capacity. That the said Mawejje was neither a Director nor Secretary of the Respondent, and neither does he state that he is an authorised officer of the Respondent. That in order to qualify to be an authorized officer of the Respondent he had to attach on his affidavit in reply the said written authority from the Directors of the Respondent, authorizing him to depose the said affidavit in reply. He contended that Mawejje Benon did not attach on his affidavit in reply any written authority from the Directors of the Respondent to depose the said affidavit in reply.

Counsel for the applicant further submitted that the said Mawejje stated that he was a treasurer and that he deposes the affidavit in that capacity but that the application before court did not relate to matters of accounts or financial transactions of the respondent to which he would be in position to depose about but still that would be with the authority from the Directors of the Respondent.

Counsel contended that the affidavit in reply deposed by the said Mawejje Benon on behalf of the Respondent was incurably defective because the deponent is not among the persons authorized to sign documents on behalf of the Company as provided under **Section 59 of the Companies Act 2012**. That the said Mawejje was not a recognized agent of the Respondent as provided for under **Order 3 Rule 1 and 2 of the Civil Procedure Rules** as he did not attach on his affidavit in reply or state anywhere in his affidavit that he was authorized by the Directors of the Respondent to depose the said affidavit. He prayed that the affidavit in reply should be struck out and that this application should stand unopposed.

<u>Submissions in reply by the respondent to the preliminary objection raised.</u>

In reply counsel for the respondent submitted that the provisions of **Section 59 of the Companies Act** as cited by counsel for the Applicant was

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cited out of context as the respondent which is a Co-operative Society is not governed by the Companies Act but rather governed by the provisions of the **Cooperative Societies Act.** Counsel for the respondent contended that any Principal Official of a Cooperative Society does not require any special authorization to sign any document or depose an affidavit on behalf of the Cooperative Society. He contended that the cases cited by counsel for the applicant were cited out of context.

Counsel for the respondent further submitted that the provisions of **Order 3 Rule 1 of the Civil Procedure Rules** as cited by counsel for the applicant are not relevant to this application. He contended that the relevant provision was **Order 29 Rule 1 of the Civil Procedure Rules** which provides that ***"In a suit by or against a corporation any pleading may be signed on behalf of the corporation by the secretary or by any director or anybother principal officer of the corporation who is able to depose to the facts of the case."***

Counsel for the Respondent cited several cases to buttress his submissions. He contended that the said Mawejje Benon being a treasurer of the respondent, was a Principal Officer with the requisite mandate under **Order 29 of the Civil Procedure Rules** to depose an affidavit without any special authorization.

Submissions in rejoinder to the preliminary objection

In rejoinder counsel for the Respondent submitted that although **Order 29 Rule 1 of the Civil Procedure Rules** provides that the Principal Officer can sign pleadings on behalf of the Corporation, the said Mawejje Benon did not state anywhere in his affidavit in reply that he is one of the Principal Officers of the Respondent. Counsel for the Applicant stated that being a Treasurer does not imply that the said Mawejje Benon was a Principal Officer of the Respondent without stating as such in his affidavit in reply. That the said Mawejje does not state anywhere in his affidavit in reply that he is able to depose to the facts of the case which is the standard set under **Order 29 Rule 1 of the Civil Procedure Rules.**

Counsel for the applicant submitted in rejoinder that the said Mawejje Benon to qualify to be a Principal Officer of the Respondent he was also supposed to attach proof that he was the treasurer of the respondent and he was one of the principal officers. Counsel for the Applicant cited the

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case of ***The Registered Trustees of Kampala Archdiocese versus Nabitete Nume Mixed Co-operative Farm Limited –H.C.M.A No. 1104 of 2017 (Land Division)*** where this Court held that the rationale for attaching such proof was to ensure that the courts are dealing with the right parties.

Counsel for the appellant contended that the affidavit of Mawejje Benon also suffers similar legal hitches as that of Gerald Mpanju in the said case which was struck out on those grounds. Counsel contended that Mawejje Benon did not attach any proof for purposes of proving that he has the legal mandate to depose the said affidavit on behalf of the Respondent. That the said Mawejje did not attach any proof that he was the treasurer or principal officer of the Respondent.

Counsel for the appellant reiterated his earlier submissions on the preliminary objection.

Decision of Court on the preliminary objection.

It is not disputed that the defendant is a co-operative society. **Order 29 (1) of the Civil Procedure Rules provides that *"In a suit by or against a corporation any pleading may be signed on behalf of the corporation by the secretary or on any director or other principal officer of the corporation who is able to depose to the facts of the case."***

Regulation 24 (1) of the Cooperative Societies Act provides that ***"Every registered society shall elect a committee consisting of –***

(a) the chairperson, vice chairperson and treasurer; and
(b) Not less than two nor more than six members.

The word principal is defined in Black's Law Dictionary Ninth Edition as ***"Chief; primary; most important".***

Since a treasurer must be one of the officers to constitute a committee in a co-operative society he or she qualifies as any other principal officer envisaged under **Order 29 Rule 1 of the Civil Procedure Rules** and can therefore competently swear an affidavit on behalf of the Co-operative Society.

I agree with the submission by counsel for the respondent that the respondent is not governed by the Companies Act but by the provisions of the Co-operative Societies Act. It is my considered view that any Principal officer envisaged under **Order 29 Rule 1 of the Civil Procedure Rules** would not

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require any special authorization to sign any document or depose an affidavit as the law does not require so.

In the case of ***The Registered Trustees of Kampala Archdiocese versus Nabitete Nnume Mixed Co-operative Farm Limited-H.C.M.A No. 1104 of 2017 (Land Division)*** which was cited by counsel for the Applicant, the deponent was not authorised to swear an affidavit on behalf of the Respondent because he was not a Trustee who by law is the only person allowed to represent the applicant and they could only appoint someone to represent them if they so wished and evidence to that effect would be required. The case is distinguishable from this one since the deponent who swore the affidavit in reply is authorised by law to do so. The preliminary objection to that effect is therefore overruled.

Issue one: Whether the Applicants instant application discloses sufficient or good reasons for enlargement of time for filing a Notice of Appeal and an appeal against the Judgment and Decree in Civil Suit No. 1559 of 2000.

Submissions by Counsel for the Applicant

Counsel for the Applicant cited **Order 51 Rule 6 of the Civil Procedure Rules** that allows a party to seek leave of court to enlarge time where limited time is fixed for doing an act or taking proceedings under the rules or any order of court. He cited **Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act** that grants this Court expansive inherent powers in granting remedies for purposes of meeting the ends of justice.

Counsel further submitted that for an application for extension to file a Notice of Appeal and an appeal to be allowed, the applicant must disclose sufficient or good reasons which relate to the inability or failure to take a particular step in time. He cited the case of ***Andrew Bamanya versus Shamsherali Zaver –C.A Civil Application No. 70 of 2001 cited in Eriga versus Vuzzi &2 others-H.C.M.A No.09 of 2017*** where the Court held that mistakes, faults, lapses and dilatory conduct of Counsel should not be visited on the litigant, and further that where there are serious issues to be tried, the court ought to grant the application.

Counsel for the applicant cited several other authorities to buttress his submissions.

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Counsel for the applicant submitted that the applicant adduced evidence under paragraph 6 & 7 of the affidavit in support that although the judgment vide **Civil Suit No. 1559 of 2000** was issued on the **14th day of June 2017,** the Applicant's then lawyers, M/S Kizito Lumu & Co. Advocates did not inform the Applicant through its representatives/ officers about the said Judgment until the 24th day of July 2017. That the said lawyers also contended that they were not served with any judgment notice prior to the issuance of the said judgment.

Counsel submitted that Paul K.Zziwa adduced evidence under paragraph 8 and 9 of the supportive affidavit that upon being notified about the decision in the said judgment and having perused it together with Rev. Father Gerald Mpanju who was the then C.E.O of Kampala Archdiocese Land Board and also after obtaining advise from the Applicant's lawyers, a decision was made to appeal against the said judgment and the instructions to appeal against the said judgment were given to the Applicant's other lawyers **M/S Buwule & Mayiga Advocates** but by then the time within which the Applicant was supposed to file a Notice of Appeal had lapsed and they were advised by their lawyers that the Applicant had to first file an application for leave to file a Notice of Appeal out of time.

Counsel further submitted that the Applicant had previously filed an application for leave to file a Notice of Appeal out of time vide **Miscellaneous Application No. 1104 of 2017** but unfortunately its former lawyers in the said application failed to advise the applicant's officers /representatives on the appropriate proper person to depose the affidavit in support on behalf of the Applicant which led to the striking out of the Applicant's said application on technical grounds. That although the ruling was delivered on the 16th August 2019, the Applicant's lawyers in the said application did not notify the Applicant about the decision in the said application.

Counsel contended that the circumstances through which the Applicant got to know the said ruling are articulated under paragraphs 13, 14, 15 and 18 of the affidavit in support.

Counsel contended that the applicant's former lawyers in the said application were negligent in making a follow up in the said application to the extent that they did not turn up in court on the date when the ruling was delivered which was an act of negligence on the side of the applicant's former lawyers.

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Counsel further contended that the instant application was not intended to make a mockery of justice but was intended to address and redress the gross injustice the applicant has suffered as a result of its successive lawyers negligence, mistakes, blunders, lapses and errors and that the applicant should not be a victim of their former lawyers ineptitude because they had no hand in how they handled their matter. Counsel for the applicant cited several authorities to buttress his submissions.

Counsel further contended that the applicant in this application has disclosed sufficient or good reasons for enlargement of time for filing a Notice of Appeal and an appeal against the **Judgement and Decree vide Civil Suit No. 1559 of 2000** and prayed that the application be granted.

Submissions of Counsel for the Respondent on issue one.

Counsel for the Respondent submitted that the Applicant has come to Court tainted with dirty hands by alleging that it was not aware of the judgment in the main suit on the day it was delivered. That it was not true that the Applicant did not know of the dismissal of **Miscellaneous Application No. 1104 of 2017** on 16th August 2019 until August 2020. Counsel submitted that the court record at page 13 of the typed Court judgment indicated that when the judgment was passed the applicant's representatives were in court. That there was uncontroverted evidence of the respondent in paragraph 6 and 10 of the affidavit in reply that on the 14th June 2017 when the main suit was dismissed, a one Luberenga one of the applicant's agents for the applicant was in court and therefore the Applicant knew of the judgment. Counsel contended that the evidence of the Respondent vide paragraph 5,6,7 and 10 of the affidavit in reply by Mawejje Benon was not challenged by any of the persons mentioned by Mawejje Benon as having been present in the court on the date of judgment. That none swore an affidavit to deny the same.

Counsel for the Respondent further submitted that the affidavit in rejoinder of Paul K. Ziwa who was never in court is incapable of making any meaningful rejoinder to the averments of Mawejje Benon and that the said affidavit was incompetent in as far as it purports to introduce fresh matters in rejoinder which should have been raised in the affidavit in reply. That the first annexture to the affidavit in rejoinder is not evidence in itself in absence of any deposition from Kizito Lumu & Co. Advocates.

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Counsel for the respondent contended that the said document raises new matters and the 2nd annexture simply intended to purge the gaps in the applicant's application raised by Mawejje Benon in paragraph 14 of his affidavit in support. That such depositions in rejoinder are bad in law and inadmissible since an affidavit in rejoinder is not supposed to introduce any new matters but it is simply supposed to clarify and address the matters raised in the reply. He prayed that court rejects the offending parts of the affidavit in rejoinder including the purported annextures. He cited the case of ***Mutembuli Yusuf versus Nagwomu Moses Musamba and another –H.C.E .P No. 13 of 2016*** to buttress his submissions.

Counsel for the respondent further submitted that it was astonishing that soon after **Miscellaneous Application No. 1104 of 2017** was dismissed on 16th August 2019, the Applicant granted Powers of Attorney to the deponent attached to the affidavit in support as annexture "A". That this was a clear indication that when the Applicant learnt that the deponent lacked the authority to bring the application, and it granted authority to Paul K Ziwa on 30th September 2019 to depose an affidavit on its behalf. That this was just one and a half months from the dismissal of **Miscellaneous Application No. 1104 of 2017**. That this application was not filed in Court until after one year.

Counsel contended that this was not conduct of a vigilant and serious litigant who desires to have matters heard and disposed of by court in an expeditious manner. He further contended that the late filing of this application is not a result of ignorance but negligence and reckless disregard of procedure by the Applicant who chose to sit on its rights to appeal and subsequently sat on its right to seek leave for enlargement of time to allow the appeal out of time and are now shifting blame on their lawyers which is not an uncommon tactic in an application of this kind. That it was even more suspicious and surprising that the applicant has shown no evidence that they have taken any remedial action against their former lawyers they blame for negligence and dilatory conduct.

Counsel for the Respondent cited the case of ***Alfred Tajar versus Uganda (E.A.C.A) No. 167 of 1967*** where Court held that major inconsistencies will lead to the evidence of a witness being rejected but minor inconsistencies will not have the same result unless they point to deliberate falsehoods.

Counsel contended that the inconsistencies shown in the applicant's application are major and that the applicant's lies shamelessly challenge the integrity of the court by denying what is even on court record. Counsel further

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submitted that litigation should come to an end and that this application was an afterthought having been brought four years after the dismissal of **Civil Suit No. 1559 of 2000** and exactly one year after the dismissal of **Miscellaneous Application No. 1104 of 2017.** He further contended that this case was filed in the year 2000 and to condone dilatory conduct like what has been demonstrated by the Applicant would perpetuate endless backlog in Court and the administration of justice.

Counsel further submitted that when one chooses to be represented by counsel they wholly submit their representation to their counsel and they cannot turn around to deny the same. That the Respondent has adduced uncontroverted evidence that at all material times no trustee of the Applicant ever attended court but were represented through their lawyers M/S Kizito, Lumu & Co. Advocates who were served with the judgment notice. Counsel contended that the Applicant never filed any affidavit from its former advocates to support its allegations that counsel never informed them or that the lawyers were never served with court notices. That no averment was advanced by the Applicants to show that they had taken action against their former lawyers whom they blame for not executing their instructions. He cited the case of ***Captain Phillip Ongom versus Catherine Nyero Owota –S.C.C.A No. 14 of 2001*** where it was held that ***"... a litigant ought not to bear the consequences of the advocate's default unless the litigant is privy to the default, or the default results from the failure on part of the litigant to give the advocate due instructions...".*** Counsel cited several other cases to buttress his submissions.

Counsel for the respondent contended that the applicant sat on its right to appeal in time and therefore cannot claim that they were denied a fair hearing when it failed to take essential steps at the right time. That there was no evidence to show that the applicant had ever requested for certified copies of proceedings to facilitate them prepare an appeal.

Counsel for the Applicant further submitted that the Applicant has not demonstrated the basis of its erroneous belief that it has high chances of succeeding in the intended appeal apart from prejudicing the Respondent who has litigated over the suit property for over 21 years. That the Applicant has failed to demonstrate any sufficient or good reason to warrant enlargement of time to file a Notice of Appeal. He prayed that this application be dismissed with costs.

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Counsel for the Applicant filed submissions in rejoinder in essence reiterating his earlier submissions. The details of the submissions in rejoinder are on record.

Decision of Court on Issue one.

Order 51 Rule 6 of the Civil Procedure Rules provides that ***"Where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by order of the court, the court shall have power to enlarge the time upon such terms, if any, as the justice of the case may require, and the enlargement may be ordered although the application for it is not made until after the expiration of the time appointed or allowed; except that costs of any application to extend the time and of any order made on the application shall be borne by the parties making the application, unless the court shall otherwise order."***

It was held in the case of ***Mulindwa George William versus Kisubika Joseph – S.C.C.A No. 12 of 2014*** that the Court's discretion to extend time depends on the following considerations:

i. The applicant must show sufficient reason why it was not possible to lodge an appeal in the time prescribed by law. Such reason must relate to inability or failure to take a particular step in the proceedings.

ii. Each application must be viewed by reference to the criterion of justice and it is important to bear in mind that time limits are there to be observed and justice may be defeated if there is laxity.

iii. The length of delay.

iv. The reason for delay.

v. The possibility or chances of success.

vi. The degree of prejudice to the other party.

The applicants blame their lawyers for the delays in filing the intended Notice of Appeal as they were not informed of when the Judgement vide **Civil Suit No.**

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1559 of 2000 and the ruling vide **Miscellaneous Application No. 1104 of 2017** were delivered.

The applicant in this application has not demonstrated the possibility or chances of success in their intended appeal. It is my considered view that it is not enough to just state that the applicant has got high chances of success in the appeal without briefly demonstrating how. This was not done in this application.

The Judgment in this case was delivered way back on the 14th June 2017 and it is now over four years ever since the said judgment was delivered. It is my considered view that the Applicant having realised that they were not informed by their counsel when the Judgement was delivered, they should have been vigilant in the subsequent proceedings by either attending the proceedings or even inquiring from court as to when the ruling would be delivered. It is not right in my view to peddle the same excuse all the time as if one cannot learn from past mistakes. Litigation has to come to an end.

I therefore agree with the observation of my learned Brother in the case of ***Matovu Charles Kidimbo versus Lukwata Yusuf and others- H.C.M.A No. 40 of 2017 arising from H.C.C.S No. 146 of 2015 (Mpigi High Court)*** where he held that there should be a time limit as to when a litigant should hide under the cover of the mistake/negligence of his or her counsel. Surely it should not take more than one year for a litigant to realise that his or her ruling was delivered. It demonstrates laxity on part of the affected litigant and that cannot be condoned by the Court.

In this case the ruling in **Miscellaneous Application No. 1104 of 2017** was delivered on the **16th August 2019.** The deponent of the supportive affidavit was given authority to depose affidavits on behalf of the Applicant on the **30th September 2019** and I am sure this was done as a result of the said ruling. This application was filed in this Court on the **15th October 2020** which is over a year when the said ruling was delivered! This is not conduct of a vigilant or serious litigant who desires to have their matters disposed of by court expeditiously. A vigilant litigant should be able to find out from the court the progress of his or her case especially where they think it has delayed. A litigant who sits back to just get feedback from his or her Advocate is equally to blame for the inordinate delay that could have been caused by his or her Advocate especially where the same litigant has suffered a similar experience as it was in this case.

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It was held in the case of ***Birkett versus James [1977] 3 W.L.R 38*** that statutory provisions imposing periods of limitation within which actions must be instituted seek to serve several aims: One is to protect the defendants from being vexed by stale claims relating to long past incidents and to ensure that a person may with confidence feel that after a given time he or she may regard as finally closed an incident which might have led to a claim against him or her.

Litigation must come to an end especially in this case that has taken over twenty years in our system!

Article 126 (2) of the Constitution provides that ***"In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles-***

(a)----

(b) justice shall not be delayed.

The applicant has inordinately delayed the prosecution of this case hiding under the cover of the mistake/negligence of their counsel which in my view they have abetted as I have already explained. The continued use of that defence to get away with the delays would amount to abuse of court process and to the prejudice of the respondent.

I have not resolved the technical issues that were raised by counsel for the respondent as that is now superfluous.

I therefore find that this application has not disclosed sufficient or good reasons for enlargement of time for filing a Notice of Appeal and An appeal against the **Judgment and Decree Vide Civil Suit No. 1559 of 2000.**

The application will therefore be dismissed with costs to the Respondent.

Hon. Justice John Eudes Keitirima

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