

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS APPLICATION NO. 1902 OF 2022
(ARISING FROM taxation no. 42 & 48 OF 2021 AND ALSO
EXECUTION APPLICATIONS 628 OF 2018 & CIVIL SUIT 59 OF
2010).

KAGORO EPIMARC.....APPLICANT
VERSUS

1. JOTENA

2. EDWARD NSUBUGA.....RESPONDENT

BEFORE THE HON. MR. JUSTICE TADEO ASIIMWE

RULING:

This is an application brought by way of notice of motion under Section 96, 79, order 51 rule 6 & order 52 rule 1 & 3 of the Civil Procedure Rules seeking for orders that leave be granted to the applicant to appeal out of time against the decision of the registrar in taxation applications number 42 of 2021 & 48 of 2021, that court pronounces itself on the 2 orders issued by Justice Wolayo and Justice Dancan Gaswaga dismissing applications in March 2019 and February 2020 respectively and costs be provided for.

Grounds for the application.

The grounds for the application are briefly stated in the application but are further expounded in the affidavit in support of the application sworn by Kagoro Epimac, the applicant.

In summary the grounds are that the applicant is aggrieved by the decision of the registrar in awarding to 1st applicant shs 89,962,014/= in Miscellaneous Application No. 42 of 2021 & shs. 121,163,388 to the 2nd applicant in taxation Application No.48 of 2021 which he intends to appeal.

That the applicant has sufficient cause to warrant extension of time to the applicant to appeal against the decision.

When the matter came up for hearing on 28th November 2022, the applicant was represented by Counsel Kamusiime while the 1st respondent had not filed a reply despite service. The 2nd respondent was represented by Counsel Musa Nsimbe. Both advocates were directed to file submissions which they did.

In support for the application, Counsel for the applicant submitted that since the 1st applicant did not file a reply, he is not opposing the application and court should find as such. He further submitted relying on the affidavit of the applicant citing the case history involving a number of application. He emphasized that the existence of the 2 orders in the same matter by different Judicial officers and between the same parties is sufficient cause to warrant the grant of this application to appeal out of time to enable court analyze the issues and facts surrounding the 2 orders. He cited a number of authorities to support his position including the case of Sango KANANURA ANDREW KANSIIME VS RICHARD HENRY KAIJUKA REFERENCE NO. 15OF 2016 where it was stated that for sufficient reasons court has discretion to extend time. That even where there is delay court may grant extension if shutting out the application may appear to cause injustice.

On the other hand, counsel for the second respondent cited a number of authorities arguing that the applicant disclosed no sufficient grounds for extension of time. That by the applicant taking a decision to file HCMA no. 628 of 2018 and not to appeal the amounts awarded in taxation

application no. 48 of 2021 amounted to taking a wrong decision and is not a good cause for extension of time.

He concluded by praying to court to find that the applicant was guilty of dilatory conduct of 19 months after the decision of the registrar.

Resolution:

I have had the opportunity to consider both the pleadings, the affidavits for and against this matter and the submissions of parties, and shall consider them in this ruling.

The gist of this application is whether it discloses sufficient cause to warrant extension of time to appeal against the decision of a taxing master. The position of the law is that for court to exercise its discretion to grant such applications, the applicant has to demonstrate that he/she has sufficient cause to have the appeal admitted out of time.

Sufficient cause must relate and include the factors which caused inability to file the appeal within the prescribed period of 30 days. **See Tight Security Ltd vs Chartis Uganda Insurance Co. Ltd HCMA 8 of 2014**

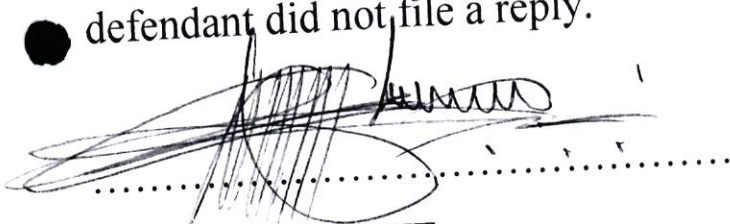
In the case of Hadondi Daniel vs Yolam Egondi Court of Appeal Civil Appeal No 67 of 2003 court held that;

"it is trite law that time can only be extended if sufficient cause is shown. The sufficient cause must relate to the inability or failure to take necessary step within the prescribed time. It does not relate to taking a wrong decision. If the applicant is found to be guilty of dilatory conduct, the time will not be extended."

In this case counsel for the applicant stated that there is sufficient cause to warrant the extension of time since there exists of the 2 orders in the same matter by different judicial officers and between the same parties. Further that the fact that the taxing master gave excessive costs is equally sufficient reason to warrant extension of time.

I am honestly surprised by the arguments of the applicant's counsel as regards this application. His arguments instead support the intended appeal and does not give sufficient cause/reasons as to why the applicant failed to take steps to file his appeal in time.

Consequently I find no sufficient cause advanced by the applicant to grant this application. I therefore find no merit in this application and the same is hereby dismissed without costs since the 1st applicant owned by the 2nd defendant did not file a reply.

A handwritten signature in dark ink, appearing to read 'Tadeo Asiimwe', is written over a horizontal dotted line. The signature is stylized with loops and a long horizontal stroke extending to the right.

TADEO ASIIMWE

JUDGE

12/12/2022.