

**THE REPUBLIC OF UGANDA**

**IN TEHHIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO.1853 OF 2022**

5 ***(Arising from Taxation Application No.2 of 2022)***

***(Arising from Miscellaneous Application No.886 of 2021)***

***(Arising out of Civil Suit No. 0451 of 2021)***

**BUKENYA MUHAMMAD HARUNA:::::::::::::::::::::::::::::::::APPLICANT**

10

**VERSUS**

**KIBERU HAMIDU:::RESPONDENT**

15 **Before: Lady Justice Alexandra Nkonge Rugadya.**

**Ruling.**

**Introduction:**

20 This application for extension of time within which to file an appeal or taxation  
reference against the decision of the learned Deputy Registrar dated 14<sup>th</sup> July  
2022 vide ***Taxation Application No.2 of 2022*** was brought by way of notice  
of motion under the provisions of ***Section 33 of the Judicature Act Cap.13,***  
***Sections 96 & 98 of the Civil Procedure Rules Cap.71, and Order 51 rule***  
***6 as well as Order 52 rules 1 & 2 of the Civil Procedure Rules SI 71-1.***  
It also seeks that the costs of the application be provided for.

25



**Grounds of the application:**

The grounds upon which the application is premised are contained in the affidavit in support of counsel Asaba Paul Christian, an advocate of the High Court practicing with **M/s Praxlex Advocates**.

- 5 He averred that on 14<sup>th</sup> July 2022, the learned Deputy Registrar/taxing master made a ruling that was allegedly a result of improperly applying the law, facts, principles and benchmarks that ought to be taken into account by a taxing officer, and that the applicant being aggrieved with the said decision, instructed his lawyers to seek a remedy.
- 10 That on 22<sup>nd</sup> July 2022, an appeal against the decision was filed via ECCMIS whilst a physical copy of the same was stamped at the registry but upon following up on the same, the deponent found that the said appeal had been improperly filed under the dismissed and closed **Civil Suit No.451 of 2021** which resulted into the appeal not being properly filed or recognized by the
- 15 ECCMIS system as filed.

That the said mistake was discovered two months after the statutorily provided time for filing an appeal had expired and that this mistake or mishap was caused by counsel's unfamiliarity with the filing process on ECCMIS and therefore the same should not be visited on the applicant who is prone to

20 suffer an injustice if the said appeal is not heard.

In addition, that the applicant's advocates have filed this application without inordinate delay and that it is not only in the interest of justice, but also fair, just and equitable that this application is granted to enable the applicant's appeal to be heard on its merits.

25 **Reply by the respondent:**

The respondent opposed the application through an affidavit in reply deposed by Counsel Kamoga Joshua an advocate of the High Court practicing with **M/s LIN Advocates**, the respondent's representatives.

He stated that the affidavit in support of the application is riddled with

30 material falsehoods and that whereas the taxation ruling was delivered on





14<sup>th</sup> July 2022, the same was conducted pursuant to the law, correct principles and proper discretion was exercised by the taxing officer.

That while counsel is aware of the introduction of the E-filing and ECCMIS, annexure 'B' of the application was not sufficient proof that the purported application was ever filed in court.

Thus the same is suspect of being a concoction, fabrication, and falsehood as the applicant has not attached any substantial proof to show that the said application was ever filed since the said annexure does not show whether it had a draft number which is the only proof of filing a suit of the same nature, whether erroneously, correctly or otherwise.

Further, that this application having been filed almost 3 months from the date of the ruling or order, the intended purported appeal is an after thought intended to deny the respondent an enjoyment of the fruits of his judgment and that should this court be inclined to find that the appeal was erroneously filed by counsel under another file, counsel should be penalized for the negligence by the applicant or his counsel by paying costs of this application.

That there is no injustice to be suffered by the applicant since the respondent's bill of costs was taxed inter party, and execution is underway without any pending application for stay of execution of the proceedings pending before the Deputy Registrar vide **High Court Miscellaneous Application No.275 of 2022.**

From the record, the applicant did not file an affidavit in rejoinder to the averments set out in the respondent's affidavit in reply.

**Representation.**

The applicant was represented by **M/s Praxlex Advocates** while the respondent was represented by **M/s LIN Advocates**. Both counsel filed written submissions in support of their respective client's case.



**Consideration of the application.**

I have carefully reviewed the evidence and submissions of both counsel, the details of which are on court record, and which I have taken into account in considering whether this application merits the prayers sought.

- 5 The main ground upon which this application is premised is mistake, and negligence of counsel in properly filing the intended appeal. It was deponed on behalf of the applicant that the appeal had been improperly filed under the dismissed and closed **Civil Suit No.451 of 2021** which resulted into the appeal not being properly filed or recognized by the ECCMIS system as filed.
- 10 That the said mistake was discovered two months after the statutorily provided time for filing an appeal had expired and that this mistake or mishap was caused by counsel's lack of familiarity with the filing process on ECCMIS and therefore the same should not be visited on the applicant who is prone to suffer an injustice if the said appeal is not heard.
- 15 It is now settled law that an applicant for the extension of time must demonstrate to court's satisfaction, that there was sufficient cause for the failure to file the appeal within the prescribed time.

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

- 20 ***"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."***

- 25 The Supreme Court in the case of **Attorney General Vs. AKPM Lutaaya SCCA No.12 of 2007 at page 14**, guided that;

- "This court has in several cases held that inadvertence of counsel can constitute sufficient reason to extend time. In Kaderbhai & Anor vs. Shamsherali & ors (supra) Okello, JSC, held that the inadvertent failure of counsel to serve a Notice of Appeal and to***
- 30





***copy to and serve the letter requesting for the record of proceedings constituted the necessary sufficient cause.”***

It is also not in dispute that the applicant’s failure to file the intended appeal within the prescribed time was premised on the fact that counsel was not familiar with the newly introduced Electronic Court Case Management Information System which this court acknowledges.

A mistake, negligence, oversight or error on the part of counsel should not be visited on the litigant. Such mistake, or as the case may be, constitutes just cause entitling the trial judge to use his discretion so that the matter is considered on its merits. **(See: *Banco Arabe Espanol Vs. Bank of Uganda, SCCA No. 8 of 1998*)**

In the instant case, it is the finding of this court that ***Civil Suit No. 451 of 2021*** was filed by the applicant. As per the finding of court dated 26<sup>th</sup> November, 2022, it had abated.

The taxation ruling was made on 14<sup>th</sup> July, 2022 by Hw Kintu Zirintusa, Assistant Registrar of this Division. The tax appeal was filed in this court on 22<sup>nd</sup> July, 2022.

***Section 79 of the Civil Procedure Act, Cap. 71*** clearly provides that an appeal against the order of the Registrar must be entered within seven days of the date of the order.

The court may however for good cause admit an appeal though the period of limitation as prescribed has elapsed.

**Decision of court:**

The order which the applicant seeks to appeal against was made on 14<sup>th</sup> July, 2022. The appeal/application against the order was filed on 22<sup>nd</sup> July, 2022.

This application for extension was filed on 24<sup>th</sup> October, 2022. This therefore means that the appeal/application was filed before the leave for extension of time was filed.



It therefore took several months for the intending appellant to lodge this application and the excuse that he gave was that on 22<sup>nd</sup> July 2022, the appeal against the decision was filed via ECCMIS.

5 A physical copy of the same was stamped at the registry but upon following up on the same, the deponent found that the said appeal had been improperly filed under the dismissed and closed **Civil Suit No.451 of 2021** which resulted into the appeal not being properly filed or recognized by the ECCMIS system as filed.

10 That the said mistake was discovered two months after the statutorily provided time for filing an appeal had expired and that this mistake or mishap was caused by counsel's unfamiliarity with the filing process on ECCMIS and therefore the same should not be visited on the applicant who is prone to suffer an injustice if the said appeal is not heard.

15 In addition, that the applicant's advocates have filed this application without inordinate delay and that it is not only in the interest of justice, but also fair, just and equitable that this application is granted to enable the applicant's appeal to be heard on its merits.

20 I have carefully read the arguments raised by both sides. With all due respect, the applicant does not deny the fact that the application to file the appeal out of time should have been filed before the appeal itself.

By his own argument the mistake on ECCMIS was realised two months later but this application was filed on 24<sup>th</sup> October, 2022, more than three months after the order was made. The physical copy bears the date of 22<sup>nd</sup> July, 2022. This was a day after allowed by the Act to file the appeal.

25 I have carefully checked both the dismissed suit and the taxation application and found that the appeal does not appear anywhere on ECCMIS. Even if court were to accept the reason given by the applicant, the draft number of the appeal would be reflected under the dismissed suit.



Indeed, the annexure attached to the application as the appeal does not show whether it had a draft number which is the only proof of filing, whether done erroneously, correctly or otherwise.

5 Besides, the extra month within which this application ought to have been filed (after realising the mistake as alleged) therefore remains unaccounted for.

It would besides be setting a dangerous precedent for this court to allow the excuse given by counsel of lack of familiarity with the current system as cause for extension of time in respect of an application of this nature.

10 In the circumstances, I am therefore inclined to agree with the submissions by counsel for the respondent that this application is more or less an afterthought, the objective of which is to delay the respondent from enjoying the fruits of the taxation ruling.

Costs to the respondent.


15 It is so ordered.

.....

**Alexandra Nkonge Rugadya**

**Judge**

20 **9<sup>th</sup> May, 2023.**

*Delivered by mail*  
  
9/5/2023