

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)**

**MISCELLANEOUS CAUSE NO.33 OF 2023**

**(ARISING FROM CIVIL SUIT NO.045 OF 2016 IN THE CHIEF  
MAGISTRATES COURT OF ENTEBBE AT ENTEBBE)**

**SULA MUTUMBA KAWUMA:.....APPLICANT**

**VERSUS**

**RUTEBEMBERWA JUSTUS:..... RESPONDENT**

**BEFORE HON LADY JUSTICE ELIZABETH JANE ALIVIDZA**

**RULING**

**REPRESENTATION**

The Applicant was represented by Counsel Baraza Eugene.

The Respondent was represented by Counsel Andrew Wamina.

**INTRODUCTION**

The Applicant filed this Application under *Section 33 of the Judicature Act, sections 79, 80 & 98 of the Civil Procedure Act Order 52 Rules 1 and 3 of the Civil Procedure Rules* seeking order that;

1. Leave be granted to the Applicant to file an Appeal out of time.
2. Costs of the Application be in the cause.

The grounds of this Application are set out in the Notice of Motion and Affidavit in support of the Application deposed by the Applicant.

The grounds are that;

- a) The Applicant is dissatisfied with the judgment/ruling in Civil suit No.45 of 2016 delivered on the 11<sup>th</sup> October 2022 by Her Worship STELLA OKWONG PACULAL which declared the Respondent herein as lawful owner of suit land comprised in Busiro Block 522 Plot 82 land at Bumpenje among other orders.

b) After delivery of the said judgment, the Applicant informed his former lawyer that he was not satisfied with the judgment and sought his advice on how to appeal the judgment. He then asked his former lawyers to file a notice of Appeal and recover copy of the proceedings to enable him appeal the said decision in this honorable Court.

c) The Applicant was shocked when served with a taxation hearing notice in respect of civil suit no. 045 of 2016 in preparation for execution of the said orders on the 19<sup>th</sup> January 2023. The Applicant was informed by his former lawyers that their clerk erred by not filing the notice of Appeal when he had gone to request for record of proceedings from the lower court.

d) The Applicant has since learned that the notice of Appeal was never filed by his former lawyers hence instructing new lawyers to handle his matter before this honorable Court. The delay to file notice of Appeal was not caused by the Applicant but rather mistake of his former lawyer.

e) The Respondents has since the said ruling threatened to evict the Applicant from his land comprised in Busiro Block 522 plot 82 land at Bumpeje and he shall suffer substantial loss if the extension is not granted. That the Applicant's appeal will be rendered nugatory if leave to file an Appeal out of time is not granted.

f) That the Applicant's Appeal has high chances of success in this honorable Court and it is in the interest of justice that leave be granted to the Applicant to file an appeal out of time.

The Respondent in his Affidavit in reply to the Application stated that the Applicant does not have any valid grounds of Appeal. That there is no valid reason to warrant the granting of an order for leave to Appeal. That the intended Appeal does not have any reasonable chances of success. That the Applicant will suffer neither injustice nor prejudice and the inordinate delay has not been explained at all.

The Respondent also stated that as the successful party, he has a right to enjoy the fruits of the judgment entered in his favor and that this Application is



intended to delay him as a successful party from obtaining the fruits of his  
60 judgment.

That the judgment was passed on the 11<sup>th</sup> of October 2022 and there was an  
inordinate delay to file an Appeal which was intended to defeat the execution of  
the judgement. That the Applicant shall not suffer any substantial loss if this  
Application is denied but as successful owner of the suit land and in possession  
of the same, the Respondent shall suffer substantial loss since he will be  
66 deprived usage of his land.

That the Applicant has not satisfied the requirements for the grant of the orders  
sought and the Application should be disallowed with costs

### **BACKGROUND**

The Respondent filed Civil Suit No. 045 of 2016 in the Chief Magistrate's court  
of Entebbe at Entebbe against the Applicant seeking orders of a permanent  
72 injunction restraining the Appellant from trespassing on the Respondent's land  
comprised in Busiro Block 522 Plot 82 land at Bumpenje, to the extent of 67  
decimals. Judgement was delivered in favor of the Respondent on the 11<sup>th</sup>  
October 2022.

This Application was filed on 1<sup>st</sup> March 2023 seeking leave to Appeal against the  
judgment and orders obtained in Civil Suit No.045 of 2016. The Application was  
78 fixed for 26<sup>th</sup> June 2023 but it would not be heard since Counsel for the  
Applicant was unavailable. On 17<sup>th</sup> August 2023, Counsel appeared before Court  
and were given timelines to file written submissions.

Counsel filed written submissions that I have taken into consideration.

### **ISSUES RAISED**

There is only one major issue. This is; Whether the circumstances of the case  
84 warrant grant of leave to file Appeal out of time?

## RESOLUTION

Issue: *Whether the circumstances of the case warrant grant of leave to file Appeal out of time?*

Law on leave to Appeal is very clear.

90 Section 79(1) of the Civil Procedure Act provides for limitation for Appeals, it states;

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*

96 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.*

What amounts to good cause?

In the case of Pinnacle Projects Ltd v Business in Motion Consultants Ltd, Miscellaneous Application No. 362 of 2010, Justice Hellen Obura (as she then  
102 was) noted that that;

*“the phrase ‘good cause’ is not defined under the rules but is defined in Black’s Law Dictionary, 7<sup>th</sup> Edition as a legally sufficient reason.” However, the phrase ‘sufficient cause’ that is normally used interchangeably with the phrase “good cause” has been explained in a number of authorities.”*

In the Supreme Court case of Boney M. Katatumba - vs - Waheed Karim, Civil Application No. 27 of 2007, Justice Mulenga, JSC, noted that:  
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*“... the court may, for sufficient reason, extend the time prescribed by the Rules. What constitutes “sufficient reason” is left to the Court’s unfettered discretion. In this context, the court will accept either a reason that prevented an applicant from taking the essential step in time, or other reasons why the intended*



114 appeal should be allowed to proceed though out of time. For example, an application that is brought promptly will be considered more sympathetically than one that is brought after unexplained inordinate delay.

But even where the application is unduly delayed, the court may grant the extension if shutting out the appeal may appear to cause injustice."

120 I am also aware that the main consideration for the grant of leave is whether prima facie there are grounds of Appeal which merit serious judicial consideration. Leave to Appeal will be given where; the Court considers that the Appeal would have prospect of success; or there is some compelling reason why the Appeal should be heard.

126 In Sango Bay Estates Ltd vs. Dresdener Bank & A' nor [1971] EA 17; it was held that leave to appeal from an order in civil proceedings will normally be granted where *prima facie* it appears that there are grounds of appeal that merit serious judicial consideration. Secondly, the application must have been brought without undue delay.

132 Counsel for the Applicant submitted that the Application was made without inordinate delay. That the Applicant learnt that the Appeal had not been filed when he was served with the taxation notice on the 19<sup>th</sup> January 2023. That upon such finding, the Applicant instructed his current lawyers who filed this application on 1<sup>st</sup> March 2023 without any reasonable delay.

The Respondent submitted that there is nothing in the Notice of Motion or Affidavit in support to demonstrate that the Applicant has been diligent in pursuing the Appeal. That there is no explanation as to why he waited for March 2023 to file this Application when he allegedly discovered mistake of Counsel on the 19<sup>th</sup> January 2023

138 Counsel for the Respondent further argues that there has been an inordinate, inexcusable and unexplained delay in pursuing the Appeal and filing this

Application and as such there is no sufficient cause demonstrated to persuade the Court to grant this application.

144 It was further submitted for the Respondent that the Applicant has not demonstrated that he has a reasonable likelihood of success in the intended Appeal, and that he has a good Appeal on the merits or that there is a dispute that ought to be examined by this Court on account of serious errors in the trial.

I note that the lower Court judgment was entered on the 11<sup>th</sup> of October 2022. The Applicant in his Affidavit in support of this Application stated that he believed that his former lawyers had lodged the Appeal only to be served with taxation hearing notices in Civil Suit No. 045 of 2016.

150 Under paragraph 3 of his Affidavit in support of this Application, the Applicant stated that he instructed his former lawyers C/O M/S S.K Kiza & Co. Advocates to appeal the said decision. That he was shocked on the 19<sup>th</sup> January 2023 when he was served with taxation hearing notices by the Respondent. The Applicant then filed this Application in March 2023.

156 Instructing an Advocate to take action and failure to do as instructed should not be blamed on a client. The control a client has over an Advocate is limited to following up.

In *Kaderbhai & Anor vs. Shamsherali & ors S.C. Civil Application No. 20 of 2008* Okello, JSC, held that

162 “inadvertent failure of counsel to serve a Notice of Appeal and to copy to and serve the letter requesting for record of proceedings constituted the necessary sufficient cause.”

Furthermore, in the case of *Roussos v. Gulam Hussein Habib Virani, Nasmudin Habib Virani, S.C. Civil Appeal No. 9 of 1993* it was decided that;

“a mistake by an advocate, though negligent, may be accepted as a sufficient cause, ignorance of procedure by an unrepresented defendant may amount to



168 sufficient cause, illness by a party may also constitute sufficient cause, but failure to instruct an advocate is not sufficient cause”

This principle was further stated in Andrew Bamanya v. Shamsherali Zaver, C.A Civil Application No. 70 of 2001 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.

174 It would be an injustice to deny the Applicant the right to appeal because of the negligence of his lawyers.

However I am also mindful that this Application may also be a form of delaying tactic to deny the judgment creditor the fruits of his labour.

Therefore to balance both interests, I shall grant leave to appeal on the following grounds.

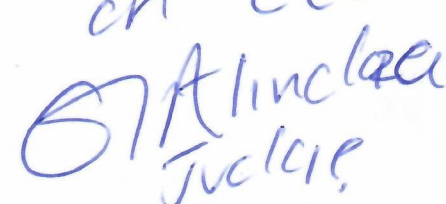
- 180 1. The Applicants deposit security of costs of UGX 3 million by December 2023.
2. The Applicant files memorandum of Appeal with written submissions attached. This will enable the Respondent to also file submissions so that the Appeal is handled expeditiously.
3. The costs are in the cause.

So ordered.

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**Elizabeth Jane Alividza**

**Judge**

**18<sup>th</sup> October 2023**

192 30/10/2023  
Judgment uploaded  
on ECCMIS.  
  
Judge