

IN THE COURT OF APPEAL
AT MENGO
(CORAM: LUBOGO, AG. J. A.)
CIVIL APPLICATION NO.3 OF 1986
BETWEEN
UGANDA COMMERCIAL BANK..... APPLICANT
AND
SEVERIO ORYEDA..... RESPONDENT
(Appeal from a judgment of the high Court of Uganda at Kampala (Mr.
Kato, J.) dated 24th March, 1986
IN
Civil Suit No.2034 Of 1984)

RULING OF LUBOGO, AG. J.A.

Two applications were made on a Notice of Motion accompanied by an affidavit sworn by the applicant an advocate, one was for extension of time to lodge an appeal, and the other was for stay of execution. However, when the application came on for hearing counsel the applicant stated that he would like to abandon the second application dealing with stay of execution as it had been overtaken by events in that the decretal amount had been paid already by the applicant. This leaves only the application for extension of time to lodge the appeal.

In his affidavit counsel stated that he filed a Notice of Appeal on 4th April, 1986 he did not say however, when the judgment was delivered against the applicant. He stated at the bar that the judgment was delivered on 24th March, 1986. On 6th May, he wrote to the Deputy Chief Registrar for a copy of the proceedings for the purpose of filing an appeal, but only received the judgment. On 8th July, 1986 another letter was sent to the Deputy Chief Registrar again requesting for a copy of the proceedings. At the time of hearing the application no such proceedings have been received.

Mr. Womutuba for the respondent submitted that the application should be dismissed for no sufficient reason had been shown. He submitted further that the application should have been

made under Rule 81 of this Court's Rules and not under Rule 4 in which case a copy of the letter to the Deputy Chief Registrar should have been sent to them. He said that the affidavit did not express the desire to appear and whether the appeal was likely to succeed in order to enable the court to determine whether or not the refusal of the application could cause injustice. He referred to National Pharmacy Ltd. v Kampala City Council Court of Appeal Civil Application No.6/79.

I must say from the outset that the application was properly filed under Rule 4 of this Court's Rules. This rule deals with extension of time, which rule 81 deals with the extension of the appeal and computation of time within which the appeal is to be instituted. That being the case the sending of a copy of a letter requesting a copy of the proceedings to the respondent's advocates does not arise.

With regard to "sufficient reason" the affidavit stated that he requested a copy of the proceedings on 6th May, 1986 having filed a Notice of Appeal on 4th April, 1986. The request for proceedings came about 42 days from the date of judgment. The applicant was still within the time to file an appeal, but he had only received a copy of the judgment. On 8th July, 1986 he sent another letter to the Deputy Chief Registrar requesting for the same. It is not known whether he received a reply. It seems up to now he has not yet received a copy of the proceedings.

It would appear that the applicant has taken steps to obtain the proceedings from the court, but the court has so far failed to provide the documents in order to enable the applicant to file the record of appeal. In Mugo & Others V. Wanjiru and Another (1970) E.A. 481 Duffus, p., was referring to Rule 9 of the East African Court of Appeal Rules 1954 which is almost similar to Rule 4 of Court of Appeal for East Africa Rules 1972. He quoted Corrie Ag. J.A. in the decision of Shah v. Jamnadas (1959) E.A. 838 at p.840. Duffus P. went on to say:

"This, however, is only the general rule. This in the case of Shatt V. Tejwant Singh (1962) E.A. 497, this court decided that there was "sufficient reason" where the delay had been attributable entirely to the courts and did not consider the merits of the case."

It would appear to me that a refusal to grant leave to extend time to file an appeal would cause injustice especially as the delay was caused by the court in this case. It is true the affidavit did not state that the prospects of the appeal to succeed were good. On this point it was stated in Mugo v. Wanjiru (supra) by Spry V-P.,

“I would agree to this extent, that I do not think the fact that an appeal appears likely to succeed can of itself amount to a “sufficient reason”. Normally, I think, sufficient reason must relate to the inability or failure to take the particular step in time, but I am not prepared to say that no other consideration may be invoked.”

It was not, therefore, necessary to refer to the prospects in this particular case, but may be necessary in other cases. I do not think that an injustice would result if time is granted to file the appeal. The sum of Shs.2,798,973/40 has already been paid to the respondent and, therefore, h. would not in anyway be prejudiced.

I would, therefore, invoke my discretionary powers to grant leave to file the appeal outside the time prescribed by the Rules within thirty days from date hereof. Costs would abide the result of the appeal.

DATED at Kampala this 7th day of October, 1986.

Signed:

D. L. K. Lubogo,
AG. JUSTICE OF APPEAL.