

There is no explanation for absence of the lawyers for the respondent. I can't speculate that the absence is due to the said letter.

There are decided cases, in this country, to the effect that application for adjournment should not be made by letter. So even if M/s Kakuru & Co. Advocates, had sought adjournment by the aforementioned letter, I would not entertain it. Besides I notice from the letter that Kakuru & Co., Advocates, is a firm of four advocates. I find nothing special in the application which any other member in the firm cannot handle.

Moreover, I find it a little strange that advocates can seek adjournment by writing informal letters to each other. I would not encourage such practice in the conduct of litigation. For these reasons I have decided to hear this matter in the absence of advocates for both sides and in the absence of the respondent whose counsel was duly served but chose not to attend court.

As I said at the beginning of this ruling, the applicant is asking for leave to file notice of appeal out of time.

The applicant was the appellant in Court of Appeal Civil Appeal No.26 of 1999. The Court of Appeal dismissed his

appeal on 5th November, 2001. In the affidavit accompanying the notice of motion, the applicant states in part as follows:

"3 That the decision of the Court of Appeal was delivered by the Assistant Registrar in the presence of my lawyers"

4. *That since the hearing of the appeal, I had been out of touch with my lawyers and I was not aware that judgment had been delivered.*
5. *That on the 22nd day of November, 2001, I travelled from Bushenyi to Kampala to check on when a decision would be made and this is how I learned of the court decision and was given a Photostat of the judgment to peruse.*
6. *That I instructed my lawyers to appeal to the Supreme Court and I was informed that I was four days late in filing notice of Appeal.*
7. *That in the interest of justice I should be afforded an opportunity to pursue an appeal".*

Rule 4 under which leave is now sought reads as follows:

"The court may, for sufficient reason, extend the time prescribed by these Rules ----- for the doing of any act authorised or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; -----"

In his affidavit, the reason, which is apparent for applicant's failure to lodge the requisite notice of appeal, is that he was unaware of the day when his appeal was dismissed by the Court of Appeal. This lack of knowledge is also due to the fact that the applicant himself lives in Bushenyi District which is outside Kampala where the decision dismissing his appeal was made. According to his affidavit, the applicant learnt of the dismissal on 22/11/2001 and there and then instructed his counsel to lodge a notice of appeal. Since the appeal in the Court of Appeal was dismissed on 5/11/2001, the Notice of Appeal should have been lodged before or by 19/11/2001, i.e., within fourteen days after the date of the decision against which it is desired to appeal: **See Rule 71(2)**. I note that after the applicant learnt on 22/11/2001 of the dismissal of his appeal, he instructed his lawyers to appeal and the lawyers drafted the affidavit to support this application which

affidavit the applicant swore the next day (23/11/2001). That day according to the diaries for 2001 was a Friday. The application was lodged in court on the next working day, which is Monday 26/11/2001. In my opinion the applicant has, in the circumstances, given sufficient reason for his failure to lodge a notice of appeal in time. And since he acted promptly when he learnt of the decision dismissing his appeal and as there is no evidence whether by affidavit or otherwise to contradict the contents of his affidavit, I exercise my discretion by granting this application.

I order that the applicant must file his notice of appeal within fourteen (14) days from today the 6th November, 2002. Lodging of the appeal must be made as required by the Rules of this court.

No prayer was made in the application with regard to costs. And I make no order as to costs.

Dated at Mengo this 6th day of November, 2002.

J.W.N. Tsekooko.
Justice of the Supreme Court.