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THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 60 OF 2021

**(ARISING FROM CIVIL APPEAL NO.15 OF 2021, NO.17 OF
2021 & NO.19 OF 2021)**

10 **KANSIIME K. ANDREW:::::::::::::::::::::::::::::::::APPLICANT**

VERSUS

1. HIMALAYA TRADERS LTD

2. KAMUKAMA ASSOCIATES LTD

3. TREASURE TROVE (U) LTD

15 **4. JETWANT SINGH**

5. GULZAR SINGH

6. JAMIL KIYEMBA:::::::::::::::::::::::::::::::::RESPONDENTS

RULING OF RUBBY OPIO-AWERI, JSC

20 **Introduction:**

Kansiime K. Andrew, hereinafter the applicant brought the instant application under Rules 5, 42 & 43 of the rules of this court, seeking orders that this court be pleased to grant him leave to cross appeal in SCCA No.15 of 2021, SCCA No. 17 of 2021 and
25 SCCA No.19 of 2021, and that costs of the application to follow the event.

The applicant elucidates a number of grounds upon which this application should be granted and they include;

- i) There is sufficient cause for extension of time
- 30 ii) The applicant is not guilty of dilatory conduct, and that
- iii) The orders sought are necessary to attain the ends of justice

5 The application is supported by an affidavit deposed by the applicant which I will briefly highlight.

The applicant avers that on 1st April 2021, the Court of Appeal delivered a judgment in Civil Appeal No.52 of 2018 in which he was the appellant and found that the respondents' certificates of title were obtained illegally and fraudulently. That despite the
10 above finding, the Court of Appeal did not order the cancellation of the respondents' titles neither did court award him damages. The applicant further contended that upon delivery of the decision by the Court of Appeal, he wanted to appeal against the Court's failure
15 to make the orders stated herein above but was advised by his lawyers of Waymo Advocates to wait to cross appeal because the respondents had filed their notices of appeal first. That later when he learnt that the respondents had filed their appeals, he immediately instructed his lawyers to cross appeal but unknown
20 to him, the lawyers did not act on instructions in time. That despite the delay, he kept on reminding his lawyers to cross appeal as evidenced by several correspondences annexed to the application. The applicant further averred that later, his lawyers advised him that he needed the leave of court to cross appeal as he was out of
25 time to cross appeal as some of the letters of instruction written to the lawyers were kept by the receptionist and not brought to their attention in time. The applicant thus contended that he diligently followed up on his instructions and not guilty of dilatory conduct but rather, was let down by the negligence, carelessness and
30 inadvertence of his lawyers to which he should not be blamed.

5 **Reply to the application:**

I have perused the court record and I do not find any reply to the application by the 1st respondent. I however note that the 1st respondent filed her submissions in respect of the application and that being so, I will proceed to determine this application on the
10 basis of what is filed.

The second and sixth respondents filed a joint affidavit in reply deponed by one Ocitti Samuel, an Advocate with Lwere Lwanyaga & Co. Advocates. In that affidavit, Mr. Ocitti averred that the instant application is bad in law, an abuse of court process and
15 the same ought to be struck on the ground that the applicant has assumed that the appeals, Civil Appeal No.15, 17 and 19 of 2021 were consolidated whereas not. To Mr. Ocitti, the applicant ought to have filed different applications arising from each appeal. Mr. Ocitti further averred that there was inordinate delay by the
20 applicant to instruct his legal counsel to file a notice of cross appeal right from the time the decree was endorsed by the Court of Appeal. Mr. Ocitti also contended that the applicant has at all material times been represented by two law firms of Godfrey Nangumya & Co. Advocates and Waymo & Co. Advocates and
25 cannot be seen to plead mistake of counsel. Mr. Ocitti prayed that it is only just, fair and equitable that this application is dismissed.

The 3rd, 4th and 5th respondents equally filed a joint affidavit in reply deponed by D.S Mubiru of Kalenge, Bwanika, Kisubi & Co. Advocates who averred that he was familiar with matters
30 pertaining the instant application. Mr. Mubiru thus contended that he was aware that judgment in Civil appeal No.52 of 2018 was

5 delivered in favour of the applicant and that the 3rd, 4th and 5th
respondents were aggrieved with that decision and accordingly
lodged their appeal in this court on 2nd July, 2021 and served the
applicant on 3rd August, 2021. That the applicant was expected to
file his cross appeal within 30 days from the date of receipt of the
10 memorandum which he failed to do but has instead filed an
application for extension of time after four months. That being
represented by lawyers, the applicant was aware of his right of
cross appeal and the filing of the instant application was not only
an afterthought but also amounts to dilatory conduct. Mr. Mubiru
15 further averred that the applicant has not given sufficient reason
for his lawyer's failure or omission to file the cross appeal in time
let alone his failure to instruct other lawyers. That the orders for
cancellation of title intended to be sought on cross appeal can only
be made upon proof of the applicant's ownership and title which
20 matter was never resolved by the Court of Appeal. Mr. Mubiru
concluded his averments asserting that the instant application is
a scheme designed to smuggle the applicant's clearly late and
superfluous cross appeal which is putting the respondents to
unnecessary costs.

25 **Submissions:**

On 18th January, 2022 when this matter came up for hearing, I
directed all the parties to file written submissions to expedite the
determination of the application. I note that all the parties
complied with that directive, though, some of them filed their
30 submissions outside the timeframes given. I have however taken a
liberal approach and considered all the parties' submissions as

5 filed. The submissions as filed by the parties respectively are on court record and I do not intend to reproduce each party's submissions but will highlight aspects of those submissions where necessary.

Analysis and determination:

10 This application was brought under the provisions of Rule 5, 42 & 43 of the rules of this court. Rule 5 in my view is the most applicable legal regime in the determination of this matter as rules 42 & 43 simply provide for the form of the application to be commenced. For emphasis purposes, I will highlight rule 5 hereto;

15 **Rule 5:**

"The Court may, for sufficient reason, extend time prescribed by these Rules or by any decision of the Court or of the Court of Appeal for doing of any act authorized or required by these Rules, whether before or after the expiration of that time and
20 *whether before or after the doing of the act; and any reference in these rules to any such time shall be construed as a reference to the time as so extended".*

Counsel for the applicant argued that the above rule gives this court wide discretion to extend time for sufficient cause. That
25 though the rule does not define what amounts to sufficient cause, the case of **F.L. Kaderbhai & Another versus Shamsherali M. Zaver Virji SCCA No.20 of 2008**, construes sufficient cause to mean the discretion, at the determination of court. Counsel highlighted paragraphs 2 to 17 of the affidavit in support of the
30 application which he observed raise important grounds for the grant of the instant application to wit negligence, carelessness or

5 inadvertence of the applicant's counsel, illegality and fraud as found by the Court of Appeal which however, did not make consequential orders. Counsel thus argued that inadvertence or negligence of counsel is sufficient cause in law which should not be visited on the litigant. To buttress this line of argument, counsel cited the
10 case of **Capt. Philip Ongom versus Catherine Nyero Owota SCCA No.14 of 2001** and **Godfrey Magezi versus Sudhir Ruparelia, SCCA No.10 of 1995** where this court observed that errors or omissions by counsel is sufficient cause especially when the lawyer had been instructed in time unless there is evidence
15 that the applicant was guilty of dilatory conduct in instructing his lawyer.

In the applicant's view, he instructed his lawyers in time to file the cross appeal after being served with the respondents' record of appeal on 2nd and 3rd August, 2021 respectively. That going by the
20 provisions of rule 87 of the rules of this court, the applicant ought to have filed his cross appeal within 30 days which elapsed on 1st and 2nd September, 2021 respectively. The applicant further demonstrated that he instructed his lawyers to file the cross appeal first, on 31st August, 2021 as evidenced by annexure 'A' to the
25 application, and when the lawyers delayed to effect his instructions, he continued writing to them, to file his cross appeal. The lawyers responded to the applicant's instruction apologizing for the delay in effecting his instructions because the receptionist who had received his letter of instruction forgot to bring it to their
30 attention on time. The applicant illustrates the continued instruction of his lawyers with a number of letters attached to the application. He thus concluded that it was the fault of his lawyers

5 not to file the cross appeal in time and as a lay man, he did not know about the timelines as he depended on the skill and expertise of his lawyers and therefore should not be condemned for being guilty of dilatory conduct.

I have taken time to peruse the respondents' submissions and
10 what can be canvassed from each of the submissions is that all the respondents contest the competency of the instant application when they argue that the applicant assumed that the application is consolidated whereas not, as the application arises out of Civil Appeals No.15 of 2021, No.17 of 2021 and No.19 of 2021
15 respectively. To the respondents, the order of consolidation can only be made under rule 97 of the rules of this court upon a party showing sufficient cause.

To the merits of the application, the respondents argue that the applicant is guilty of inordinate delay in instructing counsel and
20 cannot plead mistake of counsel as sufficient reason for extension of time. The respondents further argued that inordinate delay on the part of the applicant can be envisaged in the time he took to file the instant application as the same was filed after four months upon the expiry of the due date.

25 As to whether the applicant has showed sufficient cause to warrant the grant of the orders sought in the instant application, the respondents were of the view that the applicant did not demonstrate sufficient cause by merely insinuating mistake of counsel. To buttress this argument, the respondents cited the case
30 of **Kananura Kansiime Andrew versus Richard Henry Kaijuka S.C.C Reference No. 15 of 2006** where this court observed thus;

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

The other argument advanced by the respondents is that the applicant had at all material times been represented by two law
15 firms of M/s Godfrey Nangumya & Co. Advocates as well as Waymo Advocates and if the applicant was vigilant enough, he would not have wasted the court’s time as could have instructed M/s Godfrey Nangumya & Co. Advocates to file his cross appeal in time. They thus prayed that the court finds no merit in the application and
20 consequently dismiss it.

I have perused and considered all the parties’ pleadings and submissions in the determination of this application. As a way of disposing of what would appear like a preliminary point of law when the respondents argued that the applicant assumed that the
25 instant application was consolidated whereas not; what is not in contention is the fact that this application emanates from three appeals to wit Civil Appeal No. 15, 17 and 19 of 2021. What is also not contested is that, all the above appeals emanate from Court of Appeal Civil Appeal No. 52 of 2018. On the perusal of the
30 application, I note that the applicant filed his cross appeal in this court on 6th of December, 2021 marked as annexures G1, cross

5 appeal in respect of Civil Appeal No. 19 of 2021, annexure G2,
cross Appeal in regard to Civil Appeal No.15 of 2021 and annexure
G3 in respect of Civil Appeal No.17 of 2021. A critical perusal of
the grounds of appeal, in what would have been the cross appeals
is conclusive that the grounds are similar and generally cut across
10 save for minor variations in regard to which plots the applicant
seeks to have the certificate of title cancelled. Naturally, the
applicant ought to have filed different applications from the
respective appeals herein but what is not in doubt is that by
whatever standards, those applications ought to have been
15 consolidated as in my view, the reliefs that ought to have been
sought in each of those applications ought to have been similar
and could have been common to all. It would thus have been
unnecessary duplication had the applicant filed different
applications. In my view, the applicant made a wise decision when
20 he filed a single application as the questions to be addressed were
similar. The objection raised by the respondents is thus
unsustainable and is accordingly overruled.

As to whether there is sufficient cause to warrant the grant of the
orders sought in the instant application, sufficient cause has been
25 variously defined. By and large, sufficient cause is an expression
which has been used in a large number of cases. The meaning of
the word "sufficient" is adequate or enough in as much as may be
necessary to answer the purpose intended. Therefore, the word
sufficient cause embraces no more than that, which provides a
30 platitude which, when the act done suffices to accomplish the
purpose intended in the fact and circumstances existing in a case;
and duly examined from the view point of a reasonable standard

5 of a curious man. In this context, sufficient cause means that a party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case; or the party cannot be alleged to have been not acting diligently or remaining inactive. However, the facts and
10 circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. **See the decision of the Supreme Court of India in Parimal versus Veena alias Bhart (2011) 3 SCC 345.**

15 In the instant application, the applicant illustrates that he variously instructed his lawyers to file the cross appeal but due to inadvertence of his lawyers, the instructions were not effected in time. This can be seen from several correspondences between the applicant and his lawyers annexed to the application marked A, B,
20 C, D, E and F. From these correspondences, it is implicit that the applicant took the initiative to instruct his lawyers to file his cross appeal but the lawyers inadvertently failed to do so in time. The lawyers admitted this fact when they stated that the receptionist had indeed received the letter of instruction from the applicant but
25 delayed to present it to them for action.

This court is empowered under rule 2(2) of the rules of this court to make such orders as are necessary for achieving the ends of justice or to prevent abuse of the process of any such court. Naturally, a party who wishes to present their case when the
30 adversary has the opportunity to controvert that party's position should not be closed out. What is not in doubt is that the applicant

5 wants to present his cross appeal before this court and by whatever standards, the respondents shall have the opportunity to present their respective cases and it is then, that a final verdict shall be meted.

10 In this respect therefore, the justice of the case in the instant application would demand that the applicant is allowed to file his cross appeal out of time as he has demonstrated sufficiently that it was the negligence of his legal team that caused the delay in filing the cross appeal. As indicated before, the respondents will have the opportunity to present their respective cases at the
15 hearing of their respective appeals.

As to whether the applicant is guilty of inordinate delay, both the applicant and the respondents agree that the applicant ought to have filed his cross appeal by 1st and 2nd September, 2021 respectively. The applicant filed the instant application on 14th
20 December, 2021. That is roughly three (3) months and two weeks from the date when he was expected to have filed his cross appeal. Justly, three (3) months cannot be described as inordinate delay, as in my view, it is reasonable time for any party to be given a benefit of doubt to file an action, and the same cannot be described
25 as dilatory conduct; coupled with the fact that the applicant kept on pursuing his lawyers to file the cross appeal.

As to costs, it is trite law that costs of and incident to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine as to which party is to meet the
30 costs of any action. I observe that had the applicant and his legal team been vigilant, this application should have been avoided. By

5 filing the instant application, the respondents had to incur expenses in defending the same which expenses in my view should be met by the applicant. However, like I observed earlier, the 1st respondent did not file a reply to the application but only filed submissions in response. Though I award costs to the
10 respondents, the 1st respondent shall be entitled to only 1/3 of the taxed costs owing to his failure to fully defend the application. The costs herein awarded to the respondents shall be determined upon the conclusion of the respective main appeals.

15 In the final result, this application is allowed in the following terms:

1. The applicant is granted leave to cross appeal in Supreme Court Civil Appeals No.15, 17 and 19 of 2021, out of time. The cross appeal shall be filed within 30 days from the date of this ruling.
- 20 2. Costs of the application are awarded to the respondents save the 1st respondent who will be entitled to only 1/3 of the taxed costs.
3. The costs herein awarded shall be determined at the conclusion of the respective main appeals.

25 Dated at Kampala this....14th.....day of February 2022

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RUBBY OPIO-AWERI
JUSTICE OF THE SUPREME COURT

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