

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
BEFORE: HON JUSTICE MUHANGUZI, JSC
CIVIL APPLICATION NO. 45 OF 2020

5 **COFFEE MARKETING BOARD LTD..... APPLICANT**

VERSUS

**NATIONAL UNION OF CLERICAL COMMERCIAL PROFESSIONAL &
TECHNICAL EMPLOYEES..... RESPONDENT**

(An application arising from Civil Appeal No. 27 of 2020)

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RULING OF MUHANGUZI, JSC

This application was brought by way of notice of motion under section 8 of the Judicature Act and rules 5, 42, 43 and 50(1) of the Judicature (Supreme Court Rules) Directions SI 13-11. The applicant seeks orders that: -

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- a) The time within which the applicant can file its appeal be extended and/ or the filed appeal be validated.
- b) Costs of this application be provided for.

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The grounds of the application are stated in the notice of motion and in the affidavit in support sworn by Mr. Timothy Lugayizi. They are as follows: -

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- i. "Judgment against the applicant was delivered on the 13th July 2020 by the court of appeal in civil appeal no. 60 of 2014.
- ii. The applicant was dissatisfied with the court's findings and filed a notice of appeal and by letter of 23rd July 2020 requested for the typed record of proceedings and judgment in the appeal.

- iii. On 21st September 2020, the registrar court of appeal through a letter dated 7th September 2020 notified the applicant that the proceedings were ready for collection.
- iv. The sixty (60) days within which the appeal ought to have been filed expired on the 20th November 2020.
- v. On 13th November 2020, the record of appeal as prepared by the applicant's counsel was forwarded to the court of appeal for issuance of the registrar's certificate of correctness.
- vi. The bank draft for security for costs was obtained on 18th November 2020 and the court filing fees for the court of appeal were paid on 19th November 2020.
- vii. There were violent demonstrations in some parts of the country, Kampala district inclusive, in the week of 16th to 20th November 2020 arising out of or related to the national election campaigns which paralyzed court business that week resulting in none attendance of the registrar at the court to inter alia peruse the record and issue the requisite certificate of correctness of the record.
- viii. The applicant whilst ready with its appeal was unable to lodge the same before or by the 20th November owing to the challenges precipitated by the demonstrations.
- ix. The applicant remained committed to pursue its appeal, persisted and was finally able to obtain the court of appeal registrar's certificate of correctness and lodge the appeal on 24th November 2020, issued by court on the 25th November 2020 and serve the same onto the respondent on the same date.
- x. It is just and equitable that this honorable court be pleased to grant the application."

The respondent opposed the application and filed an affidavit in reply sworn on 2nd November, 2021 by David Bahige. He states as follows: -

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1. "That I am a male adult of sound mind, an advocate of the high court of Uganda working with Kampala Associated Advocates counsel for the respondent and well conversant with the facts of the matter at hand. I am competent and duly authorized to depose this affidavit.

2. That I have read and understood the contents of the notice of motion and the affidavit in support of this application. I hereby reply thereto as follows: -

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3. That the memorandum of appeal was signed by counsel for the appellant on 19th November 2020 being the 59th day from date of receipt of the letter from the registrar of the court of appeal indicating that the proceedings were ready for collection. **A copy is attached as annexure A.**

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4. That the Registrar of the Court of Appeal only signed off the certificate of readiness on 24th November 2020. **A copy of the said certificate is attached as annexure B.**

5. That on 24th November 2020, the record of appeal was also lodged in the supreme court. **A copy is attached as annexure C.**

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6. That the applicant has not disclosed any reason why the Registrar of the Court of Appeal did not sign off the certificate of readiness between 13th November 2020 when they alleged to have forwarded at and 24th November 2020 when it was eventually signed off.

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7. That it is not true that the applicant forwarded its record of proceedings to the Court of Appeal on 13th November 2020 yet it signed the same off on 19th November 2020.

8. That I know that the riots that took place during November 2020 only occurred on Wednesday 18th November 2020. Thereafter, the strikes were under control.

- 85 9. That Mr. Lugayizi has not availed the source of his information that
the Registrar at the court was not in attendance from 16th
November 2020 to 20th November 2020 when it is alleged that
he/she was not in attendance as a result.
10. That Registrar being made mention of by Mr. Lugayizi has
90 neither been identified by name nor their station disclosed.
11. That the Registrar being made mention of has neither
deposed an affidavit nor written a letter to confirm his/her non-
attendance on account of the reasons alluded to by Mr. Lugayizi.
12. That it is in the interest of justice and fairness that this
95 application and the appeal be dismissed with costs to the
respondent.
13. That I depone this affidavit in opposition of this application.
14. That whatever I have stated herein above is true and correct
to the best of my knowledge.”

100 **Brief background.**

The brief background of this application is that the Court of Appeal
delivered a judgment against the applicants in Civil Appeal No. 60 of 2014
dated 13th July 2020. Dissatisfied with the decision, the applicant filed a
notice of appeal and a letter requesting for the typed record of
105 proceedings and judgment in the appeal. The applicant did not file the
appeal in this court until 25th November 2020 upon expiration of the
statutory time limit. The applicant filed this application for extension of
time within which to file/validate its appeal.

Representation.

110 When this application was called for hearing before me on 3rd November
2021, the applicant was represented by Mr. Jeffrey Atwine and Mr.
Johnson Natuhwera while the respondent was represented by Mr.

Raymond Mwebesa. Ms. Rachael Niringiye, a Registration and Compliance Officer at URSB was in court.

115 **Submissions for the applicant.**

Counsel for the applicant submitted that this court has the jurisdiction to grant this application under rule 5 of the rules of this court. Counsel relied on **Crane Finance Co. Ltd Vs. Makerere Properties Ltd, SCCA No. 1 of 2001** wherein court cited with approval the case of **Executrix of the Estate of Christine Mary N. Tebajjukira & Anor Vs. Noel Grace Shalita, SCCA No. 8 of 1998**, for the proposition that the legal effect (of extending time for filing) is therefore to validate or excuse the late filing of documents and the applicant need not file fresh documents...if those already filed are complete and in proper form.

125 Counsel submitted that the applicant has shown sufficient cause for late filing of the appeal. He pointed out that the reason as to why he delayed in filing was due to the demonstrations that occurred in the week of 16th to 20th November 2020. In addition, counsel argued that the delay of 4 days was not inordinate. Counsel argued further that the subject matter
130 of the intended appeal is worth billions of shillings and that It is in the interest of justice that the application is allowed so that the applicant exhausts all its rights. Counsel prayed that this court validates Civil Appeal No. 27 of 2020.

Submissions for the respondent.

135 Counsel for the respondent opposed the application. Counsel submitted that the affidavit of Mr. Timothy Lugayizi contains falsehoods and it is unreliable. Counsel pointed out that the applicant avers that the record of appeal was not ready until 19th November 2020 and yet the memorandum of appeal and the address of service were signed on same
140 day of 19th November 2020.

Counsel argued that the fact that the certificate of readiness was signed by the registrar on 24th November 2020 after the certificate of correctness had been signed on 19th November 2020 leads to the conclusion that the record of appeal was not yet ready on 13th November 2020 and could not have therefore been forwarded to the court of appeal on 13th November 2020 as stated by the applicant.

Counsel further argued that the demonstration mentioned by the applicant did not take a week as alleged but a day. Counsel contended that the situation was brought under control and it did not affect/disrupt business the following day. Counsel further argued that the applicant paid fees between 18th and 19th November 2020 from NCBA bank Uganda limited which is in the same premises with Court of Appeal but the applicant never filed the appeal. He contended that the applicant's submission that the appeal was ready on 13th November 2020 is false and should therefore render the application dismissible.

Counsel submitted that the applicant has failed to prove the allegation that the Registrar Court of Appeal failed to attend to court business due to the demonstrations. According to counsel, the applicant would have attached the Registrar's affidavit in support of the application to prove that fact. Counsel argued that the applicant has not disclosed the source of the information and thus the statement that the Registrar was unable to attend to court business due to the demonstrations violate rule 43(1) of the rules of this court that provides that affidavits in support of an any formal application are to be sworn by the applicant or some other person having knowledge of the facts.

Counsel prayed that the application be dismissed with costs and Civil Appeal No. 27 of 2020 be dismissed for having been filed out of time.

Consideration of the application

170 Rule 5 of the Rules of this Court under which this application was
filed reads:

175 ***"The Court may, for sufficient reason, extend the time presented by
these Rules or by any decision of the Court or of the Court of Appeal
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; any reference in these Rules to
deny such time shall be construed as reference to the time so
extended."***

180 There are many decisions of this Court and of the East African Court
of Appeal which have interpreted Rule 4 now 5 of the Rules of this
Court. In ***Crane Finance Co. Ltd. vs Makerere Properties, Supreme Court
Civil Application No. 1 of 2001***, which raised issues similar to those in
the instant case as cited by counsel for the applicant, court stated
instances under which rule 5 of the rules of this court applies. These
185 were stated as follows: -

***"The rule envisages four scenarios in which extension of time for the
doing of an act so authorised or required, may be granted, namely -***

- (a) before expiration of the limited time;***
- (b) after expiration of the limited time;***
- 190 ***(c) before the act is done;***
- (d) after the act is done."***

***The situation in the instant case is a combination of scenario (b) and
(d). the appellant applied for, and Kitumba JA, granted extension***

195 *of time for filing and serving of the record of appeal, long after*
limited time had expired, and also after the acts of filing and
serving the record of appeal had been done. The bone of contention
however, is in respect of scenario (d) namely the effect of such
200 *extension on the acts which had already been done. We think that*
it is obvious that the contended effect is to bring an act within the
time as so extended. There would have been no reason to include
that scenario in the rule if an act done out of time was an incurable
nullity. It is because it is not a nullity that under rule 12 of the same
Rules, the Registrar is required to accept documents filed out of
205 *time, and only to endorse them to that effect. A reading of rr 4 and*
12 together clearly indicates that while a document filed out of
time is voidable, it may be validated by extension on time.

210 *Secondly, we share the view that it could be futile to construe the*
provision otherwise. That view was succinctly expressed by the
Court of Appeal for East Africa in Shanti - vs - Hindocha [1973] E.A.
207. In that case the Court considered r 9 of its
Rules (which was in identical terms as r. 4), and all arguments
(similar to that of Mr. Nangwala in the instant case), that the rule
215 *empowered the judge to authorise a future act not to validate a*
past one.

The Court held:

220 *We think that when the time for lodging a document is extended,*
the document is duly lodged if lodged within the time as so
extended, whether the actual lodging is before or after the order

225 *of extension. To hold otherwise would serve no purpose and would merely result in further costs being incurred. It is not irrelevant in this connection to note that under r 11 the Registrar has no power to refuse to accept an appeal on the ground that it is out of time, which clearly implies that the delivery of the appeal out of time may be excused or validated."*

230 In an obiter dictum in *The Executrix of the Estate of Christine Mary N Tebajuka & Anor - vs - Noel Grace Shalita, Civil Application No. 8 of 1999 (S.C)*, Odoki JSC (as he then was) referring to the same scenario said:

235 *"Late filing of "The legal effect (of extending time for filing) is therefore, to validate or excuse the documents. The applicant need not file fresh documents if those already filed are completed and in proper form."*

240 However, for this application to be granted and Civil Appeal No. 27 of 2020 to be validated, the applicant has to prove that there was sufficient reason that prevented it from filing the appeal in time. In the case of *Boney M. Katatumba Vs Waheed Karim (Administrator of late Suleiti Haji's Estate) Supreme Court Civil Application No. 27 of 2007)* Justice Joseph Mulenga was dealing with a similar application and he had this to say on what constituted a sufficient reason.

245 *"Under r.5 of the Supreme Court Rules, the Court may, for sufficient reason, extend time prescribed by the Rules. What constitutes "sufficient reason" is left to the Courts unfettered discretion. In this context the Court will accept either a reason that prevented an applicant from taking the essential step in time,*

250 *or other reasons why the intended 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
255 *where the application is unduly delayed the Court may grant the*
extension if shutting out the appeal may appear to cause
injustice.” (Underlining is mine)

In the instant application, the applicant attributed the late filing of the
appeal due to the failure by the Court of Appeal Registrar to attend to
court business because of the demonstrations that took place in the
260 week of 16th to 20th November 2020.

Secondly, the applicant stated that she filed Civil Appeal No. 27 of 2020
four days after the expiration of the statutory time and thus that the
delay in filing was not inordinate. I would agree with this submission that
four days’ delay is not unreasonable.

265 Although mistake of counsel was not pleaded as submitted by the
Counsel for the respondent, when court is considering all the
circumstances of the matter, it is not precluded from inferring matters
which otherwise appear obscured.

270 Court, before exercising its discretion ought to lift the veil to see the
party who is likely to suffer most if justice is denied on the ground of fault
or error of Counsel. See: **James Bwogi & son’s Enterprises Ltd Vs.
Kampala City Council & Anor, SCCA No. 09 of 2017.**

In that case, Justice A.S Nshimye Ag. JSC went on to state that: -

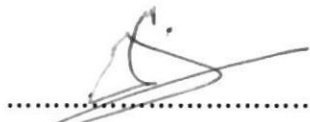
275 **“In this case, it is the applicant who would be denied the right to
present and prosecute his appeal in the highest court of the**

land. She would in addition be condemned to pay exorbitant costs on account of deficiency of Counsel.

280 I am also alive to the fact that the people in whose name I exercise justice expect me to dispense substantive justice. In consideration of the peculiar circumstances and submission of all counsel (*sic*)."

Similarly, I find that there was sufficient cause to warrant the grant of this application due to the reasons discussed above. Civil Appeal No 27 of 2020 is hereby validated. Costs shall abide by the outcome of the main appeal.

285 Dated at Kampala this.....20th..... day of.....Jan.....2022.



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EZEKIEL MUHANGUZI
JUSTICE OF THE SUPREME COURT

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Delivered today the 20/01/2022
Babirye