

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA
HOLDEN AT KAMPALA

(CORAM: HON. JUSTICE S. T. MANYIN1)O — DCJ)

PARLIAMENTARY ELECTION APPLIC. NO. 12 OF 1997
BETWEEN

ELECTORAL COMMISSION: :: :: :: APPLICANT
VS

BIGIRWA BERNADETTE: :: :: RESPONDENT

(Appeal from a Ruling of the High Court of Uganda at Kampala (Mr. Justice J.P.
M. Tabaro) dated 22-8-96).

RULING OF MANTINDO - DCJ:

This is an application for an order extending time for filing an appeal. It is brought by Notice of Motion under Rule 4 of the Rules of this Court. The respondent, Bigirwa Bernadette, and one Hope Kabirisi Luberega, contested for the District Women's Parliamentary seat for Bushenyi District in general Elections which were held in June, 1996. The respondent won the elections. Hope Kabirisi Luberega, then filed a petition in the High Court against the respondent, the District Returning Officer and the applicant.

The petition was struck out as incompetent on the ground that it had been filed in the wrong Registry of the High Court. That decision was wrong in view of the decision of this Court in: Ngirabakuni –v- Jenninah Ntabgoba, Election Petition Appeal No. 41/96. Be that as it may, the trial Judge ordered that the applicant pay the costs of the present respondent (Bigirwa Bernadette) while the petitioner was to meet her own costs of the petition.

No order for costs was made in respect of the Returning Officer, who was the third respondent. The petition was disposed of on 22-8-96. According to Mr. Serwanga, State Attorney and Counsel for the applicant, the petition in the High Court was handled by another State Attorney, Mr. Gabriel Kamugisha who did not inform the applicant of the result of the petition. Mr. Kamugisha even left for Europe early in January 1997, on study leave without communicating with the applicant about the petition. The case file is still locked up in Mr. Kamugisha's steel filing cabinet in his office.

The applicant learnt of the Ruling and order only in December 1996, when a taxed bill of costs was served on them by Counsel for the respondent. The applicant then applied, by Notice of Motion for review of the judgment but the application was never heard as the trial Judge was not available. On 14-3-97, the applicant applied to the High Court for an order for stay of execution but that application is still pending. This application was brought on same day- 14-3-97.

The application is supported by the affidavit of Alex Nkonge, a Senior State Attorney attached to the applicant. The application is based on two grounds, namely: (a) that the delay in filing the appeal was occasioned by Gabriel Kamugisha's failure to convey to the applicant the Ruling and order of the High Court in the matter and (b) that the appeal is likely to succeed since the applicant was dragged to Court in a similar manner like the respondent and the Returning Officer by the petitioner who should have been ordered to pay the costs of all the respondents in the petition — in other words that the applicant was wrongly condemned in costs.

Mr. Babigumira who represented the respondent here and in the High Court argued that although Gabriel Kamugisha acted negligently, the applicant has not satisfactorily explained the inordinate delay in filing the appeal. He pointed out that under Rule 29 of the Parliamentary Petitions (Election Petitions) Rules, 1996- SI No. 27 of 1996 - the losing party may give Notice of appeal orally on the day the ruling or judgment is delivered or may give written notice within 7 days of the delivery of the ruling or judgment.

under Rule 30 Memorandum of Appeal must be filed within 14 days (in case of oral Notice of Appeal) and 7 days (in case of written Notice of Appeal). The applicant took none of these steps

The principles governing extension of time under Rule 4 seems to be well established. Time should be extended only for sufficient cause or reason which relates to the inability or failure to

take the required steps in time. See Mugo and Others v Wanjiru and Another [1970] EA 481 at 483; Charles Kangemiteto v Uganda, Criminal Application No. 1 of 1978 Court of Appeal of Uganda (unreported) and Clouds 10 Ltd v Standard Chartered Bank (u) Ltd; civil Appeal No. 35 of 1992 Supreme Court (unreported)

Time will not be extended if the applicant is guilty of delatory or in ordinate delay. See: Shanti v Hindocha and Others [1973] EA 207 Supreme Court (unreported). As was pointed out by Spry VP in Shanti (supra) there may be other reasons and these are all matters of degree. It is not necessary to establish that the appeal will probably succeed although it may be helpful to do so.

Accordingly to the record, the applicant's Counsel in the High Court did not attend court on the 22-8-96, to receive the ruling. Mr. Babigumira is recorded as having stood in for him. That is strange, as one counsel should not represent both parties. As it is, it is not even clear whether Mr. Babigumira communicated the results of the case to the applicant's counsel. So the claim by Mr. Babigumira that the applicant's counsel should have given oral notice of the Appeal seems to be absurd. It is remarked that even the bill of costs was taxed exparte.

I am satisfied that the conduct of Mr. Gabriel Kamugisha amounted to gross professional negligence. There was nothing the applicant could do in the circumstances.

I do not see it that it should be punished by refusing it to appeal because of the negligence of its counsel over whose actions it had no control. Mr. Babigumira' handling of the case did not assist matters either.

Mr. Serwanga submitted quite rightly I think, that as this was the first time ever that the applicant, a nominal defendant as it were, had been condemned in costs, t would be right and proper of this point to be argued on appeal. In my view, since the applicant would have to pay the costs out of public funds, the matter becomes of public importance. The public would want to know whether it is proper for the applicant to be condemned in costs in the circumstances of this case. Also election petitions are, in their own right, matters of public importance. And e as was held by the Court of Appeal for East Africa in Esso Standard v Income Tax [1971] EA 127, a matter of public importance to be decided on appeal constitutes sufficient cause.

For all these reasons, I allow the application. The applicant shall file the appeal 14 days from today. Each party shall bear its own costs of the application.

Before I take leave of the case, I should perhaps comment on the point which Mr. Babigumira touched on at the end of his submission. He thought that the applicant may have no standing in court since the High court's order for costs was made against the Interim Election Commission. I do not see merit in the argument in view of clear provisions of section 3 and 41 of the Election Commission Act, 1997. the applicant inherited all assets, rights, obligations and liabilities of the Interim Election Commission.

Dated at Kampala this 8th day of April 1997

S.T MANYINDO

DEPUTY CHIEF JUSTICE