THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 58/1997

ST. KIZITO YOUTH FARM LTD:::::::::::::::::::::::::::::::: APPLICANT(S)

VERSUS

ATTORNEY GENERAL:: RESPONDENT (S)

RULING

This is an application for leave to file notice of appeal out of time. The application is by a notice of motion dated 10/12/97. It is supported by the affidavit of Mr. Yesero Mugenyi counsel for the applicant. The application was lodged under the Provisions of rules 4, 42(1) (2), 43(1) (2) and 52(1) of Court of Appeal Rules 1996. The sole ground upon which the application is based is that the judgment, which is the subject of this application, was delivered in the absence of the applicant and his counsel which resulted in the applicant learning of the outcome of the case after the time within which to lodge the notice of appeal had long expired.

Mr Asa Mugenyi who appeared for the applicant did not have much to say about the application apart from insisting that the judgment was delivered in the absence of the applicant and his counsel as they had not been given notice of the date when the judgment was to be delivered. Mr. Cheborion who appeared for the respondent opposed the application on the ground that no sufficient reason had been given to warrant extension of time. He further maintained that there had been an inordinate delay in filing the application since judgment was delivered on 16/6/97 and the application was not filed until 12/12/97, on this point he relied on the case of: Rossette Kizito v Administrator General and others [1993]5 KLR 4.

Rule 4 of Court of Appeal Rules 1996 under which this application was brought reads as follows:-

“4. The court may, for sufficient reason, extend the time limited by these Rules or by any decision of the court or of the High court 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; and any reference in these Rules to any such time shall be construed as reference to the time so extended."

The expression "sufficient reason" is not defined anywhere in the rules. In the cases of: Mugo v Wanjiri [1970]EA 481 at page 483. Njagi v Munyiri [19751EA 179 at page 180 and Rosette Kizito v Administrator General and others [Supreme Court Civil Application No. 9/86 reported in Kampala Law Report Volume 5 of 1993 at page 4] it was held that sufficient reason must relate to the inability or failure to take the particular step in time. In the present case the applicant's version is that he could not file the notice in time because judgment was delivered in his absence and in the absence of his counsel as they had not been served with notice for delivery of the judgment. It is the applicant's case that by the time he learnt of the decision of the court the time within which to file notice of appeal had expired. According to the copy of the judgment on the file there is no doubt over the fact that the judgment was delivered in the absence of the applicant and his counsel and according to the affidavit of Tumwebaze Kenneth, sworn in reply, it is most likely that the applicant might never have been served with the necessary notice for the delivering of the judgment. Mr. Tumwebaze's statement in paragraph 7 of his affidavit that Mr. Mugenyi must have been served with hearing notice is not only hearsay but an empty assumption.

Mr. Cheborion who appeared in this matter on behalf of the respondent argued that there was an inordinate delay in filing this application, he relied on the case of: Rosette Kizito vs. Administrator General [1993]5 KLR 4. In this case the court declined to extend time because of inordinate delay, the application had been filed 18 months from the date the applicant had been ordered to furnish security for costs. The present case can easily be distinguished from Rosette's case (supra) in that in the instant case the applicant and his counsel were absent when judgment was delivered unlike in the former case where the counsel was present at the time an order to deposit security for costs was made, another difference between the two cases is that in, the case now under consideration the application was filed after about 6 months from date of judgment but in Rosette's case the application was filed 18 months late; the other element distinguishing the two cases is that in the present case the applicant has offered lack of knowledge of the outcome of the case as the reason for not acting in time but in Rosette's case the counsel simply gave as his reason mere forgetfulness to deposit the correct amount for security.

Considering all the circumstances of this application I am satisfied that the explanation given by the applicant as to why he was unable to file the notice of appeal in time is a sufficient reason within which the meaning of rule 4 of court of appeal rules 1996.The application is allowed with costs in the cause.The applicant is to file his notice of appeal within14 (fourteen) days from the date of delivering of this ruling (17/2/98)

C.M. Kato

JUSTICE OF APPEAL

17/2/ 98

17/2/98: -

Assa Mugenyi for applicant.

Cheborion for respondent absent.

Lydia Tuhirirwe court clerk.