

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

CORAM: HON. MR. JUSTICE G.M. OKELLO, J.A.

MISC. APPLICATION NO. 10 OF 1999
(Arising from Criminal Appeal NO. 4 of 1999)

BETWEEN

PROF. G.S.Z. SSENYONGA}::APPELLANTS
NAMUDDU CHRISTINE}

AND

UGANDA::RESPONDENT

RULING OF G.M. OKELLO, J.A.

This is an application for extension of time within which to apply for a certificate of this court to appeal to the Supreme Court. It was brought under rules 4, 40 (1) and 42 (1) of the Rules of this Court.

The grounds on which the application was based are:

[1] That the applicant could not apply for the certificate in time because the advocate representing them at the time did not apply.

[2] That the judgment sought to be appealed against was read by the Registrar of the Court before whom such application could not have been made.

The application was supported by two affidavits: One by Augustus Ssewankambo of Kanyuzi & Co. Advocates. This affidavit was sworn on July 1999. Namuddu Christine, the second applicant swore the second one, on 2nd July 1999. There is no affidavit in reply.

In his address to me, Mr. Kanyunyuzi, learned counsel for the applicants, rehearsed those grounds without making any reference to the affidavits whether or not there was evidence therein supporting any of those grounds. I think the omission was unfortunate because affidavits are to contain evidence to support the ground. The evidence must be related to the submission. Under rule 4 of the rules of this court, extension of time will be granted when sufficient reason is shown. It is trite that such reason must relate to the failure to act within time. Where applicant is found to be guilty of delay, extension shall not be granted.

Affidavit of Ssewankambo paragraphs 5 and 6 are relevant as to the reasons for the delay. They are:

“5 — That the certificate could not be applied for at the time of delivery of the judgment because the judgment was read by a Registrar and not a full court.

6 — That our firm was later instructed to prosecute the applicant/appellant’s appeal in the Supreme Court and when I checked with the Court registry it dawned on me that both appellants counsel at the time filed Notices of Appeal but no application for certificate was made and no such certificate had been issued by this court and yet the time within which the application had long expired.”

Paragraph 5 above shows reason for failure to make an informal application at the time of delivery of the judgment. This was well taken, but there was still time within which to make formal application.

Paragraph 6 blamed the delay to make formal application in time on the advocate who was instructed by the applicants and filed Notice of Appeal. Paragraphs 5 and 6 of Namuddu Christine show that the firm of the Advocates M/S Kanyunyuzi & Co. Advocates was the defaulting firm.

I agree that the firm of Advocates that was instructed by the applicants to file appeal to the Supreme Court for them had a duty towards their client to ensure that if a certificate was required, it was obtained. That did not happen here. It was a fault. Indeed it is plain that the fault

of the advocate cannot be visited on his client. Fault of advocate causing delay constitutes sufficient reason for extension.

For the reason, the application is allowed and applicants are to file their application for a certificate within 7 days from the date of this Ruling. Costs of this application were not submitted on and I make no order in that regard.

Dated at Kampala this 28th July day of 1999.

G.M. OKELLO

JUSTICE OF APPEAL