

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

MISC. APPLICATION NO.107 OF 2015

(Arising out of Misc. Appln No.228 of 2012)

(Arising from Misc. Appln. No. 138 of 2012)

(Arising out of Civil Suit No.82 of 2012)

ANDERSON INVESTMENTS LTD ::::::::::::::::::::::::::::::: APPLICANT

VS

1. PAN AFRIC IMPEX LTD

2. COEX COFFEE INTERNATIONAL LTD::::::::::::::::::::: RESPONDENTS

CORAM:

HON. JUSTICE. PROF. LILLIAN EKIRIKUBINZA TIBATEMWA, JA sitting as Single
Justice

RULING OF COURT

This is an application brought by way of Notice of Motion under **Rule 5** of the **Rules of this Court** for orders that:

- (a) Leave of court be granted to the applicant to appeal out of time against the decision of Her Lordship Hon. Justice Elizabeth Ibanda Nahamya allowing miscellaneous application No. 228 of 2012.
- (b) Costs of the application be provided for.

The main grounds of the application are that:

1. The applicant was the Respondent/ Defendant in objector proceedings filed by the 2nd respondent herein in Miscellaneous Application No. 228/12.
2. That Her Lordship Elizabeth Ibanda Nahamya in her ruling dated 7th November 2012 decided in favour of the 2nd respondent herein and against the applicant company.
3. That the applicant instructed its then lawyers M/S Muwema & Mugerwa Advocates to file an appeal in this court and only a Notice of Appeal was filed but no appeal was ever filed.
4. That mistake of counsel should not be visited on the innocent litigant being the applicant company.
5. That the time within which to appeal against the decision of Hon. Justice Elizabeth Ibanda Nahamya has since expired.
6. That the applicant's appeal has high chances of success.
7. That it is in the interest of justice that the applicant be granted leave to appeal out of time against the ruling in Miscellaneous Application No.228 of 2012.

Representation

At the hearing of the application, on 22nd July 2015, the applicant was not legally represented but the Managing Director of the applicant Company, Mr. Daniel Kizito was in court. The 2nd respondent Company on the other hand, was represented by Mr. Funso Tinuoye.

The court record indicated that service of the hearing notice of this application had been effected on both parties. The record also indicated that the 2nd respondent had filed an affidavit in reply to the application on the 21st of July 2015. However, there was no rejoinder filed by the applicant. Basing on this, the Managing Director prayed that this court grants him an adjournment to enable him liaise with his lawyer to make a reply to the 2nd respondent's filed affidavit in reply.

The 2nd respondent's counsel objected to the applicant's prayer for another adjournment. He contended that the applicant had earlier on been granted an adjournment and there was no convincing reason to grant a second adjournment. Counsel for the respondent prayed that this court permits the respondent to proceed *ex parte* or dismiss the application for want of prosecution under **Rule 56 of the Rules of this Court**.

Rule 56 provides as follows:

“(1) If on any day fixed for the hearing of an application the applicant does not appear, the application may be dismissed, unless the court sees fit to adjourn the hearing.”

The respondent counsel submitted that basing on the above provision, effective appearance in court corresponds with the readiness to proceed which the applicant has failed to do. That on such ground the application ought to be dismissed.

Resolution of Court

Having heard from both parties on the 22nd of July, the court dismissed the application for want of prosecution and promised to deliver a detailed ruling. It is this that is contained herein below.

First, this court notes that the first hearing date of this application was on the 16th day of July 2015 and the applicant's lawyer was not in court. The court record indicated that the hearing notice of this application had been served a day to the hearing of the application and the 2nd

respondent could not file an affidavit in reply in time. Basing on this, the applicant's representative prayed for an adjournment so as to have his lawyer present at the next hearing date and also to enable the 2nd respondent to file an affidavit in reply.

Court in ensuring that justice is done, and there being no objection from the respondent, granted the applicant an adjournment on the 16th of July 2015.

At the subsequent hearing date, viz 22nd July 2015, the applicant was still not represented. The record did not indicate any reason for non-attendance of the applicant's lawyer.

This court also notes that the applicant Company had filed a Notice of Appeal but was out of time in filing the subsequent appeal within sixty days after lodging of the Notice of Appeal as stipulated in **Rule 83 (1)** of the **Rules of this Court**.

The application before court was to therefore have the time extended to enable the applicant file the appeal out of time. The application for extension of time to lodge an appeal was filed on 29th April 2015. However, this court notes that the ruling against which the applicant intends to appeal was delivered on 7th November 2012. This is after 2 years and 6 months have lapsed! Much as the faults of the applicant's lawyers should not be visited on the applicant, the applicant, a Company, should not have waited for 2 years to follow up the matter. On this premise, coupled with the fact that the application was called twice and only the respondent's lawyer appeared in court on the two hearing dates, shows the applicant's laxity in having the application prosecuted.

This court therefore exercised its judicial discretion and granted the 2nd respondent's prayer to have the application dismissed for want of prosecution.

Costs of the application are awarded to the 2nd respondent.

I SO ORDER.

Dated at Kampala this ...10th.... Day of ...September.... 2015.

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HON. JUSTICE PROF LILLIAN EKIRIKUBINZA TIBATEMWA, JA.