

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – CV – MA – 117 OF 2023

(ARISING FROM MISC. APPLICATION NO. 052 OF 2023)

CYRIL GRACE BWAMBALE ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

PHILLIP RWABWOGO ::::::::::::::::::::::::::::::::::: RESPONDENT

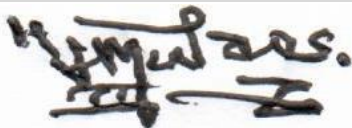
BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

The applicant brought this application under Section 33 of the Judicature Act, Section 96 and 98 of the Civil Procedure Act and Order 52 rule 1 & 3 of the Civil Procedure Rules for orders that;

- 1. The applicant be granted leave to appeal out of time the ruling of this honourable court dated 24th October 2023.**
- 2. That in the alternative without prejudice, this honourable court validated a notice of appeal filed out of time on the 16th day of November 2023 to enable the applicant proceed with the appeal to the Court of Appeal.**
- 3. That the costs of the application be provided for.**

The application is supported by the affidavit of Mr. Cyril Grace Bwambale, the applicant who averred as follows;

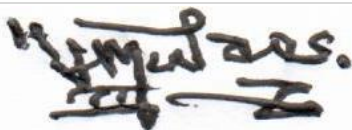


- (1) That he filed misc. application No. 52 of 2023 for leave to appeal out of time which was dismissed. That he lost contact of the former lawyers that represented him to wit; M/s Lufunya Associated Advocates whom he had instructed to appeal against the ruling.
- (2) That he learned that the lawyers filed the notice of appeal out of time and the said lawyers abandoned instructions without communication to the applicant since he left the file with the lawyer in personal conduct of the matter.
- (3) That the said lawyers informed him that he had to seek leave of court to enlarge the time within which to appeal or to have the notice of appeal validated. That it was a mistake of his former lawyer that caused the filing of the notice of appeal out of time. That he is still interested in pursuing the appeal and it is equitable that the application is allowed.

The application was opposed by the Respondent who contended thus;

- (1) That applicant delayed to seek leave to appeal against the judgment of court in Civil Suit No. 49 of 2001 as such the application for leave to file was brought with inordinate delay (after 15 years).
- (2) That the applicant has had knowledge of the case as well as the former advocates. That this honourable court lacks the jurisdiction to validate the notice of appeal since the same is a preserve of the Court of Appeal. That no sufficient reason was advanced by the applicant for the failure to lodge the notice of appeal out of the prescribed time. That the current application was filed to frustrate execution and ought to be rejected.

Issues:



1. Whether this application is proper before this Court.
2. Whether the applicant has demonstrated sufficient cause warranting grant of leave to appeal out of time.
3. What remedies are available in the circumstances?

Representation and Hearing:

Mr. Wagaba Ismail of M/s Kabuusu, Muhumuza & Co. Advocates while *M/s Magezi, Ibale & Co. Advocates* appeared for the Respondent. Both counsel filed written submissions which I have considered.

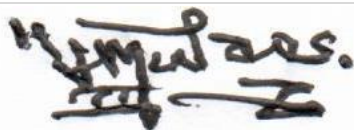
RESOLUTION:

Issue One: Whether this application is proper before this Court.

On 4/7/2023 after 14 years had passed from the date of judgment, the applicant filed Misc. Application No. 52 of 2023 seeking an order for extension of time within which to appeal. The application was dismissed by this court in a ruling dated 24/10/2023. The applicant now seeks an order for extension of time within which to appeal that ruling.

The question that arises is whether the applicant has a right to appeal against the ruling of this court in Miscellaneous Application 052 of 2023 denying leave to appeal out of time.

This issue was settled by the *Supreme Court in GM Combained v AK Detergents, Supreme Court Civil Application No. 23 of 1994* where it was unanimously held thus;

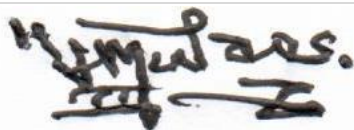


“The rule is that if the High Court has refused leave to appeal on a proper application or on what the high court considers doubtful application, but one which should have been entertained, it is taken that the High Court has refused leave and that an application may be made to the appellate court. That is precisely the point made in Sango Bay Ltd where the application ought to have been heard. This court has had occasion to point that out fairly recently”

Further in Charles Sempewo & 43 others v Silver Springs Hotel Ltd, Court of Appeal Civil Appeal No. 103 of 2003 which has been cited with confirmation in Hon. Kato Lubwama Paul V Buwembo Habib, Court of Appeal Election Application No. 02 of 2017 court stated thus:


“The right to appeal is a statutory one. Some appeals lie to the appellate (Court) as of right and some with leave of the trial court. Where the trial court rejects the application for leave as it did in the matter before us, the application is lodged in the appellate court...”

This is an application for leave to appeal out of time against the ruling of this court in Miscellaneous Application 052 of 2023 where leave to appeal out of time against the judgment of this Court in Civil Appeal No. 007 of 2003 which was denied. This court rejected the application for leave as such, this application ought to have been lodged in the appellate court. Further, since the order that the applicant seeks leave to appeal against is a discretionary order, the law does not envisage an appeal against the same. (See *Muhamed Motiv Chanchalbai [1915-1916] 6 KLR at 2*). Therefore the proper remedy in the circumstances is lodging a fresh application for leave in the Court of appeal and not an appeal as insinuated by the applicant.



Consequently, I strike out Misc. Application No. 117 of 2023 for being incompetent and bad at law with costs to the Respondent.

I so order.

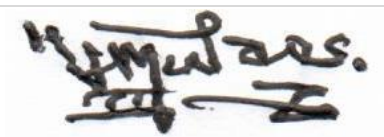
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Vincent Wagana

High Court Judge

FORTPORTAL

DATE: 25/03/2024

A handwritten signature in black ink, appearing to read "Vincent Wagana", with a stylized flourish underneath.