

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-MA-0213-2011
(ARISING FROM CIVIL APPEAL NO. 56/2002)
(ORIGINATING FROM KAPCHORWA CIVIL SUIT NO. 83/2001)**

YUSUF MAMA **APPLICANT**
VERSUS
1. MALINGA DAVID
2. ARAP BENDUI SHARIF **RESPONDENTS**

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

Applicant seeks grant of an extension of time within which to appeal to High Court against a Chief Magistrate’s decision dated 25th August 2008.

The application is by Notice of Motion and supported by the affidavit of the Applicant.

In his affidavit **Yusuf Maama** claims that he filed CS 83 of 2001 and intends to appeal. Paragraph 5 of his affidavit in support of the application shows that he has been waiting for judgment and proceedings the court below.

In reply by affidavit- **Arap Bendui Sharif** replied in paragraph 7 and 8 arguing that the applicant was not vigilant and is guilty of dilatory conduct. In paragraph 10, 11, and 12, he shows that the applicant has no appeal pending and has not shown any sufficient grounds to sustain this application.

In paragraph 2, he shows that the application is similar to application 41/2010 which had been already determined.

In rejoinder by affidavit Yusuf Mama, in paragraph 7 claims that he was vigilant and in reply he controverted all the allegations made by the respondents.

I have read the submissions and examined the record. I agree that this court has wide powers to extend the time. According to **Harlsbury's Laws of England 4th Edition V 37, paragraph 30,**

“The Court has power on such terms as it thinks just by order to extend or abridge the period within which a person is required or authorized by the rules... To do any act or proceedings even if the application for extension is not made under the expiration of that period.

This is an extensive power designed to give the court a wide discretion with view to the avoidance of injustice and ordinarily the court will extend time where any injury caused by the delay may be compensated for by the payment of costs.

On the other hand, the court in its discretion will decline to extend the time where there has been an excessive delay or where the litigant has had his trial or hearing and lost, or where no explanation is offered for substantial delay. Apart from this rule the court has very wide inherent jurisdiction to enlarge any time within which an act has been ordered to be done.”

The applicant in this matter claims that the delay was because he delayed to receive the lower court judgment/proceedings.

I notice from the record that counsel for applicant in submissions did not address in specific terms this element of delay; save a reference to paragraph 5 of applicant's affidavit. My reading of paragraph 5 does not show when he got the record, and what steps he took to get the record/judgment.

Arap in reply opposed that statement calling it in his affidavit in reply under paragraph 7 *“an abuse of process.”*

In the submissions by Respondent, it is argued that the applicant filed a notice of appeal on 27.08.2008 and has led no evidence to explain what transpired since then.

Counsel draws court's attention to Misc. Application 41 of 2010 referred to under paragraph 3 of 2nd Respondent's affidavit in reply, to argue that the matter had earlier on been withdrawn, the applicant having lost interest in the appeal. He argued that applicant is guilty of perpetuating the delay and is guilty of dilatory conduct.

The events that lead to this application are regrettable. This applicant filed a notice of appeal and requested for the record in 2008. The record was received in High Court Registry in 2010. The appellant then filed Misc. Application 41/2010, to High Court for extension of time to appeal. Court began hearing the matter and was at stage of submissions, then counsel for applicants M/s Owori & Co. wrote to court on 3rd October 2011 that:

“Applicant had no interest in pursuing this application.”

The matter was hence withdrawn.

It is the same applicant again through same lawyers who came back to court and filed MA-0213-2011, again applying for time to appeal.

This application does not explain at all why the applicant withdrew Misc. Application 41/2010, and what he depones to in this application is therefore incorrect. He received the proceedings long ago in 2010 but has been lax and dilatory in his conduct of the case. I do not find any justifiable cause for allowing a matter which was decided in 2002, to continue in our court system due to flimsy applications. There must be an end to litigations, and successful parties to disputes should be allowed to enjoy the fruit of their success. I do not find any merit in this application, as it lacks evidence sufficient enough to move court to exercise the discretion to extend the time within which to appeal. The application is not granted. It is dismissed with costs to the Respondents. I so order.

Henry I. Kawesa

JUDGE

07.11.2016

