

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
MISCELLANEOUS APPLICATION NO.044 OF 2016
ARISING FROM CIVIL APPEAL NO 003 OF 2012

1.KISORO TOWN COUNCIL

2.KISORO DISTRICT LAND BOARD

APPLICANTS

VERSUS

CHRISTINE ZUNGU

RESPONDENT

BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI

RULING

This is an Application by Notice of Motion brought under Section 98 of the Civil Procedure Act, Rule 6 of Order 51, and Rules 1, 2, and 3 Of Order 52 of the Civil Procedure Rules. The Applicants seek leave of Court to file an Appeal outside the set time and for costs to be in the cause. The Application is supported by the Affidavits of Tumwesigye Isiah the 1st Applicant's Town Clerk and that of Kwizera George, the Secretary to the 2nd Applicant.

The grounds on which the Application is premised are that the Applicants are aggrieved by the judgment of this Court in Civil Appeal No.003 of 2012 delivered on the 1st June 2015. The Applicants filed a Notice Of Appeal on the 17th June 2015 and wrote to Court requesting for the record of proceedings. The record was certified in April 2016 and the Decree was sealed on the 23rd June 2016. The Court registry did not contact the Applicants to collect the certified record of proceedings.

The Applicants claim that due to logistical challenges and the delay to provide the record by Court, they were not able to have the Appeal filed in time hence the Application. The other ground raised is that the intended Appeal raises important matters of Public Policy and has a likelihood of success

Hearing Notices were served on Counsel for the Respondent by the Court Process Server and an Affidavit of service was filed on the court record. Mr. Ndibareema Mwebaze for the Applicant appeared in Court and the Respondent and her Counsel did not appear for the hearing.

I allowed the Application by Counsel to proceed with the Application in the absence of the Respondent and her Counsel. The grounds in the Affidavit were reiterated by Counsel who also submitted that the intended Appeal seeks a pronouncement by the Court of Appeal on the important issue of the treatment of customary land holdings in Urban areas and to the

ownership of Public land by Local Governments which are matters of great public importance.

In her Affidavit in reply, the Respondent attributes the delay to the Applicants lack of vigilance in following up on the preparation of the record of Appeal and the Application is in her view intended to frustrate the enjoyment of her success in the High Court.

I have perused the record of proceedings in Civil Appeal No.03 of 2012 and the judgment the Applicants intend to appeal against. There was indeed a delay by the Court registry to prepare the record in time as requested by the Applicants and even when this was done, there is no evidence that the Applicants were notified. The delay in certifying the Decree is however attributed to the Applicants Counsel for they were under duty to ensure it was certified as soon as the record was delivered to them.

The High Court has the discretion to extend time within which to Appeal provided the Applicant provides sufficient reasons which must relate to the inability to take a particular step in time and this is gathered from the particular circumstances of the case. The circumstances in this case were the failure to notify the Applicants to collect the record and the delayed certification of the Decree .I would not revisit the lack of vigilance by Counsel on the Respondents who instructed Counsel to lodge the Notice of Appeal and apply for the record in good time.

The administration of justice however requires that the substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights.

See: Civil Appeal 41 of 1979 Mary Kyomulabi Vs Ahmed Zirondemu.

The issue of customary holdings in Urban Centers and the ownership of Public Land by Local Governments are matters of Public Interest which in my view merit further investigation and a judicial pronouncement by the Court of Appeal.

In the circumstances I allow the Application and grant extension of time within which to file the Appeal. Applicants should file the Appeal within 30(thirty) days from the date of delivery of this Ruling. Each party shall bear its costs.

Moses Kazibwe Kawumi

Judge

23rd November 2016.