

**THE REPUBLIC OF UGANDA**  
**IN THE SUPREME COURT OF UGANDA AT MENGO**  
**CIVIL APPLICATION NO.22/99**

**BETWEEN**

**MILLY MASEMBE:..... APPELLANT**  
**VS.**  
**SUGAR CORPORATION (U) LTD. & ANOTHER :..... RESPONDENT**

**RULING OF THE COURT**

Milly Maseembe hereinafter to be called the applicant filed this application under Rules 41(1) 42 (1) and Rule 108 of the Rules of the Supreme Court. It is seeking leave to appeal to this court without depositing security for costs and payment of fees into court. The application is supported by two affidavits sworn by the applicant in person. The grounds of the application are as follows:

1. The applicant has no means to pay the required fees and to deposit ‘security for costs into court.

2. The applicant’s appeal has reasonable possibilities of success.

The background of the matter is that the applicant is a widow of the late Maseembe. She is a mother and resident of Bukoto. She is unemployed. On 28th December 1993 she was travelling to Nairobi in motor vehicle Registration No. UPS 847 when it got involved in an accident with Tractor Registration No. UXI 462 belonging to **Sugar Corporation of Uganda**, hereafter to be referred to as the **1<sup>st</sup> Respondent**. It was being driven by **Kagiri Richard**, hereafter to be referred to as the **2<sup>nd</sup> Respondent**. The accident took place on Jinja Road some where in Namagunga. As a result of the accident the applicant sustained injuries and was hospitalized for over two months. She also lost her money and income which was coming from the business she was running.

With the assistance of the Legal Aid Project of The Law Society she was able to file High Court Suit No. 646 of 1995 against both Respondents. Judgment was passed in her favour. She was awarded both general and special damages. However, judgment was reversed in favour of the Respondents when they later appealed to the Court of Appeal.

Mr. Ssentomero who represented the applicant explained to this court that all along the applicant was availed lawyers by the Legal Aid Project to assist her to prosecute her case. That is how she was able to file the Notice of Appeal and file the present application. Correspondence between the applicant and the Legal Aid Project to that effect was annexed to the applicant's affidavit. It was Mr. Ssentomero's submission that communication clearly showed that the applicant has no means of prosecuting her case. In one such annexure, a letter dated 22.02.99; the applicant is described as one less privileged in our society. Secondly Mr. Ssentomero, submitted that the applicant's intended appeal has a possibility of success. This is because the Court of Appeal failed to properly evaluate the evidence as a result of which it came to a wrong conclusion. Further the learned Justices of the Court of Appeal did not consider vicarious liability on the part the first Respondent, which resulted in allowing the Respondents' appeal.

Mr. Sserwanga, learned counsel for the Respondents, strongly opposed the application. To him the claim that the applicant was all along assisted by lawyers availed to her by the Legal Aid Project was false. The averments in her affidavits were refuted by Mr. Kaggwa, the representative of 1<sup>st</sup> Respondent in his affidavit in reply. Mr. Sserwanga pointed out that the applicant at one time was represented by Ssebalu, Lule and Co-Advocates and Ssendege, Ssenyondo & Co. Advocates who were not availed to her by the Legal Aid Project.

Mr. Sserwanga told court that the Respondents have been advised by their counsel that the intended appeal has no likelihood of success. He further submitted that the waiver to pay security for costs will be very prejudicial to the Respondents in the most likely event of the appeal failing and as the applicant has already confessed to incapacity to pay. As far as the Respondents were concerned there was no sufficient indications of errors by the learned justices of the Court of Appeal to justify grant of the application. The Court of Appeal ruled out negligence on the part of the 2nd Respondent, so vicarious liability on the part of 1st Respondent did not arise. Mr. Sserwanga asked this court to dismiss the application. It had not been proved that the applicant had no means to pay. Further her intended appeal had no likelihood of success.

The Registrar of this court did not have an objection to the applicant's application.

The test to apply in applications of the present nature was enunciated in The Case of *East Africa Civil Appeal No.5 of 1977, Ouma Vs. PSC. Kenya.*

For the application to succeed the applicant must establish that:

1. He or she lacks the means to pay the required fees and to deposit security for costs into court and
2. That the intended appeal is not without reasonable possibility of success.

Further Rule 108(1) of the Rules of the Supreme Court provides that:

***“If in an appeal from the Court of Appeal in any Civil Case the court is satisfied on the application of an appellant that he or she lacks the means to pay the required fees or to deposit the security for costs and that the appeal has a reasonable possibility of success to court may order, direct that the appeal may be lodged.”***

- (a) Without payment of fees or on payment of any specified amount less the required fees.***
- (b) Without security for costs being lodged***

With regard to the first requirement it is not disputed by the Respondents that the applicant is a widow and unemployed, and that she sustained injuries during the accident. She adduced evidence to show that she was assisted by the Legal Aid Project. It is immaterial that she was assisted by other lawyers not instructed by the Legal Aid Project. In any case, it was explained that the two firms of lawyers alleged by Mr. Sserwanga to have been briefed by the applicant were not very co-operative. Further even Mr. Sserwanga in his submission apparently conceded that the applicant had confessed to incapacity to pay which worried the Respondents. Clearly on the evidence before court I find that it has been proved that at present the applicant lacks the means to pay the required fees or to deposit security for costs.

As for the second requirement. I listened to the submissions of both learned counsel for the parties. It is unfortunate that this court was not availed the full record of the lower courts. However, from the affidavits deponed to by the parties and the submissions of their learned counsel. I am of the view that the appeal is not without reasonable possibility of success. I, therefore, reject the submissions of counsel for the Respondents that the applicant has not

complied with the requirements of the law. On the other hand I find that she has satisfied them.

Besides the Registrar of this court did not have an objection to the application. In the result I would, grant the application. It is hereby ordered that.

**1. The applicant may lodge her intended appeal**

**(a) without prior payment of fees of this court and**

**(b) without depositing security for costs in court**

2. The record of Appeal be prepared by the Registrar of the Court of Appeal without payment therefore.

• The costs of this application abide the result of the intended appeal.

3. A copy of this order be served on the Registrar of the Court of Appeal

4. The intended Appeal be filed within 60 days from the service of this order on Registrar of The Court of Appeal.

***Dated at Mengo this 18<sup>th</sup> day of February, 2000.***

Laetitia E.M. Mukasa Kikonyogo

**Justice of the Supreme Court**