

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT MENGGO

(CORAM: ODER, MULENGA, AND KATO JJ.SC.)

MISCELLANEOUS APPLICATION NO.6 OF 2003

BETWEEN

1. **GODFREY MAGEZI**
2. **BRIAN MBAZIRA :::::::::::::::APPLICANTS**

AND

SUDHRI RUPARELLIA ::::::::::::::: RESPONDENT

(Reference from the ruling of Kanyeihamba JSC, sitting as a single Judge of the Supreme Court of Uganda at Menggo, dated 21st November, 2002 in civil application No. 10 of 2002)

RULING OF THE COURT.

This is an application by way of reference to this court from the decision of a single Judge who declined to grant an application for extension of time.

The facts, which gave rise to this reference, are as follows: Under Civil Appeal No. 16/2001 the applicants appealed to this court against the decision of the Court of Appeal. It was discovered that

the appeal had been filed out of time. The respondent applied under Miscellaneous Application No.3 of 2002 to have the appeal struck out for non-compliance with the rules of procedure. Under Civil Appeal No.10 of 2002, the applicants also applied to this court for extension of time within which to file the appeal. On 23/1/2002 when the appeal came up for hearing, the court was referred to the pending application for striking out the appeal, whereupon the appeal was adjourned to enable the present applicants to file their reply to that application. It appears no such reply was ever filed, at least by the time this reference was being heard. On 21/12/2002 the applicants' application for extension of time came up before a single Judge. He dismissed it on the ground that it was premature, superfluous and incompetent and that as a single Judge he could not hear an application for extension of time when another application for striking out the appeal was still pending before a full bench.

The applicants being dissatisfied with the decision of the single Judge, made this reference on five grounds, which are:

- 1. The learned trial judge (sic) erred in law and when he held that a single judge had no jurisdiction to hear and determine the application before him.**
- 2. The learned trial judge (sic) erred in law and fact when he found and concluded that the ruling of the single judge would render redundant the application before the full bench.**

- 3. The learned judge erred in law and fact when he found that the application before him was premature, superfluous and incompetent.**
- 4. The learned judge erred in law and fact when in reaching his decision he failed to take into consideration and give due regard to the substantive rights of the litigants and the Court jurisprudence on the issue.**
- 5. The learned judge erred in law and fact when he relied on and based his decision on technicalities.**

Mr. Mohammed Mbabazi, who represented the two applicants, argued the grounds generally after summarizing them into one ground namely: whether a single Judge can proceed to hear an application for extension of time when there is a pending application to strike out an appeal. He submitted that a single Judge had the power to deal with the matter in view of the decisions in: ***Kiboro v Posts and Telecommunications Corporation (1974) EA 155***, ***Haji Nurdin Matovu v Ben Kiwanuka (Supreme Court Civil Application No.12 of 1991)***, ***Kabogere Coffee Factory Ltd and Haji Bruhan Mugerwa v Twaibu Kigongo (Supreme Court Civil Application No.10 of 1993)*** and ***Crane Finance Co. v Makerere properties Ltd (Supreme Court Civil Appeal No. 11 of 2001)***. He submitted that the learned single Judge was wrong to hold that he had no power to decide on the application. The learned counsel prayed that the reference be allowed and the application (No.10 of 2002) be heard on its merits.

On his part, Mr. William Byaruhanga, who appeared for the respondent, submitted that the single Judge was correct to dismiss the application for extension of time. He contended that the Judge gave his reasons for his decision and he (counsel) agreed with those reasons. According to him, the authorities cited by Mr. Mbabazi did not support the legal principle that a single Judge has power to hear and determine a matter pending before a full court.

In counsel's view, ***Nuridin Matovu's case (Supra)*** decided that an application for extension of time can only be heard when the one to strike out the appeal is pending, if the latter was filed after the former had been filed, which was not the case in the present case. He contended that in the present case, the application to strike out the appeal ought to have been disposed of before that for extension of time was heard.

The ruling of the single Judge, which resulted in this reference, reads:

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"I find merit in the objection raised by Mr. Byaruhanga, counsel for the respondent in this application. I have analysed the cases supplied by Mr. Mbabazi in support of his clients' application and have found no statement in these respective judgments which are relevant or would assist me to dismiss Mr. Byaruhanga's persuasive submissions. The authorities cited by counsel for the applicants deal with courts' discretion to grant remedies in situations where litigants have failed or neglected to take essential steps in the proceedings required by rules of court. None of the authorities cited show any power,

let alone jurisdictions of a single judge to make a ruling which has the effect of rendering redundant an application pending before a full bench of the same court. I noted that the grounds of this application and the supporting affidavit by Mr. Godfrey Magezi conspicuously omitted to mention Application No.3 of 2002 or the ruling of this court upon it. This omission, especially by counsel, is most unfortunate and must be totally discouraged in future. Be hat as it may. I am satisfied that Application No.3 of 2002 is still pending before a full bench of this court and in my view only that panel has the powers and discretion to make any variations in the proceedings in that application before them. I agree with counsel for the respondent that this application is premature, superfluous and incompetent. It is therefore dismissed with costs to the respondent."

There is no doubt that a single Judge of this Court has discretion to grant or refuse to grant extension of time to a party, under rules 4 and 49 of the Rules of this Court and section 9(1) of the Judicature Statute 1996. In the instant case, the application, which is the subject of this reference, was made under Rule 4 of the Rules of the Court, which reads;

"4 The court may, for sufficient reason, extend the time prescribed by these Rules or by any decision of the Court or of the Court of Appeal for the doing of any act authorized or required by these Rules, whether before or after the expiration of that time and whether

before or after the doing of the act; and any such time shall be construed as a reference to the time so extended"

In view of the above provisions of the law, it would be incorrect to say that a single Judge of this court has no jurisdiction to hear an application for extension of time. In the case before us, the Judge declined to deal with the case because an application was pending before a full bench to strike out an intended appeal. There are a number of authorities of this court stating that an application for extension of time may be heard even if there is a pending application to strike out an appeal. Among those authorities is: ***Hajji Nurdin Matovu v Ben Kiwanuka*** (supra) where it was stated:

"It is to be noticed that in Kiboro's case the application for an extension of time was made before the hearing of the notice to strike out the appeal. Hence Kiboro's case can illustrate, that if there in an existing application, the court does not normally strike out the appeal, but would prefer to allow the application for extension of time to be heard first, before the striking out motion." (underline supplied)

With due respect to Mr. Byaruhanga counsel for the respondent, his attempt to distinguish the present case from the previous precedents is not tenable. The answer cannot depend on who filed his application first. This is so because if there is merit in the application for extension of time, the appeal will not be strangled. If there is no merit it will be rejected and the one to strike out the appeal will be

heard. An application to strike out an appeal does not act as a bar to an application for extension of time nor does it divest the court of its jurisdiction to extend time. When dealing with a matter of this nature the guiding principle should be that the rules of procedure are meant to serve as handmaids of justice and not to defeat justice.

In our view, there were two alternative courses open to the learned single judge in this case. Since he feared pre-empting the decision of the full court, he could have adjourned the application pending the hearing of the application for the striking out of the appeal. The better course was to decide the application on its merits and dismiss or grant it. The order dismissing the application was clearly an error as it served as hindrance to the applicants' rights to file a fresh application: (See: ***Hajji Nurdin Matovu v Ben Kiwanuka (supra) and Kabogere Coffee Factory Ltd and Hajji Bruhan Mugerwa v Hajji Twaibu Kigongo*** (Supra).

In the result, we allow the reference with costs to the applicants. The order by the single Judge dismissing the application is set aside. It is ordered that Civil Application number 10 of 2002 be fixed for fresh hearing by another single Justice of this Court.

Dated at Mengo this 4th day of August 2004

A.H.O.
Justice of Supreme Court.

Oder

J.N.
Justice of Supreme Court.

Mulenga

C.M.
Justice of Supreme Court.

Kato