THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: KISAAKYE; NSHIMYE; & OPIO-AWERI, JJ.S.C]

CIVIL REFERENCE NO. 15 OF 2016

BETWEEN

KANANURA ANDREW KANSIIME ::::::::::::::::::::::::::::::::] APPLICANT

AND

RICHARD HENRY KAIJUKA ::] RESPONDENT

[Reference arising from the decision of a Single Justice (Tibatemwa-Ekirikubinza, JSC) dated 6th October 2016 in Civil Application No. 11 of 2016]

RULING OF THE COURT

The applicant, Kananura Andrew Kansiime, (hereinafter called Kananura) filed this Reference from the Ruling of Tibatemwa-Ekirikubinza, JSC, which dismissed his application for leave to file and serve his Notice of Appeal in Court of Appeal Civil Appeal No. 042 of 2014, out of time.

The background to this Reference is as follows:
The parties to these proceedings carried out business transactions between themselves. Disputes arose between them culminating into High Court Civil Suit No. 90 of 2008.

On 2nd October 2008, the parties signed a consent Judgment, which was subsequently varied by another consent Judgment dated 8th July 2009.

The respondent, Richard Kaijuka (hereinafter called Kaijuka) later challenged the latter consent Judgment in Misc. Application No. 445 of 2009 on account of a mistake for including Motor vehicle Reg. No. UAH 800R which had not been part of the original consent judgment. The trial Judge, Kiryabwire, J., (as he then was) allowed the application.

On 3rd November 2011, Kiryabwire,J., having heard High Court Civil Suit No. 90 of 2008 on its merits, delivered his Judgment and found Kananura in default of paying Kaijuka the sum of Shs. 200,000,000/=.

Subsequently, Kananura then filed Misc. Application No. 763 of 2013 before the High Court seeking for Judicial Review of the orders made in Misc. Application No. 445 of 2009.

Wangutusi, J., heard the said application and reviewed the Judgment of Kiryabwire, J., (as he then was) and allowed the application.

Dissatisfied with the order and ruling of Wangutusi J., Kaijuka filed Civil Appeal No. 042 of 2014 to the Court of Appeal and prayed for the setting aside of the orders of the learned trial Judge.

On 4th November, 2015, the Court of Appeal set aside the order of review made by Wangutusi, J. and reinstated the Judgment of Kiryabwire, J. of 3rd November 2011. The Court of Appeal Judgment was delivered in the presence of counsel for both parties.

On 1st August 2016, Kananura filed Civil Application No. 11 of 2016 in this Court, seeking for extension of time within which to file and serve his Notice of Appeal against the Court of Appeal Judgment in Civil Appeal No. 042 of 2014. He also prayed that this Court validates the Notice of Appeal he had already filed at the Court of Appeal on the 28th July 2016, and that the costs of the application be provided for.

Kananura's application was heard by Tibatemwa-Ekirikubinza, JSC, as a single Justice, who on 6th October 2016, dismissed it with costs to the respondent.

Dissatisfied with the ruling of Tibatemwa-Ekirikubinza, JSC, Kananura filed this Reference on the following 3 grounds.

1. ***That the learned Justice erred in law and fact when she held that there was no sufficient reason to grant the applicant extension of time within which to file and serve a Notice of Appeal in Civil Appeal No. 042 of 2014.***
2. ***That the learned Justice erred in law when she failed to find that the points of law on illegality being raised by the applicant in his (intended) Appeal transcend all matters of pleadings and procedures of Court.***
3. ***That the learned Justice erred in law and fact by failing to properly appraise the evidence before Court and thereby arriving at a wrong decision.***

Kananura prayed that this Court finds that sufficient reason existed for the grant of extension of time within which to file the Notice of Appeal and to validate the Notice of Appeal already filed on the Court record. Furthermore, Kananura prayed that the Court remedy the illegality which had been brought to its attention. Lastly, Kananura prayed for costs of this Reference and the application before the single Justice.

Kananura was represented by Alex Tuhimbise, while Alex Candia represented the respondent. Kananura filed written submissions, while Kaijuka made oral arguments.

Parties Submissions of Ground 1

Turning to the present reference, we now proceed to consider ground 1 of this reference which was framed as follows:

"That the learned Justice erred in law and fact when she held that there was no sufficient reason to grant the applicant extension of time within which to file and serve a Notice of Appeal in Civil Appeal No. 042 of 2014."

Under this ground, Kananura contends that he had sufficient reasons for not filing and serving his Notice of Appeal in time.

Kananura's counsel submitted that this Court has power to extend time within which to file a Notice of Appeal. He further contended that an application to validate a Notice of Appeal can be granted even after the Notice of Appeal has been filed out of time. He relied on Rule 5 of the **Judicature (Supreme Court) Rules** and the case of ***Godfrey Magezi & Anor v. Sudhir Rupaleria, SC Civil Application No. 10 of 2002*** to support his submission.

Kananura's counsel also contended that this Court had powers to extend time fixed by the **Judicature (Supreme Court) Rules,** on sufficient reason being given to Court. He argued that whereas the Rules do not define what constitutes 'sufficient reason', this Court has construed the meaning of this phrase in ***F.L. Kaderbhai & Anor v. Shamsherali M. Zaver Virji & Anor, SC Civil Application No. 20 of 2008*** which he relied upon in support of his contentions.

Relying on paragraphs 2, 3, 4,5,10 and 12 of Kananura's Affidavit in Support of the Application and paragraphs 5, 7, 8 and 9 of his Affidavit in Rejoinder, counsel contended that Kananura had sufficient reason for failing to take an essential step within time. The sufficient reason, according to counsel was that Kananura's former advocates failed to carry out his instructions to appeal in time. Relying on ***Godfrey Magezi*** (supra), counsel contended that mistake of counsel cannot be visited on a litigant. He further argued that it also constituted sufficient ground for extension of time.

Counsel further reasoned that Kananura was a layman who depended on the advice of his advocate to file his intended appeal effectively. He contended that negligence of counsel should not be visited on a lay litigant like his client, Kananura. He relied on this Court's decision in ***Eng. Ephraim***

Turinawe & Anor v. Molly Kyalimpa Turinawe, SC Civil Reference No. 01 of 2012, to support his contention.

Relying on paragraphs 3, 6, 7, 9, 12 and 13 of the Kananura's Affidavit in Support of the Notice of Motion, counsel further contended that Kananura's conduct from the date of the judgment of the Court of Appeal showed that he always intended to pursue his appeal against the Judgment of the Court of Appeal. Counsel further submitted that Kananura was not guilty of dilatory conduct and that this was sufficient reason for the extension of time to appeal out of time. Counsel contended that had the single Judge considered Kananura's conduct immediately after the Judgment of the Court of Appeal, was delivered she would have reached a different conclusion.

On the other hand, Kaijuka's counsel refuted Kananura's claims that he had sufficient cause for the non-filing of his Notice of Appeal. He submitted that the single Justice properly evaluated the evidence and found Kananura guilty of dilatory conduct because it took him nine (9) months to get in touch with his former counsel.

Counsel further contended that Kananura was forced to get in touch with his former lawyer only after Kaijuka had taken steps to take out execution proceedings. Furthermore, counsel also submitted that Kananura contacted/instructed his current lawyers to lodge an appeal, after he (counsel for Kaijuka) had agreed to meet Kananura to discuss the execution matter and the way forward.

Counsel contended that whereas sufficient reason for extension of time under Rule 5 of the Judicature (Supreme Court) Rules includes mistake of counsel, Kananura's dilatory conduct could not enable him to rely on this provision. According to Kaijuka's counsel, Kananura's dilatory conduct was manifested

by his failure to follow up with his advocates, to know the status of his appeal. Kaijuka's counsel relied on the case of ***Capt. Philip Ongom v. Catherine Nyero Owota, Supreme Court Civil Appeal No. 14 of 2001*** to support his submission.

Kaijuka's counsel also disputed the genuineness of Kananura's letter purporting to give instructions to his former lawyers to lodge an appeal on his behalf.

Counsel distinguished the authorities that Kananura's relied on before the single Justice. Regarding this Court's decision in ***F.L. Kaderbhai & Anor v. Shamsherali M. Zaver Virji & 2 Others, Supreme Court Civil Application No. 20 of 2008***, counsel submitted that the learned Judge, Okello, JSC found that the applicants in that case had been more vigilant in instituting their application for extension of time, which was not the case in the present case.

Kaijuka's counsel further argued that in ***Molly Kyalukunda Turinawe & 4 others v. Eng. Ephraim Turinawe, SC Civil Application No. 27 of 2010*** , this Court found the applicants had been vigilant. Similarly, in consolidated Application ***Nos. 1 & 2 of 2010: Prof. Anyang'Nyong'o & 10 others v. Attorney General of Kenya and Attorney General of Kenya v. Prof. Anyang'Nyong'o & 10 others (EACJ)*** , the East African Court of Justice found that the delay was for only 3 days.

In rejoinder, Kananura's counsel reiterated his earlier submissions. Specifically on dilatory conduct, he contended that Annexure C clearly shows that the applicant instructed his former lawyer to lodge an appeal. Counsel

prayed to this Court to find that sufficient reason existed for the Court to grant extension of time and that there was no dilatory conduct on Kananura's part but rather negligence of the former counsel.

Court's Consideration of Ground 1 of this Reference.

This application was brought under Section 8(2) of the Judicature Act and Rule **52(1) (b)** of the **Judicature (Supreme Court) Rules.** Section 8(2) of the Judicature Act provides for references in this Court as follows:

> ***"Any person dissatisfied with the decision of a single justice in the exercise of a power under subsection (1) is entitled to have the matter determined by a bench of three justices of the Supreme Court which may confirm, vary or reverse the decision."***

On the other hand, Rule 52(1) (b) of the **Judicature (Supreme Court) Rules** provides for references from a single Justice as follows:

> ***"Where under Section 8(2) of the (Judicature) Act, any person who is dissatisfied with the decision of a single judge of the Court –***
>
> ***(a) …***
>
> (b) in any civil matter wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the Court, the applicant may apply for it informally to the judge at ***the time when the decision is given or by writing to the registrar within seven days after that date."***

There is no doubt that the above cited provisions give locus to Kananura file this Reference.

Furthermore, Rule 5 of the **Judicature (Supreme Court) Rules** gives this court discretion to grant extension of time within which an applicant can take an essential step to lodge an appeal. The Rule provides as follows:

> ***"The Court may, for sufficient reason, extend the time prescribed by these Rules or by any decision of the Court or 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 reference in these Rules to any such time shall be construed as a reference to the time as so extended."

Sufficient reason is not defined by the Rules of this Court. However, this Court has in the past, had an opportunity to consider what amounts to sufficient reasons.

In ***F.L. Kaderbhai & Anor v. Shamsherali M. Zaver Virji & 2 Others, Supreme Court Civil Application No. 20 of 2008,*** Okello, JSC (as he then was) cited with approval his brother Mulenga, JSC (as he then was) in ***Boney M. Katatumba v. Waheed Karim*** in ***SC Civil Application No. 27*** of ***2007,*** who observed as follows with regard to the meaning of 'sufficient reason' under Rule 5.

"Under Rule 5 of the Supreme Court Rules, the Court may, for sufficient reason, extend the time prescribed by the Rules. What constitutes 'sufficient reason' is left to the Court's unfettered discretion. In this context, the Court will accept either a reason that prevented an applicant from taking the essential step in time, or other reasons why the intended appeal should be allowed to proceed though out of time. For example, an application that is brought promptly will be considered more sympathetically than one that is brought after unexplained inordinate delay. But even where the application is unduly delayed, the Court may grant the extension if shutting out the appeal may appear to cause injustice."

As the above authorities indicate, sufficient reason should relate to the justification of the reason given for the applicant's inability to comply with the time limits prescribed by law.

It therefore follows that the paramount consideration by the Court in exercising its discretion under Rule 5 is existence of sufficient reason to grant the extension of time. The Court must also exercise its discretion judiciously.

We have carefully perused the record of the Reference and the submissions of both counsel. We have also read the ruling of the learned single Justice,

Tibatemwa-Ekirikubinza, JSC. We have noted that the facts placed before the learned single Justice and the arguments (except criticism of her ruling) for and against the application before her are substantially the same as those that were made before us.

The question that arises is whether the learned single Justice erred when she held that Kananura did not have sufficient reason to extend the time for him to file his notice of appeal out of time.

Kananura's contentions raise two sub-issues which, in our view, require independent consideration to determine whether there was an error on the part of the single Justice in dismissing his application. These are: i) Whether Kananura was guilty of dilatory conduct or not, and ii) Whether Kananura's failure to file his Notice of Appeal was due to mistake of Counsel. We will now consider each of these sub-issues in the following section.

Whether Kananura was guilty of dilatory conduct.

Kananura contended that six days after the Court of Appeal delivered its Judgment, he instructed his former lawyer to lodge his appeal.

Kaijuka refuted Kananura's contention that he was a diligent litigant and contended that the letter of instruction filed by Kananura was a sham which was generated for purposes of supporting Kananura's application for extension of time. Kaijuka further contended that the only time Kananura acted was when execution procedures against him were commenced in the Court of Appeal.

The learned single Justice while faulting the applicant for dilatory conduct in pursing his appeal observed as follows:

> ***"On 10th November 2015, the applicant communicated to his first lawyers, his intention to appeal against the Court of Appeal judgment delivered on the 4th November 2014. On 27th June 2016 the***

respondent wrote a demand letter to the applicant through his lawyers. There being no response, the respondent applied for an arrest warrant. On 21st July 2016, the registrar of the Court of Appeal issued an arrest warrant to be effected on or before the 2nd day of September 2016.

Upon execution of the warrant, the applicant on 28th July 2016 instructed other lawyers to lodge a Notice of Appeal. On 29th July 2016, the Notice of Appeal was lodged.

However, the applicant denied ever having knowledge of the demand letter. He also denied having been arrested and entering an amicable settlement with the respondent. It is noted that the applicant is silent as to when and how he learnt of the execution so as to be prompted to check on his lawyers.

Court also notes that between 10th November 2015 when the applicant writes to his first lawyers expressing an intention to appeal against the judgment and 21st July 2016 when the warrant of arrest is issued, there is no evidence that he was in contact with his lawyers. From the chronology of events one can infer that the only time the applicant is seen engaging or checking on his lawyer on the status of the appeal is when execution proceedings were commenced. This was 9 months after delivery of the judgment of the Court of Appeal. This contradicts the applicant's submission that he is a serious litigant interested in the appeal. It cannot also be a coincidence that it is after the arrest warrant was issued that the applicant instructed other lawyers to lodge the Notice of Appeal.

Analysis of the chronology of events as presented to the Court shows the applicant as a non-vigilant litigant and yet equity does not aid the indolent."

We entirely agree with the analysis of the learned single Justice. We have perused the record and have found no evidence of vigilance on the part of Kananura. He did not adduce any affidavit evidence to show that from the time of the purported instructions to his former lawyer to lodge his appeal, up to the time of commencement of the execution process against him, a period of 9 months: (a) that he ever followed up with his former lawyer to know the status of his appeal or the extent to which his instruction had been effected; or (b)that he ever paid any instruction fees to the said lawyers to

proceed with his instructions; or (c)that he had reached an agreement or arrangement on how he was to pay for the instruction.

Such evidence would have gone a long way to show vigilance on Kananura's part. It is only in those circumstances that it would have been possible for this Court to find that sufficient reason to extend time existed, because there would have been clear evidence of not only lawyers being instructed, but of being paid or agreeing to defer their payments and of their subsequent failure to institute Kananura's appeal.

We also note that there is nowhere in Kananura's Affidavit in Support of his application where he deponed that he ever followed up on his purported instructions to his first lawyer inquiring about the status of his appeal. Yet in such circumstances, good sense would require that a litigant who had instructed a lawyer to lodge an appeal would inquire or remind the lawyer about the appeal, or even demand to know its progress or status. A litigant, in our view cannot afford to be complacent or passive in regard to his intended appeal. He or she is expected to follow up his or her intended appeal or case with his lawyer. In the event of any inaction by his lawyer, Kananura should have taken a step to engage new lawyers to ensure that his instructions were acted upon in a timely manner.

The only time Kananura showed some vigilance in demanding to know the progress of his appeal was indicated in paragraph 5 of his Affidavit in Rejoinder, where he deponed as follows:

> ***"That in Reply to Paragraph 9 of the Affidavit in Reply, when I learnt of the Application for Execution of the Court of Appeal's Judgment, I contacted my former lawyers M/s Geoffrey Nangumya & Co. Advocates inquiring on the status and progress of the Appeal as per my instructions, who advised me that they had not lodged the Appeal for which they could not furnish me sufficient reason."***

It should be noted that Kananura did not show when and how he came to know of this information about execution proceedings. There is no evidence to show how he contacted his lawyers or what means he used. Was it by letter? Was it a telephone call? Was it through a third party? In the absence of any evidence, we have no basis for agreeing with Kananura's claims.

Be that as it may, the warrant to arrest Kananura was issued by the Court on 21st July 2016. The issue of the warrant was preceded by a demand for payment which was made on 27th June 2016. The Affidavit in Reply to the application before the single Justice further shows in paragraphs 6, 7, 8 and 9 that Kananura was arrested at his Panamera Bar in Naguru by the Court Bailiffs executing the warrant of arrest. The Affidavit further shows that upon being arrested, Kananura contacted Kaijuka through their mutual friend, Eddy Kisitu, and requested for a meeting at the office of Kaijuka's lawyer in Naguru to discuss payment modalities, contending that his former lawyer did not draw the demand notice to his attention.

Furthermore, according to paragraph 8 of the affidavit in Reply to Kananura's application, Kaijuka's lawyers accepted to meet Kananura. They accordingly informed the bailiffs of Kananura's willingness to pay voluntarily including the bailiff's fees but Kananura never turned up on the day. Then on the 28th July 2016, Kananura filed a Notice of Appeal.

As the learned single Justice pointed out, all that we have observed above cannot be a coincidence. Whereas Kananura disputed all this, the above chronology of events and our analysis makes us inclined to believe Kaijuka's version of events, as opposed to Kananura's version.

We have also reviewed the letter Kananura wrote to his former lawyer, which was attached as annexure 'C' on his Affidavit in Support of the application before the single Justice. We have noted that the letter neither

bore Kananura's address nor his telephone number. We are therefore unable to confirm if the letter was indeed genuine or a sham. This made this evidence unreliable.

In conclusion, our analysis of the evidence on record shows that Kananura only moved to file his appeal after he had been arrested by the bailiffs who were executing a warrant of arrest issued by the Court of Appeal. In the circumstances we are of the view that Kananura was guilty of dilatory conduct on grounds of failure to take action for a period of 9 months and of only taking action after being arrested by bailiffs.

We therefore agree with the finding of the learned single Justice that Kananura was guilty of dilatory conduct.

Whether Kananura's failure to file his Notice of Appeal was due to Mistake of Counsel

Kananura contended that as a layman who is not well conversant with the legal processes, he trusted his counsel to follow up on his instructions to file his appeal. He prayed that the Court finds that the mistake of his former advocate should not be visited on him as a person by denying him the right to appeal.

On the other hand, Kaijuka agreed that mistake of counsel is a sufficient ground for Court to grant leave to appeal. He however argued that it is only available to a litigant who has acted diligently to pursue his appeal, which was not the case with the present applicant.

The learned single Justice while analyzing the issue of mistake of counsel vis-à-vis a vigilant litigant observed as follows:

> ***"Much as it is a settled principle of law that a lawyer's mistake cannot be visited on an innocent litigant, there are exceptions to this principle.***

Where an applicant does not establish sufficient reason, then he cannot rely on the principle. Court notes that the function of this principle is to serve as an instrument to advance the ends of justice. Where the principle is not used to serve its proper function, then it cannot be used as a shield in abuse of the court of process and of justice.

A litigant who exhibits dilatory conduct cannot use the principle as a shield to conceal his conduct."

This Court has held so in various decisions of this Court such as ***F.L. Kaderbhai & Anor v. Shamsherali M. Zaver Virji & Anor, SC Civil Application No. 20 of 2008;*** and ***Molly Kyalukinda Turinawe & 4 others v. Eng. Ephraim Turinawe & Another, SC Civil Appln No. 27 of 2010*** that counsel's negligence, omission or mistake can constitute sufficient reason under Rule 5 and therefore cannot be visited on a litigant

In ***Capt. Philip Ongom v. Catherine Nyero Owota, SC Civil Appeal No. 14 of 2001, Mulenga, JSC*** held as follows:

"A litigant ought not to bear the consequences of the advocate's default, unless the litigant is privy to the default, or the default results from failure, on the part of the litigant, to give to the advocate due instructions."

Similarly, in ***Sepiriya Kyamulesire v. Justine Bikanchurika Bagambe, SC Civil Appeal No. 20 of 1995*** (unreported) Karokora, JSC also held as follows:

"In my considered opinion, considering the decided cases of this Court and other Courts on this point, it is now settled that errors of omission by counsel (are) no longer considered to be fatal to an application under Rule 4 of the Rules of this Court unless there is evidence that the applicant was guilty of dilatory conduct in the instruction of his lawyer."

As the above authorities clearly show, the general principle of law that mistake or omission of counsel should not be visited on his client is subject to exceptions.

We note that whereas Kananura as a non-lawyer is a layman in as far as matters of Court processes are concerned, it is also true that the lawyer is only an agent of a litigant and/or intended appellant. It therefore follows that it is the duty of an intended appellant to follow up and inquire from his advocate on the status of his case. Following up of the applicant's case did not require him to be knowledgeable in Court processes.

In the instant case, Kananura's conduct shows that he did not exercise any vigilance or diligence in pursuit of his intended appeal. Such conduct, in the circumstances amounted to dilatory conduct and negligence on his part.

In conclusion on Ground 1 of the Reference, the evidence on record shows lack of vigilance on the part of Kananura in pursuit of his intended appeal to this Court and dilatory conduct. His actions in our view did not show or constitute sufficient reason for this Court to grant him extension of time within which to lodge his appeal. The learned Justice therefore did not err in holding that there was no sufficient reason to grant Kananura extension of time within which to file and serve the notice of Appeal in Civil Appeal No. 042 of 2014. Ground 1 of this Reference therefore fails.

Ground 2 of the Reference

We will now turn to consider the submissions of the parties with respect to ground 2 of this Reference which was framed as follows:

> ***"That the learned Justice erred in law when she failed to find that the points of law on illegality being raised by the applicant in his (intended) Appeal transcend all matters of pleadings and procedures of Court."***

Counsel submitted that Kananura's intended appeal raises novel and important questions of law that this Court should hear. He contended that the novel point of law was *'whether the terms of a consent judgment which has been duly set aside by a Court of Competent jurisdiction in a separate*

Miscellaneous Application, can be imposed on parties during determination of the main suit.'

Kananura's counsel also referred the Court to grounds 6 and 7 of the intended Memorandum of Appeal and contended that the intended appeal was meant to prove that imposing on the parties terms of a consent Judgment that had been set aside was an illegality. In support of his contention, Kananura's counsel referred this Court to paragraph 8 of Kananura's Affidavit in support of his application before the single Justice, which introduced the draft memorandum of appeal that Kananura intended to file in the event that his application for leave was granted. In the circumstances, he submitted that the existence of such an illegality which had been brought to the attention of Court superceded any other argument in suppression of the said illegality and had to be remedied.

On the issue of remedies, Kananura's counsel submitted that it was in the interest of justice for this Court to find that the single Justice ought to have granted Kananura's application, because there was sufficient reason to do so and also because an illegality which had been brought to the attention of the Court needed to be remedied.

Kaijuka's counsel on the other hand, submitted in respect of this ground that the issue of the alleged illegalities ought to be disregarded because it was an attempt by Kananura to smuggle in a matter that never arose during the hearing of the application before the single Justice. In the circumstances, he prayed that this ground be ignored by the Court.

Counsel further submitted that in the event that the Court was inclined to consider it, then it should find that Kananura's contentions on illegality were untenable since the complaint was centered on the decision of Kiryabwire, J. yet Kananura's intended appeal was from a Court of Appeal Judgment against

the decision of Wangutusi, J. He further contended that Justice Kiryabwire's Judgment was still intact. Counsel contended that if this Court allowed the intended appeal to be filed, this Court would be entertaining an appeal from the High Court, contrary to Article 132 (2) of the Constitution and Sections 4

and 6 of the Judicature Act. He relied on this Court's decision of ***Lukwago Erias v. Kampala Capital City Authority, SC Civil Application No. 06 of 2014*** to support of his contention.

Lastly, Kaijuka's counsel prayed that this Reference be dismissed with costs.

In rejoinder, Kananura's counsel refuted Kaijuka's contentions that the issue of illegalities never arose before the single Justice. Kananura's counsel contended that Kananura deponed on the issue of illegality in his Affidavit in support, but the learned Justice failed to consider it. Counsel contended that the single Justice erred in failing to consider the fact that the intended appeal raises important points of law, which transcend all rules of procedure.

In conclusion, Kananura's counsel reiterated his prayers and prayed to this Court to find that Kananura was not guilty of dilatory conduct; that the intended appeal raised important points of law which transcend all matters of procedure; and lastly that the Notice of Appeal already on Court record be validated.

Court's consideration of Ground 2 of the Reference.

We now turn to address ourselves to Kananura's contentions under this ground and shall deal with the issue of illegality first.

We note that whereas Kananura referred to issues of illegality in his Affidavit in support of his application, he did not canvass this issue in his written submissions for the application by the single Justice. Kaijuka's counsel in turn did not address himself to this issue.

We also note that Kananura raised this issue of illegality in rejoinder to Kaijuka's submissions generally. At page 53 of the Record of the Appeal, Kananura submitted that there was need to look at the matters raised in the appeal and then referred the Court to the draft memorandum of appeal which, in his view, raised matters of law which this Court should determine.

We have further noted that it was improper for Kananura to raise the issue of illegality in rejoinder, because he was only supposed to respond to matters that had been raised in the reply and not to raise new matters. As a result, Kaijuka was not able to respond to the new issues raised. In the circumstances, we cannot fault the single Justice for having failed to consider whether the intended appeal raised the issue of illegality and novel points of law.

Be that as it may, we have also taken note of the fact that the application before the learned single Justice was about extension of time within which to file or validate a Notice of Appeal. The intended Memorandum of Appeal was not a Court document that the learned Justice was bound to follow. The learned Justice did not have before her, the Ruling and Judgments in question or the full Record of Appeal before her, to enable her to determine whether the intended appeal raised novel points of law or instances of illegalities. It was only in such circumstances that the learned Justice could have been in position to make that determination on the likelihood of success of the intended appeal.

Furthermore, we have reviewed the authorities relied on by Kananura. We note that he did not cite or rely on any authority that has held that likelihood of success of an intended appeal on grounds of illegality or novel point of law constitutes sufficient cause to extend time with in which to file a notice of appeal out of time. What Court is reviewing in such an application such as

the one before us, is the reason or reasons that prevented the applicant from taking an essential step within the time that is provided for under the Rules of this Court.

The same views we have expressed above on the issue of illegality, equally apply to the contentions that the intended appeal raised a novel point of law. We again state that the learned single Justice was dealing with an application for extension of time and not whether Kananura's intended appeal raised a novel point of law.

Be that as it may, we wish to note that Kananura's argument that his intended appeal raises a novel point of law on the status of a consent Judgment which has been set aside by the Court is not accurate, and therefore should be rejected. Consent Judgments that have been set aside in the past. It is our view that the effect of setting aside consent Judgments on the parties is not novel. We have found no merit in Ground 2 of the Reference. It therefore fails.

Ground 3 of the Reference.

We now turn to ground 3 of the Reference which was framed as follows:

> ***"That the learned Justice erred in law and fact by failing to properly appraise the evidence before Court and thereby arriving at a wrong decision."***

We have carefully perused the Ruling of the learned single Justice and the Record that was placed before her. We find that she properly considered and appraised all the evidence and submissions made by the parties and that she arrived at the right decision. We therefore find no merit on this ground either. It therefore fails.

As a result, all the three grounds of this Reference fail.

We are satisfied with the decision reached by the learned single Justice that Kananura was guilty of dilatory conduct with respect to the filing of his intended appeal.

A party that is dissatisfied with the decision of any Court is required to take the essential steps within the prescribed time to file an appeal against the decision, under the relevant applicable laws. A loosing party who only springs in action when the successful party sets in motion the process of realizing the fruits of his or her Judgment, cannot be allowed to use the Court to frustrate or delay the execution process. There must be finality in litigation.

Orders

Kananura's Reference is hereby dismissed with costs. The order of the single Justice declining to grant Kananura leave to file his Notice of Appeal out of time, is hereby upheld. Kananura shall pay Kaijuka the costs of this Reference.

Dated at Kampala this ...**30th** ... day of .....**March**..... 2017.

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JUSTICE DR. ESTHER KISAAKYE,
JUSTICE OF THE SUPREME COURT.

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JUSTICE AUGUSTINE NSHIMYE,
JUSTICE OF THE SUPREME COURT.

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JUSTICE RUBY OPIO-AWERI,
JUSTICE OF THE SUPREME COURT.