

UGANDA / JUDGMENT

Adura Omuto Ltd v Henry Nyombi (Civil Application No. 5 of 1999) [1999] UGCA 66 (1 June 1999) [1999] UGCA 66

COURT

Court of Appeal of Uganda

BEFORE

kato, JA

CASE / FILE NUMBER

Civil Application No. 5 of 1999

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 5 OF 1999

ADURA OMUTO LTD

APPLICANT

VERSUS

HENRY NYOMBI RESPONDENT

CORAM: HON. JUSTICE C. M. KATO, J. A. (Single Judge)

RULING

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This is an application for extension of time within which to file a notice of appeal.. The application was filed under rule 4 of the Rules of this court. It was lodged by a notice of motion dated 512199 and it is supported by an affidavit sworn by Mr. George Emesu on 512199.

Although the notice of motion gives 3 grounds upon which this application was founded there is in fact only one substantial ground namely: that the applicant's delay to file the notice of appeal on time was due to the negligence of its counsel.

Mr. Emesu who argued the application on behalf of the applicant submitted that the delay was not attributable to the applicant who promptly instructed its counsel to file the notice of appeal immediately after the judgment was delivered. According to him he prepared the necessary papers on time but went upcountry before signing them. When he returned from upcountry on 23-12-98 time within which to file the notice of appeal had expired and the papers had been misplaced in his chambers. The papers were not recovered until 3-2-99. It was Mr. Emesu's contention that the applicant was diligent and it would be unfair to deny it enlargement of time.

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On his part, Mr. Kiwuuwa who appeared for the respondent strongly opposed the application. He submitted that no sufficient ground had been shown as to why the applicant had not filed the notice of appeal within prescribed time. He contended that failure by applicant's counsel to sign and file papers on time and misplacement of the papers was unethical behaviour on the part of the counsel.

Rule 4 under which this application was brought reads as follows:

"4 . The court may, for sufficient reason, extend the time limited by these Rules or by any decision of the Court or of the High Court for the doing of any act authorised 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."

The phrase "sufficient reason" is not defined in the rules. The legislators in their wisdom left it to the discretion of the court to decide as to what amounts to "sufficient reason". In the instant case the matter to be considered concerns the question of whether counsel's negligence can be regarded as "sufficient reason" within the meaning of rule 4 of the Rules of this court.

According to Mr. Emesu's affidavit sworn in support of this application and his submission, there is no doubt that the delay in filing the notice of appeal on time was due to the counsel's negligence. The applicant was not to blame for the mess. There are decisions of this court and the Supreme Court suggesting that a party to litigation should not be punished for negligence of his counsel and that each case has to be considered on its own merits. In the case of *Shabir Din v Ram Parkash Anand* [1955] 22 EACA 48 at page 51 the Court of Appeal for Eastern Africa had this to say on the matter:

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In particular, mistake or misunderstanding of the appellant's legal advisers, even though negligent, may be accepted as a proper ground for granting a relief, but whether it will so be accepted must depend on the facts of the particular case."

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Since the applicant was in no way to blame for the wrongful acts or omissions of its counsel, I find this a proper case to pennit the applicant to file its notice of appeal out of time. The application is accordingly allowed. The applicant is to file its notice of appeal within l4 days from the date of the delivery of this ruling. As the applicant's counsel was wholly responsible for this mess, due to his own negligence, he is to pay the costs ofthis application to the respondent from his (counsel's) own resources.

+ TL JUR', Dated at Karnpala -e- this Day of ¹⁹⁹⁹¹

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r C. M. KATO JUSTICE OF APPEAL

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Prepared on 14 October 2026 · Esheria