

Atuhairwe v Kabeizire (Miscellaneous Application 49 of 2024) [2024] UGHC 1025 (30 October 2024)

[2024] UGHC 1025

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1. The applicant was the defendant to Civil Suit No. 22 of 2014 which was filed and heard by the Fort Portal Chief Magistrate's Court and judgment delivered 24 against him.

- 2. The applicant having been aggrieved with the findings of the trial court, lodged Civil Appeal No. 006 of 2018 to the High Court which was dismissed 3 on grounds that the memorandum of appeal was argumentative and narrative in nature.
- 3. The applicant being aggrieved with the decision of this court appealed to the Court of Appeal and lodged a notice of appeal on 25th 6 September 2019.
- 4. The applicant during the pendency of the appeal also lodged Revision Application No. 103 of 2019 which was also dismissed.
- 9 5. The applicant later filed Misc. Application No. 96 of 2022 where court advised him to either file an application for enlargement of time to file a proper appeal or appeal against the decision of court in Civil Appeal No. 006 12 of 2018.
- 6. The applicant was advised by his lawyers to file an application for leave to appeal out of time hence the current application.
- 15 7. It is fair, just and equitable that the application is granted so that he could exercise his right of appeal.

Reply of the Respondent:

The application is opposed by the Respondent who stated as follows:

- 1. The applicant's appeal to this court was dismissed by his Lordship Justice
- 21 Masalu Musene on 19/09/2019 and after being dissatisfied with the same, he lodged an appeal to the Court of Appeal which is still pending.
- 2. The applicant later filed an application for revision which was dismissed on 27 24 th March 2022 and he later filed Misc. Application No. 096 of 2022 for reinstatement of the appeal which was dismissed by court on 18th January 2023.

- 3. The Respondent as a decree holder in Civil Suit No. 22 of 2014 was given vacant possession of the suit land on 30th June 2022 and he is still in 3 possession to date.
- - 4. The applicant attempted to challenge execution in Misc. Application No. 037 of 2023 before the Chief Magistrate at Fort Portal and the motion was 6 dismissed for want of merit. The applicant also filed Civil Suit No. 10 of 2022 challenging execution which was dismissed by the Chief Magistrate of Kyenjojo.

- 9 5. The current application is an abuse of court process and the applicant is barred under the principle of election having chosen to appeal to the Court of Appeal from seeking leave to appeal against the decision of the lower court.
- 12 6. The application has no merit and ought to be dismissed with costs to the Respondent.

Rejoinder of the Applicant:

In rejoinder, the applicant clarified as follows;

- 1. The decision of his Lordship Wilson Masalu Musene was not determined on 18 merits and did not confer ownership of the suit land to the Respondent. The errors pointed out in the intended appeal to the Court of Appeal need to be corrected.
- 21 2. In the ruling in Misc. Application No. 96 of 2022, the applicant was given an option for enlargement of the time to file a proper and valid memorandum of appeal and it was the basis of the current motion.

24 Representation and Hearing:

The parties did not file submissions. I thus premised this ruling on the pleadings filed in court.

Issues:

- 6 Whether the applicant has presented just cause to enlarge the time within which to appeal.
- 9 Consideration by Court:

Section 79 (1) of the Civil Procedure Act limits the time within which an appeal against the decision of the Chief Magistrate Court must be lodged to the High Court

- 12 to 30 days. Section 98 of the Civil Procedure Act and Order 51 rule 6 of the CPR, grant court the discretion to extend the time within which to appeal, upon demonstration of sufficient cause. Sufficient cause connotes the inability to take a
- 15 necessary step in time. (See: *Hadondi Daniel v. YolamEgondi Court of Appeal Civil Appeal No 67 of 2003*). The applicant must also demonstrate that the intended appeal has high chances of success or that he has arguable grounds of appeal and
- 18 has not been guilty of dilatory conduct. (See: *Degeya Trading Stores (U) Ltd v Uganda Revenue Authority, Court of Appeal, Civil Application No. 16 of 1996; Sango Bay Estates Ltd & Ors Vs Dresdner Bank A. G (1972) EA 17)*
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In the Court of Appeal of Kenya in *ThuitaMwangi V Kenya AirwaysLtd [2003] eKLR* the following considerations were laid down: (i) The period of delay; (ii) The

- 24 reason for the delay; (iii) The arguability of the appeal; (iv) The degree of prejudice which could be suffered by the Respondent if the extension is granted; (v) The importance of compliance with time limits to the particular litigation or issue; and
- 27 (vi) The effect if any on the administration of justice or public interest if any is involved.

- 3 Enlargement of time to file the notice of appeal should be granted unless the applicant is guilty of unexplained and inordinate delay in seeking the indulgence of the Court, has not presented a reasonable explanation of his failure to file the notice
- 6 of appeal within the time prescribed by the rules, the extension will be prejudicial to the respondent or the Court is otherwise satisfied that his intended appeal is not an arguable appeal. It would be wrong to shut an applicant out of court and deny him
- 9 the right of appeal unless it can fairly be said that his action was in the circumstances inexcusable and his opponent was prejudiced by it. (See:*Ojara v Okwera, HCMA No. 023 of 2017 & Oywelo Yasinto v Onying Veronica, HCMA No. 057 of 2019)*.
- 12

I have considered the pleadings of both parties and the annexures thereto. The applicant previously filed Civil Appeal No. 06 of 2018 against the decision of the 15 trial court in Civil Suit No. 22 of 2014. The appeal was dismissed by His Lordship Masalu Musene (RIP) on the basis that the grounds of appeal were argumentative and narrative. The applicant later lodged a notice of appeal against the decision of 18 the His Lordship Masalu Musene. Subsequently, he filed Misc. Application No. 103 of 2019 for revision which was dismissed on ground that the matter was not 21 re-instatement of Civil Appeal No. 06 of 2018 which was dismissed on account that there was no legal foundation for the same. The Respondent asserted that the present application has no merit and ought to be rejected.

amenable for revision. He later filed Misc. Application No. 096 of 2022 seeking a

The delay herein seems to have been caused by the wrong procedures adopted by the applicant to have his appeal heard. He filed numerous applications which did not 27 yield results. After the appeal had been dismissed on account that the memorandum

of appeal was defective, he appealed instead of filing a fresh appeal with proper grounds with leave of court. The court has taken into consideration that the applicant

3 was not represented in most of these proceedings. In **Andrew Bamanya v Shamsherali Zaver, S. C. Civil Appln. No. 70 of 2001,** the Supreme Court also considered that the mistakes, faults / lapses or dilatory conduct of Counsel should not be visited on the litigant. The Court also held that the other principle governing

applications for extension of time is that the administration of justice requires that all substances of disputes should be heard and decided on merit.

In the present case, the applicant seeks to appeal against a decision made in 2018, that is, after 5 years and some months. The Respondent asserts that the applicant

- 12 brought the motion with dilatory conduct and as such it ought to be rejected. The question is whether the 5 years is dilatory conduct and whether court can ignore that time and grant leave. In **Andrew Bamanya v Shamsherali Zaver (supra)**, there was
- 15 a delay of 2 ½ years in filing the application for leave to appeal out of time. The delay was caused by the Applicant's lawyers. In that case the court found that it would be a denial of justice considering the circumstances of the case to shut the

18 Applicant out from exercising his right of appeal. The Supreme Court decided that it had inherent powers under its own rules to administer substantive justice.

In **Sabiiti Kachope and three others v Margaret Kamuje, S. C Civil Appln. No. 31* 21 *of 1997 [1999] KLR 238**, an application for leave to extend time within which to appeal was filed after two years and five months from the date the judgment was passed. The applicant accounted for the delay. The court held that the applicant had shown good cause for the extension of time. In the two cases above cited, enlargement of time was granted despite the relatively long delay.

The series of applications filed by the applicant clearly demonstrate his efforts to have his appeal heard. Denying him leave would amount to unreasonably blocking

- 3 the applicant from the gates of justice. He has fronted several efforts to have the appeal heard which have been largely challenged by the procedure undertaken by the applicant. Further, since the Respondent is in possession of the suit land, I find
- 6 no prejudice which the Respondent will suffer if the application is granted. If any, the said likely prejudice can be atoned by an award of costs. This application thus succeeds with the following orders:
- 9 1. Leave is granted to the applicant to file an appeal out of time against the decision of HW Kwizera Vian, Magistrate Grade One at Fort Portal in Civil Suit No. 22 of 2014.
- 12 2. The applicant shall file a memorandum of appeal within 30 days from the date of delivery of this ruling and serve it upon the Respondent.
- 3. Since the delay was caused by the applicant, I grant this application with

15 costs to the respondent.

It is so ordered.

- 18 Vincent Wagona **High Court Judge FORTPORTAL**

- 21 **DATE: 30/10/2024**

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