

UGANDA / JUDGMENT

Byakagaba v Ssempe (MISCELLANEOUS APPLICATION No. 279 OF 2017) [2017] UGHCCD 188 (21 August 2017)

[2017] UGHCCD 188

COURT

HC: Civil Division (Uganda)

BEFORE

Musota, J

CASE / FILE NUMBER

MISCELLANEOUS APPLICATION No. 279 OF 2017

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS APPLICATION No. 279 OF 2017

(Arising from High Court of Uganda (Civil Division))

Miscellaneous Application No. 339 of 2015)

(All arising from Chief Magistrates' Court of Mengo at Mengo)

Miscellaneous Application No. 87 of 2013 &

Civil Suit No. 2149 of 2008)

BENON BYAKAGABA ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

SSEMPA BARNABAS ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for extension of time within which to seek leave to appeal against this Court's decision in HCMA 339 of 2015 arising from Chief Magistrates' Court of Mengo MA 87 of 2013 and Civil Suit No. 249 of 2008.

The reason for this application is that the applicant was not served with a notice of the ruling. That the applicant came to know that the ruling was delivered on 22nd December 2016 on 21st April 2017 upon service of a warrant. That the applicant has always pursued the matter in a timely manner. That he has good grounds of appeal and the appeal involves matters of great importance and that it will be extremely prejudicial to the applicant if this application is not allowed.

The respondent opposed this application saying that the applicant has made it a habit to blame court for his failure to follow up his matters in court. That the dispute the subject of the previous and the current application for leave to appeal was vacant possession of the suit land. That the applicant pleaded in the written statement of defence that he is no longer the owner of the suit land since he disposed of the same long ago and has no control over the same. That therefore granting leave would serve no purpose in view of the above pleading. That failure to serve a hearing notice does not necessarily mean the applicant has a high likelihood of success on appeal or that the appeal raises matters of great importance.

Court allowed respective counsel to file written submissions in support of their respective cases.

I have considered this application as a whole and the submissions by respective counsel.

I am inclined to agree with the respondents that this application lacks merit. Although the applicant claims that he has good grounds of appeal and that the appeal raises matters of great importance, he has not attempted to indicate what those matters are. Although he acknowledges that he came to know of the Ruling after almost four months, he must have read the ruling and pointed out the errors in the ruling which warrant consideration of the Court of Appeal. The alleged failure to serve a hearing notice does not necessarily mean that the applicant has a high likelihood of success which can persuade this court to extend time within which to file for leave to appeal. None service of a hearing notice cannot be a ground of appeal because it does not go to the merits of the decision complained of. None service is only an error of procedure which does not defeat the decision of court on merits. The above notwithstanding the applicant has deponed in paragraph 10 of the affidavit in support of the Notice of Motion that:

“ ... I have filed an appeal before the Court of Appeal which has high chances of success.”

If the applicant has already filed the appeal then there is no need for extension of time to file the appeal.

For the reasons herein, this application is dismissed with costs.

Stephen Musota

J U D G E

21.08.2017

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