

Damulira v Sserunjogi & Another
(Civil Application 42 of 2023)
[2025] UGSC 4 (21 February 2025)
 [2025] UGSC 4

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

Background:

The brief background is that the respondents sued the applicant together with hve others for inter alia proprietorship of a propert5r situate at Kyamula, Badongo village, Salaama road, Makindye Division, Kampala. The respondents alleged that they purchased the

⁵ property from Edith Nayiga who got it from the late Margaret Namutindwa as a gift inter uiuos. The appellants/defendants were therefore trespassers on the land. The applicant on the other hand alleged that the property sold to the respondents was different from the applicant's suit property who sold it to the other appellants/ defendants. 10

The trial Court found that the respondents were the rightful owners of the suit property. The learned trial Judge found that the applicant fraudulently and illegally acquired and sold the suit property to the rest of the appellants/defendants and that the transactions between the applicant to the sixth defendant was a collective arrangement to defeat the respondents' claim to the land. They were therefore trespassers on the said land. Court awarded the respondents general damages of 20,000,000/= as well as special damages on the basis of rent collected from the premises of 30,000,000/= for loss of earnings against the applicant. Court also awarded interest on the damages of 25o/o per annum from the date of filing the suit until payment in full. Court further ordered for demolition of all the sixth defendant's

structures and properties on the land together with a permanent injunction restraining the appellants/ defendants from selling any portion of the land. 25

Dissatisfied, the defendants/appellants appealed to the Court of Appeal but were unsuccessful; they therefore appealed and filed a Notice of Appeal to this Court. The applicant in due course was arrested and detained for six months and could not prosecute the appeal in time hence this application to file his memorandum and

⁵ record of appeal out of time. The applicant also avers that the other appellants have since withdrawn from pursuing the appeal but he is desirous to have his appeal heard and disposed of on merit.

Representation:

At the hearing, Bruno Serunkuma appeared for the applicant 10 whereas Magellan Kazibwe appeared for the respondents. The applicant was also in Court.

Grounds:

The grounds of the application are summarized in the Notice of Motion and contained in the affidavit in support of the application sworn by John Damulira the applicant and briefly are that;

- 1) The applicant was the 1st appellant in the Court of Appeal Civil Appeal No. 12 of 2019. The judgment of the Court of Appeal was read and delivered on the 24th day of March, 2022 against the applicant together with Makanga Iga, Abdul Bikwalira, Faisal Mukasa, Mawanda Kiddawalime and Mariam Bukirwa in favour of the respondent.
- 2) The applicant and four others then instructed M/S Barnabas D. K Dyadi & Co. Advocates to file their appeal before this court and paid professional fees for that purpose. That M/S Barnabas D. K Dyadi & Co. Advocates filed a notice of change of instructions before the Court of Appeal as new counsel for the applicant and 4 others. On 11th of April, 2022 the applicant's counsel then applied for certified copies of the record of proceedings, judgment and decree in the Court of Appeal in

respect of Civil Appeal No.12 of 2019. On the same day counsel filed a notice of appeal in the Court of Appeal which was transmitted to the Supreme Court on the 12th of April, 2022.

- 3) The certified record of proceedings and judgment were availed to the applicant's advocates on the 26th of April, 2022. Despite the receipt of the same, the applicant's lawyers did not take any step to prosecute the appeal. The applicant was on 1st September, 2022 arrested and detained in a civil prison for six months and subsequently released on 23rd of February, 2023.
- 4) That the applicant then instructed new lawyers M/S G W Bwanika & Co. Advocates who upon perusal of the applicant's file discovered that the former advocates never filed the memorandum of appeal and the record of proceedings within 60 days as required by the law. That the four other applicants withdrew from pursuing the appeal.
- 5) That the applicant is desirous of having the appeal heard and disposed of on merit within this honorable court and that the appeal has chances of success against the respondents. That whereas the trial and the first appellate court had concurrent findings, that the property was given to Edith Naiga as gift inter vivos, there is evidence that the property she received exists and not contested by the applicant and it was sold to the respondents different from the applicant's suit property which matter ought to have been addressed by the trial court when they conducted locus at quo proceedings which locus

proceeding did not take place which caused a miscarriage of justice.

- 6) That the applicant has sufficient cause for the failure to file his memorandum of appeal and the record of appeal in this honorable court within time in civil appeal no. 12 of 2019 attributable to inactivity and negligence of his former lawyers' M/S Barnabas D. K Dyadi & Co. Advocates against whom a complaint has been filed in the Law Council to have their paid professional fees refunded for failure to file an appeal in this honorable court as instructed.
- The Respondent opposed the application through an affidavit in reply sworn by Rogers Sserunjogi the 1st respondent with the consent of the 2nd respondent. 15

The respondent admitted that the applicant was the 1st appellant in the Court of Appeal Civil Appeal No. 12 of 2019. The judgment of the Court of Appeal was read and delivered on the 24th day of March, 2022 against the applicant together with 5 others in favour of the respondents.

The 1st respondent averred that the 4 other appellants in Civil Appeal No. 12 of 2019 were fictitious persons who did not give instructions to

M/S Barnabas D. K Dyadi & Co. Advocates to file an appeal to this honorable court. That he was not aware of any matters involving the applicant and M/S Barnabas D. K Dyadi & Co. Advocates relating to the filing of the notice of appeal and applying for the record of appeal 25

and certified copy of proceedings and when the same were received by applicant's counsel as stated by the applicant.

The respondent stated that it is true that the decree of the Court of Appeal was signed and sealed on the 30th day of September, 2022 by the deputy registrar. That the 4 appellants in Court of Appeal, Civil Appeal 12 of 2019 are fictitious persons used in a scheme to steal the respondent's land. That they do not exist neither did they defend themselves in the High court. That the applicant is untruthful because his former lawyers had taken the step to prosecute the appeal by filing the notice of appeal and applying for the record of appeal and certified copies of proceedings. That they are not aware of the complaint against the applicant's former lawyers before the Law Council and that the same has no legal consequence in this matter. The respondent deposed that the applicant was committed to civil prison by the Deputy registrar of the High Court land division because he failed to pay the decretal sum. 10 15 20

He averred that the applicant's former lawyers received the typed record of proceedings, judgment and decree on 26 / 4 / 2022 and were then to file the memorandum of appeal and record of appeal by 22/6/2022 which was not done for reasons best known to them.

The respondent stated that there is glaring inordinate and inexcusable delay by the applicant to file and prosecute the appeal by not following up with his former lawyers from 23 February, 2023 when he was released from civil prison until 09/ 10/2023 when their application was filed by their new lawyers. That the applicant is 25

personally guilty of dilatory conduct and he should not push the blame of laxity on his former lawyers. That the execution of a decree in the trial court and the Court of Appeal has already been concluded where upon the respondents have already been put in possession of the suit property and have developed it. The respondent further stated that the arguments the applicant intends to advance in the appeal ought to have been raised at the high court hence they are misplaced, irrelevant and untenable and render the affidavit defective. That he believes that the application is incompetent, grossly misconceived, bad in law, devoid of merit and incurably defective. The respondent therefore opposed the application for extension of time within which the applicant should file his record of appeal and memorandum of appeal in this court.

The applicant rejoined and averred that;

There were no fictitious persons as alleged by the respondent. That Makanga Iga, Abdul Bikwalira and Faisal Mukasa were part of High Court Civil Suit No. 484 /2014. They obtained their sale agreements and were served with court summons to file defenses. That the applicant's former lawyers had served the respondent's lawyers with a notice of change of instructions, letter requesting for certified copies of proceedings and the Notice of appeal on the ¹²/4 12022 and thus were aware of what was transpiring at the Court of Appeal. 20 25

The applicant's complaint against his former lawyers is relevant in this matter to show that he gave lawyers instructions to handle his appeal in the Civil appeal where they omitted to carry out

- ⁵ instructions without a lawful excuse and also took professional fees. That whereas he was committed to civil prison for six months, it was as a result of the betrayal of his former lawyers to handle the civil appeal and their failure to advise him to apply for orders of stay of execution at the time but not the failure to pay the decretal sum.
- That as to whether the applicant should pay the sum of 181,100,090/= (one hundred eighty-one million one hundred thousand ninety shillings) exclusive of the other appellants in Civil Suit No. 484 of 2014 to the respondents had not been ruled upon in Misc. Application No. 351 of 2023 (Rogers Sserunjogi & Anor vs. John Damulira) which ruling is to be delivered on notice. That the decretal sum of 181,100,090 /= (one hundred eighty-one million one hundred thousand ninety shillings) is inclusive of awarded exorbitant general and unproved special damages which are subject of the appeal before this court. 10 15
- That the respondent's lawyers received from the applicant's former lawyers notice of change of instructions, letter requesting for certified copies of proceedings and judgment on the ¹²/I ⁴/12022 and not any other document from the lawyers regarding the processing of the applicant's appeal. That upon release from the civil prison the applicant went back to his former lawyers to follow up the appeal and did not get anything assistance and thus instructed new lawyers. That the seven months taken to file this application before this court arose from the process taken by my new lawyers to prepare the application. That the documents used to file this application were obtained from the court of appeal and photocopied from the court of 20 25 30

⁵ appeal file since the new lawyers did not possess the client's files from the former lawyers.

That the respondent's execution of the decree in Civil Suit No. 484 of 2014 and Civil Appeal No. 12 of 2019 is not yet concluded as there is at the High Court Land Division Execution Miscellaneous Application No. 351 of 2023 Rogers Sserunjogi & Anor vs. John Damulira and Court of Appeal Execution miscellaneous application No. 11 of 2022 Rogers Sserunjogi & Anor vs. John Damulira and 5 Ors. That Court of Appeal Execution miscellaneous application No. 11 of 2022 Rogers Sserunjogi & Anor vs. John Damulira and 5 Ors. was fixed for 10/10/2023 and adjourned to 30/11/2023 at 2:00pm and the respondent's lawyers did not turn up in court and High Court Land Division Execution Miscellaneous Application No. 351 of 2023 Rogers Sserunjogi & Anor vs. John Damulira last came up on the ¹³/I 10 /2023 and is pending ruling of the registrar. 10

15

That the applicant's new lawyers have since filed Court of Appeal civil applications No. 1199 of 2023 and 1200 of 2023 seeking interim orders of stay of execution and stay of execution which applications are now pending rulings before the single justice to be heard on the 12/12/2023. That there has never been any suit property that was granted to PW3 as a gift inter vivos that she could sell to the respondents to execute on the property of the 6th defendant and instead executed on the applicant's property illegally. 20 25

That even if the respondents executed a warrant of vacant possession on account of my former lawyer's failure to apply for stay of execution

⁵ orders, the same is not a restraint to the appeal sought. That the contents of paragraph 21 of the applicant's affidavit in support are meant to show that the intended appeal has merit and they believe that application no. OO42/2023 is properly before this honorable court. That in the interest of substantive justice, this application be granted with all the orders sought and with costs against the respondents. 10

CONSIDERATION OF THE APPLICATION.

I have perused the application together with the affidavit in support, affidavit in reply and affidavit in rejoinder.

It is settled that the jurisdiction of this Court to hear such applications is exercised pursuant to Rule 5 of the Rules of this Court. The rule provides as follows; t5

"5. Extension of time

"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 reference in these Rules to any such time shall be construed as a reference to the time as so extended."

This Court has established various criteria to determine what qualifies as a valid reason for granting an extension of time putting

in mind that the reason must be directly related to the party's inability or failure to take a specific step in time. 5

In *Kananura Kansime Andrew versus Richard Henry Kaijuka S. C. C Reference No. 15 of 2006*, this court observed thus;

"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 be allowed to proceed though out of time."

It is therefore settled that in exercising court's discretion with such matters, the applicant must satisfy the court that he/she was prevented by a genuine sufficient reason from adhering to the time lines set out in the law. The court must be convinced that the delay was not caused by the applicant's dilatory conduct. The discretion of court to grant the application of extension of time may also be exercised so that the appeal is heard on the merits and have the matter finally settled in the interest of justice. 15 20

In *Dr. Rubinga versus Yakobo Kato and 2 others*, Supreme Court Civil Appeal, No. 35 of 1992, this Court held that;

"When a Judge sets out to consider an application for leave to appeal out of time he must take into account all the circumstances involved in all the proceedings up to that point. For instance, he must take into account the delays which have occurred, the probable likelihood of success of the Appeal or otherwise and he must take into account the

general situation as to whether the appeal could in law be instituted."

In *Buyungo Samuel v Nyansiana Talidda Sserwadda & 6 Ors* SCCA No. 12 of 2021 & 10 of 2022 Court also stated that:

"Rules are made to be observed, and when there has apparently been excessive delay the court requires to be satisfied that there is an adequate excuse for the delay or that the interest of justice is such as to require the indulgence of the court upon such terms as the court considers just."

This principle was also followed in the case of **Nicholas Kanyanya 15 v Paul Elvis Owori**, Civil Reference No. 10 of 2022(SC). where this Court also further held that:

"An applicant for extension of time should therefore show good and substantial reasons for the delay and that it was not contributed to by a dilatory conduct on his/her part, as well as a prima facie good cause why the intended appeal should be heard. However, consideration is to be made on a case to case basis and each case will depend on $\mathbf{a}$ its peculiar facts and circumstances."

25 Guided by the above principles, the issue therefore is whether the application discloses sufficient grounds for grant of leave to file a memorandum of appeal and record of appeal out of time.

In the instant application, the applicant avers that his former lawyers were inactive and negligent and did not file the memorandum and

$\mathbf{S}$

⁵ record of appeal. That their negligence and inactivity should not be visited on him as an innocent litigant. The respondents opposed the applicant's argument and averred that it was his laxity and dilatory conduct that the appeal was not filed in time.

It is settled in numerous cases that mistakes, faults, lapses and dilatory conduct of counsel should not be visited on the litigant. 10

In BANCO ARABE ESPANOL V BANK OF UGANDA No.8 of 1998 (SC), it was held that; "A mistake, negligence, oversight or error on the part of counsel should not be visited on the litigant. Such mistake, or as the case may be, constitutes just cause entitling the trial judge to use his discretion so that the matter is considered on its merits." In the Supreme Court decision Philip Ongom, Capt. v Catherine Nyero Owota No. 16 of 2003 (SC), Odoki CJ (as he then was) summarized what amounts to sufficient cause as including a mistake by an advocate though negligent, ignorance of filing procedure by the defendant, and illness by a party.

In Nicholas Roussos v Ghulam Hussein Habib Virani Civil Appeal No. 19 of 1993 (SC), it was decided that a mistake by an advocate, though negligent, may be accepted as a sufficient cause, ignorance of procedure by an unrepresented defendant may amount to sufficient cause, illness by a party may also constitute sufficient cause, but failure to instruct an advocate is not sufficient cause.

In this present case, the applicant in his affidavit in support stated that judgment was delivered on the 24/3/2022, he then instructed

- ⁵ lawyers M/S Barnabas D. K Dyadi & Co. Advocates to file an appeal before this Court and paid professional fees for that purpose. Receipts of payment were attached and payments were made on the ⁶ 4/12/2022 and 22/1/2022 respectively (see annexure H). The lawyers subsequently filed notice of instructions (annexure B), a notice of appeal (annexure D) and sought for the certified copies of the record of proceedings, judgment, and decree in the Court of Appeal (Annexure C). These were all served on the respondents' advocates on 11/4/2022. The certified copies were received by the applicant's advocates on the 26/4/2022. The applicant was subsequently arrested and detained in civil prison on the 1/9/2022 whereupon he was released on 28/2/2023. The applicant's advocates did not take any further steps to file the appeal and have it heard despite being instructed and paid. Upon release he instructed other advocates to prosecute the appeal, they sought for the client file from the former advocates which proved futile as it was not available. They then proceeded to obtain a copy from Court of Appeal in order to file the appeal. The applicant took the necessary steps as required of him as a client and the rest was the advocate's process to file an appeal. From the foregoing and the evidence on record, I find that the reasons for the delay are plausible. 10/15/2025

The respondent raises an issue that the applicant took long to file his application and this amounts to inordinate delay which should not be imputed on the advocate but the applicant and not laxity of his former lawyers. With due respect I, do not agree with respondents' counsel's argument. The applicant instructed counsel who was duly

- ⁵ paid and with full instructions to represent the applicant which duty they did not discharge for reasons best known to them. This caused the delay in filing and subsequent arrest of the applicant. While in prison he could not do much, when he was

released he instructed another law firm to complete the process to file the appeal. The lawyers discovered that the memorandum and record of appeal were never filed and embarked on the process of getting the client's file and filling this subsequent application. The applicant therefore should not be faulted for delay in a matter where he had counsel to take the process but did not. I find that the delay was explained. 10

- Another underlying consideration by the Court is the need to ensure that matters are heard on their merits and that disputes between parties are finally resolved, if shutting them out would cause an injustice. The applicant stated in the affidavit that the application was brought Bonafide to enable court settle the real questions in controversy between the parties and invited court to exercise its inherent discretion and grant the orders sought. The applicant raises issues of proprietorship and damages in his affidavits which cannot be resolved in this application but can be resolved on appeal. The Affidavit in reply stated that execution had been concluded while in the rejoinder the applicant has produced evidence that the same has not been concluded and there are applications pending ruling and determination. However, in the interest of justice, given the circumstances of the case and that these are matters of ascertaining ownership of land, justice is best served if the appeal is considered on merit and the matter finally resolved. 15 20 25 30
- ⁵ This court has also stated that a party who shows continuous interest in having their case heard and the opposite party has the opportunity to challenge and or refute that party's assertions should be given the opportunity to present their case. (See: IVicholas Kanganga o Paul Elrtls Outorl, (Supra).
- ¹⁰ In my view, the applicant has showed the desire to pursue his appeal despite the disappointment/ negligence of counsel. The respondent in my view will therefore be able to challenge the appeal considering that no prejudice will be caused if extension is granted since the respondent is in possession pending the finality of the matter.
- ¹⁵ In the circumstances, therefore, the applicant has established sufficient cause to warrant the orders sought. The application is therefore allowed. The applicant is granted leave to file his memorandum of appeal and the record of Appeal out of time. The same sha-ll be filed and served on the respondents within 7 days from
- ²⁰ the date of this Ruling. The costs of this application shall be in the cause.

Dated at Kampala this..... QLzl....day ^t* ^o 2024

MIKE J. CHIBITA

JUSTICE OF THE SUPREME COURT

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugsc/2025/4/eng@2025-02-21>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/damulira-v-sserunjogi-civil-application-42-of-2023-2025-ugsc-4-21-february-2025-and-others-unknown-topic-unknown-court-2025--6a3ea4dc3b1caa91297e8cc3>

Prepared on 13 October 2026 · Esheria