

UGANDA / JUDGMENT

Jigar G. Malavitas v Uganda
(Miscellaneous Application No. 12 of
2025) [2025] UGHC 411 (10 June 2025)
[2025] UGHC 411

COURT
High Court of Uganda

BEFORE
Bukirwa, J

CASE / FILE NUMBER
Miscellaneous Application No. 12 of 2025

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT LUWERO

MISCELLANEOUS APPLICATION NO 0012 OF 2025

(ARISING FROM LUW-OO-CR-CO-0532 OF 2024)

JIGAR G. MALAVITAS:..... APPLICANT

VERSUS

UGANDA:..... RESPONDENT

(An application for leave to file a Notice of Appeal out of time, arising from the judgment of the Chief Magistrate delivered on 20th November 2024 in CR-0532 OF 2024)

BEFORE HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI

RULING

This is an Application brought under Section 37 of the Judicature Act cap 16 and Section 31 of the Criminal Procedure Code Act Cap 122 for enlargement of time within which to appeal. It is by way of a Notice of Motion dated 27th May 2025 supported by the affidavit of the applicant's lawyer Mukiibi Henry sworn on the same date.

The grounds of the application are; -

- 1. That the Applicant was on the 20th day of November 2024 convicted of the offences of Theft c/s 237 and 244 of the Penal Code Act and Conspiracy to defraud c/s 289 of the Penal Code Act and was sentenced to 4 years' imprisonment and was in addition fined to pay UGX 200,000,000/= to Victoria Sugar Ltd on count one and a fine of 10,000,000/= or imprisonment of 2 years in case of default on count 2.
- 2. That the Applicant is a foreigner and had no Legal Counsel present during that time.
- 3. That the right and process of appeal were never explained to the Applicant then.
- 4. That the Applicant instructed other advocates who explained to him the right of appeal against the judgment.
- 5. That by the time the Applicant instructed his new lawyers to appeal, the prescribed time within which to appeal had already expired.
- 6. That the Applicant's appeal has a likelihood of success.
- 7. That this Application has been brought without undue delay and will not prejudice the Respondent in anyway.

Representation

At the hearing of this application Counsel Katamba Sowali represented the Applicant while the Regional State Attorney of the Directorate of Public Prosecutions, Peace Bashabe represented the Respondent.

Submissions

Both parties at the hearing of this Application before this court made oral submissions. In his submissions, Counsel for the Applicant informed court that this Application met the criteria for grant of leave for extension of time as stated in the affidavit of Mr. Mukiibi Henry.

Counsel for the Respondent did not oppose the application and requested that in the event that the court validates the Notice and Memorandum of Appeal, the Respondent should be served with a certified copy of proceedings from the lower court.

Issues for Determination.

The issue for determination by this court is whether the application raises sufficient grounds for the grant of an extension of time within which to appeal.

Consideration of the Application.

I have carefully considered the submissions of both parties. It is not in dispute that the judgment of the Chief Magistrate was delivered on 20 th November 2024 and that the Applicant did not file a Notice of Appeal.

Section 28(1) and (6) of the Criminal Procedure Code Act provides that;

'Notice of Appeal'

- *1. Every appeal shall be commenced by a notice in writing which shall be signed by the appellant or an advocate on his or her behalf, and shall be lodged with the registrar within fourteen days of the date of judgment or order from which the appeal is preferred.*
- *2.*

- *3. 4. 5.*
- *6. The appellate court may, for good cause shown, extend the periods mentioned in subsection (1) or (3)*

The filing of the Notice of Appeal is the first step an intending appellant must take. Upon expiry of fourteen days after delivery of the judgment, Section 31 of the Criminal Procedure Code Act provides that;

Application for extension of time;

1. An application to extend the time for lodging a notice of appeal or ground of appeal under section 28 (1) and (3) shall be made in writing to the registrar of the appellate court and shall be supported by an affidavit specifying the grounds of the application.

In the case of **Chance Clinton Abooki V Uganda Criminal Application No.001 of 2023**, my learned brother Justice Emmy Vincent Mugabo held that in the determination of whether an extension of time within which to file appeal should be granted, the court should first establish whether the Applicant has sufficient cause that prevented him or her from filling the appeal within the prescribed time. In **Hadondi Daniel Vs. Yolam Egondi CACA No.67 of 2003**, the Court of Appeal held thus;

"It is trite law that time can only be extended if sufficient cause is shown. The sufficient cause must relate to the inability or failure to take the necessary steps within the prescribed time. It does not relate to making a wrong decision....."

Enlargement of time is a discretion which must be judiciously exercised by court after proper analysis of the facts of a case and application of the law to the facts. The party seeking such discretionary orders which are only granted on a case to case basis, not as a matter of right, must satisfy court by placing some credible material before the court upon which such discretion may be exercised.

Applications for extension of time within which to appeal will not be granted if the delay is inexcusably long, where injustice will be occasioned to the other party or where there is no reasonable justification.

In this case, the judgment sought to be appealed was delivered on 20 th November 2024. This application was filed on 27 th May 2025, six months later after the delivery of the judgment by the Chief Magistrates Court. On the day that the judgment was delivered, the Applicant was not represented by an advocate and was not informed

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about his right to appeal. Given the fact that he is not a Ugandan, I am fairly inclined to associate myself with the submissions of counsel for the Applicant that the Applicant had no idea as to how the laws of Uganda operate.

Trite to note is that time will not be extended if the applicant is guilty of dilatory conduct or inordinate delay. These principles have been reechoed by Supreme Court in various cases for example in the case of **Molly Kyalikunda Turinawe & 4 Others v Turinawe Ephraim & Another (Supreme Court Civil Application No.27 of 2010)**, where my Sister Lady Justice Esther Kisaakye stated and I quote;

"It is therefore important to consider the following three questions before I can dispose of this application;

- *i. Whether the applicants have established sufficient reasons for this court to extend the time in which they may lodge their appeal.*
- *ii. Whether the applicants are guilty of the dilatory conduct.*
- *iii. Whether any injustice would be caused if this application is not granted.*

The basis of the applicant's evidence is to be found in the affidavit evidence of the first applicant....."

I agree with the above criteria and in my view, the Applicant has satisfied the above criteria.

Further in **Boney Katumba Vs Waheed Karim SCCA No.27 of 2007**, the supreme court held that;

*"What constitutes 'sufficient reasons' is left to the courts unfettered discretion. In this context, 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 an explained inordinate delay. But even where the applicant is unduly delayed, the court may grant the extension if shutting out the appeal may appear to cause injustice'*

In the case before me, the reason for the delay advanced in ground 5 of the application is a demonstration that indeed the Applicant being a foreigner with no idea of how Ugandan laws operate and without being represented by an Advocate on the date that the judgment was delivered coupled with having not been informed about his right to appeal, the Applicant could hardly have envisaged what the next legal step to be taken would have been.

Secondly, arising out of the above observation, the Applicant was not guilty of any dilatory conduct having explained to this court that he did not know what to do next following his conviction as he was subsequently committed and detained at Nakasongola prison to serve his sentence. Thirdly, an injustice will be occasioned to the Applicant if this application is not granted thus denying him an opportunity to be heard.

In the case of **Bance Arabe Espanol v Bank of Uganda** [1999]2 EA, the Supreme Court of Uganda held that;

"*The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that errors or lapses should not necessarily debar a litigant from the pursuit of his rights and unless a lack of adherence to rules renders the appeal process difficult and inoperative, it would seem that the main purpose of litigation, namely the hearing and determination of disputes, should be fostered rather than hindered."*

In this application, the Applicant has convinced this court with credible reasons that led to the delay in the filing of an appeal within the prescribed time. This court is therefore hesitant to block the doors of justice in his face. The right of appeal is one of the cornerstones of the rule of law*. To deny the Applicant that right given the circumstances of this Application would in essence constitute an act that would deny him access to justice and fair hearing both of which are guaranteed by the 1995 Constitution of the Republic of Uganda. It would therefore only be fair and just that the Applicant is accorded an opportunity to ventilate his grievances on appeal having being aggrieved by the decision of the lower court.

I accordingly grant the Application and henceforth validate the Notice of Appeal and Memorandum of Appeal in the pursuit of saving court's time.

Each party shall bear its own costs.

I so order

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HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI

JUDGE.

Ruling delivered on Eccmis on 10 th June, 2025.

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