

UGANDA / JUDGMENT

Mukwaya v Katarangye

(Miscellaneous Application 4 of 2024)

[2024] UGHC 1065 (28 October 2024)

[2024] UGHC 1065

COURT

High Court of Uganda

BEFORE

David S.L. Makumbi, J

CASE / FILE NUMBER

Miscellaneous Application 4 of 2024

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

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KASESE

HCT-25-CV-MA-0004-2024

(FORMERLY FORT PORTAL HCT-01-CV-MA-0019-2023)

(ARISING FROM KASESE CHIEF MAGISTRATE CIVIL SUIT NO. 53 OF 2017)

MUKWAYA THEMBO LAWRENCE=====APPLICANT

VERSUS

KATARANGYE JAMES ANDREW=====RESPONDENT

BEFORE JUDGE DAVID S. L. MAKUMBI

RULING

REPRESENTATION:

Applicant unrepresented

Respondent represented by Counsel Chan Geoffrey Masereka

BACKGROUND:

This Application is brought by way of Notice of Motion pursuant to Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules by which the Applicant in this matter seeks orders for:

1. Unconditional leave to appeal out of time.

2. Costs to be provided for.
3. Any other relief.

The grounds of the Application are that:

1. The Applicant did not have any debt with the Respondent that the lower court ruled upon.
2. The Applicant was not served with any notice or notice of intention to sue, notice of mediation, notice of summons to file defence from the Respondent.
3. The Applicant was sentenced to six months in prison as a debtor and yet he had not debt owed to the Respondent.
4. Upon release from prison the Applicant found his properties worth UGX 80,000,000 had been taken by the Bailiff of the Respondent (Bwambale Jonen) without a Court Order.
5. The Respondent breached a contract of Joint Venture Business made with the Applicant leading to loss and damages of UGX. 80,000,000.
6. The Applicant was tortured psychologically when he was sentenced to prison for six months without reason.

Based upon the above, the Applicant prayed Court to allow him to file his Appeal out of time stating that it would be a double jeopardy and prejudicial to him if his prayers were not granted and that furthermore it was only just and equitable that his prayers are granted.

The Application was unsupported by affidavit and instead the Applicant presented submissions to court citing provisions of the Evidence Act, the Penal Code Act and various court cases by which the Applicant went into the merits of the case before the lower court and did not put forward any reason as to why he failed to appeal the lower court decision within the stipulated time.

For his part the Respondent Katarangye James Andrew filed an Affidavit in Reply by which he contended that the Application was bad in law and lacked merit for which he intended to raise a preliminary objection as the Application lacked an Affidavit in Support.

The Respondent further averred that he was the Judgment Creditor in Kasese Chief Magistrate Civil Suit No. 53 of 2017 wherein he was awarded a sum of UGX 24,000,000 being the combined principal sum with costs. Upon the failure of the Applicant to pay, he was committed to civil prison upon application for execution. The Respondent further explained that the Applicant had only paid UGX 600,000 out the Bailiff's entire costs. The Respondent contended that the Applicant was peddling falsehoods about property worth UGX 80,000,000 being attached.

The Respondent prayed for Court to dismiss the Application with costs.

Counsel for the Respondent filed submissions in reply to the Applicant's submissions by which submissions he raised two issues.

1. Whether the Applicant has a right to appeal

2. What remedies are available to the parties

Regarding the 1st issue Counsel raised a preliminary objection to the effect that the Application was bad in law having been brought by Notice of Motion without an Affidavit in Support contrary to Order 52 Rule 1(3).

Counsel further submitted that the substance of the application was misconceived as the matter for which the Applicant was seeking leave to appeal is not one for which an automatic right of appeal exists. This is because the decision of the lower Court arose from Order 36 of the Civil Procedure Rules on Summary Procedure. Counsel argued that per the provisions of Section 76(1) of the Civil Procedure Act and Order 44 Rule 2 of the Civil Procedure Rules it would not be possible for the Applicant to appeal the decision even if leave were granted to appeal out of time. Counsel for the Respondent also put forward arguments for why the Appeal was unlikely to succeed and also contended that there was no compelling reason for the Appeal to be allowed out of time.

In light of the preliminary argument raised by Counsel for the Respondent, I shall first address myself to the same before proceeding into the merits of the Application itself.

PRELIMINARY DETERMINATION:

As I consider this matter I bear in mind the fact that the Applicant appears to have engaged Counsel in this matter in this matter on the 12th of April 2024. This was long after he had filed this Application in March of 2023. At the time of appearance of his Counsel Timothy Atuhaire, I advised Counsel Atuhaire to carefully review the Applicant's self-prepared application and thereafter Counsel would advise Court of whether his client would still wish to proceed with the Application.

The matter was subsequently set for mention on the 24th of May 2024 at which time the Applicant appeared in Court unrepresented. At this time it was drawn to Court's attention that submissions in the matter were already on record. As a result the matter was set down for ruling as clearly the Applicant despite having engaged Counsel previously had opted to proceed via his self-prepared Application.

Concerning the fact that the Applicant appears to have prepared his pleadings without the benefit of Counsel I have in mind the Kenyan case of **C Patel v BD Joshi (1952) 19 EACA 42**, where it was held at Pages 43 and 44 that,

*“A trial judge should not descend into the arena where his vision may become clouded by the dust of the conflict. Where the parties are represented by counsel, it is preferable that ordinarily, the conduct of the case should remain in their hands. Not to do so might indeed lead to the error of descending into the arena. It is one thing, however, to accept that principle and quite another to argue that, in a civil case, where the conduct of the case is left entirely in the hands of the parties. That is not the law and practice in Kenya. Sometimes, particularly in the backward areas, litigants in a civil case may often appear without counsel. If the hands of the court were tied by some rule that the case should remain entirely in the hands of the parties, the trial of such cases

might present great difficulty and the end of justice might be perverted.”*

By that decision, there is sometimes room given to accommodate litigants who are unrepresented especially in light of the requirement under Article 126(2)(e) of the Constitution for substantive justice to be done without undue regard to technicalities. However, in this case I take into account the fact that the Applicant cited Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules. If he or any other person who may have assisted him had the presence of mind to cite Order 52 Rule 3 then they ought to have realized that the Rules state,

*“*Every notice of motion shall state in general terms the grounds of the application, and, where any motion is grounded on evidence by affidavit, a copy of the affidavit intended to be used shall be served with the notice of motion.”**

The nature of the grounds raised by the Applicant are such that they are statements of fact and not law. The said grounds would therefore require evidence for which the Applicant has submitted none. The only time that an Affidavit may be deemed unnecessary in support of a Notice of Motion is if the application rests purely on a matter of law (see **Odongkara v Kamada** [1968] EA 210).

In light of the above, I find that the Application as filed by the Applicant is misconceived both in form and content.

This is a matter which is not only an issue of seeking leave to appeal out of time but it is also, by virtue of the decision of the lower Court being derivative of Order 36 of the Civil Procedure Rules, a matter requiring leave to appeal. In both instances I do not see how the Applicant could expect to proceed without bring forth evidence by affidavit justifying why leave to both appeal and appeal out of time should be granted.

RESOLUTION:

I therefore find that this application fails for lack of evidential grounds both for leave to appeal and leave to appeal out of time.

ORDERS:

1. This Application is hereby dismissed for lack of evidence contrary to Order 52 Rule 3 justifying leave to appeal and leave to appeal out of time.
2. Costs awarded to the Respondent.

I so order.

David S. L. Makumbi

JUDGE

28/10/24

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/ughc/2024/1065/eng@2024-10-28>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/mukwaya-v-katarangye-miscellaneous-application-4-of-2024-2024-ughc-1065-28-october-2024-unknown-topic-unknown-court-2024>

Prepared on 13 October 2026 · Esheria