

UGANDA / JUDGMENT

Mulhubira v Ambitious Construction Company (Miscellaneous Application 15 of 2024) [2024] UGHC 655 (25 June 2024)

[2024] UGHC 655

COURT

High Court of Uganda

BEFORE

David S.L. Makumbi, J

CASE / FILE NUMBER

Miscellaneous Application 15 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KASESE

MISCELLANEOUS APPLICATION No. 15 OF 2024

FORMERLY FORT PORTAL MISCELLANEOUS APPLICATION No. 97 OF 2023

(ARISING FROM FORT PORTAL MISCELLANEOUS APPLICATION NO. 41 OF 2023)

(ARISING FROM FORT PORTAL HCT – 01 – LD – CV – CS- NO. 10 OF 2021)

MULHUBIRA DAVID:..... APPLICANT

VERSUS

AMBITIOUS CONSTRUCTION COMPANY LIMITED :.....RESPONDENT

BEFORE HON JUSTICE DAVID S. L. MAKUMBI

RULING

REPRESENTATION:

Applicant represented by M/S Bagyenda & Co. Advocates

Respondent represented by M/S OSH Advocates.

BACKGROUND:

This application is brought by way of Notice of Motion under Order 44 of the Civil Procedure Rules SI 71-1 and Section 98 of the Civil Procedure Act seeking orders that:

1. The applicant be granted leave to appeal the order dismissing Miscellaneous Application No. 41 of 2023 with costs.
2. Costs of and incidental to this application be provided for.

The grounds of the application as contained in the affidavit of Mulhubira David in brief are that the Applicant being aggrieved with the order dismissing Miscellaneous Application No. 041 with costs has filed a Notice of Appeal and requested for the record of proceedings.

Miscellaneous Application No. 41 of 2023 involved an application wherein the Applicant sought an order that the Respondent was in contempt of court orders issued in High Court Civil Suit No. 10 of 2021. This Court dismissed the application with costs hence this present application for leave to appeal the dismissal before the Court of Appeal.

The Applicant contends that he has good grounds of appeal warranting judicial scrutiny by the Court of Appeal and that the Applicant can only appeal to the Court of Appeal by leave of the High Court.

ANALYSIS OF THE APPLICATION:

Counsels for the Applicant and Respondent prepared written submissions, which I now take into consideration in deciding this application.

Before delving into the substantive merits of the application, I noted that in responding to the application, Counsel for the Respondent raised a preliminary objection to the effect that the application is barred in law and should be dismissed with costs. Counsel contended that the Applicant had filed the Notice of Motion under the wrong law and that the correct law governing this Application is laid out in Rule 40(2) of the Judicature (Court of Appeal Rules) Directions.

Counsel for the Respondent submitted that under the aforementioned rule the Applicant ought to have either informally applied for leave to appeal from the Court that dismissed the previous application or formally filed a Notice of Motion within 14 days after the decision was delivered.

Counsel for the Respondent argued that the Applicant had not informally applied to Court and had instead filed the Notice of Motion on 30th October 2023 which was nearly a month after the ruling had been delivered on 29th September 2023.

In response to the preliminary objection, Counsel for the Applicant argued that the Application was filed correctly within time. Counsel further argued that the Notice of Motion was filed in time because Rules 4(a) and 83(2) of the Judicature (Court of Appeal Rules) Directions essentially provide that the time for preparation of the ruling is excluded from the 14 day period. Counsel for the Applicant therefore argued that the time from 29th September 2023 to 24th October 2023 when the record was provided is excluded by the aforementioned Rules.

I have considered the submissions of both Counsel in this matter.

Rule 40(2) of the Judicature (Court of Appeal Rules) Directions provides that,

“Where formerly an appeal lay from the High Court to the Supreme Court with leave of either the High Court or Supreme Court the same rules shall apply to appeals to the court where an appeal lies with leave of the High Court, application for the leave shall be made informally at the time when the decision against which it is desired to appeal is given; or failing that application or if the court so orders, by notice of motion within fourteen days of the decision.”

By virtue of the rule above, it is clear that in matters regarding leave of the High Court to appeal to the Court of appeal, the procedure is either by informal application to the court at time of the decision or in the event of failure to apply informally or if court so orders by Notice of Motion.

In this matter, there are two things clear at the outset. The first is that the application has been brought by way of Notice of Motion at the instance of the Applicant and not by court order. There is no evidence of a court order requiring this application by way of Notice of Motion. This therefore bound to the 14-day time limit specified in Rule 40(2) above.

This therefore leaves the question of whether Rules 4(a) and 83(2) of the Judicature (Court of Appeal Rules) Directions apply to this particular application.

Rule 4(a) of the aforementioned Rules provides that,

“Any period of time fixed by these rules or by any decision of the court for doing any act shall be reckoned in accordance with the following provisions:

(a) A period of days from the happening of an event or the doing of any act or thing shall be taken to be exclusive of the day on which the event happens or that act or thing is done.”

Rule 83(2) then provides that,

“Where an application for a copy of the proceedings in the High Court has been made within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as maybe certified by the Registrar of the High Court as having been required for preparation and delivery to the appellant of that copy.”

With all due respect to Counsel for the Applicant, the context of Rule 83(2) above is very clear. It refers to computation of time within which the appeal is to be instituted. The proper context of Rule 83(2) flows from Rule 83(1).

Rule 83(1) provides that an appeal is instituted subject to Rule 113 of these Rules, an appeal shall be instituted by lodging in the Registry, within sixty days after the date when the Notice of Appeal was lodged—

- (a) a Memorandum of Appeal, in six copies, or as the Registrar shall direct;
- (b) the Record of Appeal, in six copies, or as the Registrar shall direct;
- (c) the prescribed fee; and

(d) security for the costs of the appeal.

From the above, it is clear that the exclusion in computation of time in Rule 83(2) only applies to the instituting of the appeal in accordance with Rule 83(1). The filing of the Notice of Appeal cannot be construed as part of the process of instituting the Appeal but only serves to communicate the Appellant's intent to appeal.

It is also clear from Rule 40(2) that computation of time for leave to appeal was never intended to be to the exclusion of time between when an intended Appellant applies for the court record and the availing of the record. This is because the Rule clearly provides for the option of the intended Appellant seeking leave informally at the time when the decision intended to be appealed is made. If it was intended that time for leave to appeal should take into account when the certified copy of the ruling and proceeding are ready then provision would not have been made for immediate informal application for leave to appeal at the time of the decision.

I find therefore find that to the extent that the ruling against which the Applicant seeks leave to appeal was delivered on 29th September 2023 while this Application was filed on 30th October 2023, this Application for leave to appeal was filed out of time contrary to Rule 40(2) of the Judicature (Court of Appeal Rules) Directions.

The preliminary objection is sustained.

ORDERS:

This Application is dismissed with costs to the Respondent for being filed out of time contrary to Rule 40(2) of the Judicature (Court of Appeal Rules) Directions.

David S. L. Makumbi

JUDGE

25/06/24

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Prepared on 13 October 2026 · Esheria