

UGANDA / JUDGMENT

Ndahura v Bategeka and 13 Others (Miscellaneous Application 6 of 2024) [2024] UGHC 428 (31 May 2024) [2024] UGHC 428

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Miscellaneous Application 6 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA

MISC. APPLICATION NO. 06 OF 2024

(Arising from Consolidated C. S No. 52 of 2023 and C. S No. 249 of 2022)

NDAHURA EDWARD KAFUMU ::::::::::::::: APPLICANT (Administrator of the estate
of the late Evan Kafumu Nkoba)

VERSUS

1. ISMAIL BATEGEKA 2. BUSOBOZI YOFESI 3. PASTOR MONICA T/A GREAT MARVELOUS
CHURCH 4. KYALIGONZA EMMANUEL 5. BETEGEKA MOSES 6. KATUSABE TRAJAN 7.
MUGUMIKIRIZA SIMON 8. RAJAB KAWOLONGONJO 9. JAMES BYAHATI 10. RWAMUSAYI
JIMMY 11. AKUBALIRWA FREDRICK 12. SIMON EDDY YOUNG 13. KABABIITO JOSELYNE 14.
KUGONZA ERIA ::::::::::::::: RESPONDENTS

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

- The Applicant brought this application under the provisions of **Rules 2(2), \$[1]\$ (5), & 42** of the Judicature (Court of Appeal Rules) Directions, S. I, 13-10, Ss. 33 of the Judicature Act and 98 CPA seeking for orders that:

- a) The time be extended to file an appeal against the ruling and orders of this court in consolidated Civil Suit Nos.52 of 2023 and 249 of 2022.
- b) Costs be provided for.
- \$[2]\$ The Application is supported by the affidavit of the Applicant wherein the gist of the application is that ruling was entered in consolidated Suits No.52 of 2023 (Formerly MSD C. S No.43/2018) & 249 of 2022 (Formerly MSD C. S No.17 of 2015) on 1/6/2023 and the Applicant being dissatisfied with the ruling and order of this court instructed his former lawyers to challenge the said decision but the lawyers instead filed an application for review to set aside the court's decision. That the application for review was dismissed on ground that the Applicant's former lawyers ought to have appealed. That the Applicant has now instructed M/s Kayongo Jackson & Co. Advocates to prosecute the appeal and was therefore, that the Applicant was prevented from filing the Appeal in time by sufficient cause.
- Counsel for the Applicant Mr. Luwukya Kennedy submitted that it was a \$[3]\$ mistake of the Applicant's former lawyer for his failure to prosecute the appeal in time and that having realised the said anomaly by his lawyers, the Applicant filed this application without inordinate delay. He prayed that the discretion of court should be exercised in his favour since shutting out his appeal may appear to cause injustice to him.
- Counsel for the Respondent Mr. Kasangaki Simon on the other hand \$[4]\$ submitted that the present application was filed in a wrong court without jurisdiction to entertain it. That the Application ought to have been filed in the court of Appeal under Rule 5 of the Judicature [Court of Appeal Rules] Directions S. I, 13-10. Rule 5 provides as follows;

"5. Extension of time

The court may, for sufficient reason extend the time limited by these Rules or by any decision of the court or of the High court for the doing of any act authorised or required by the Rules, whether before or after the doing of the act,...."

As counsel for the Respondent submitted, it is trite that under Rule 5 of \$[5]\$ the Court of Appeal Rules, it is the court of Appeal with the mandate to grant extension of time for filing an appeal; In the Matter of Ranch on the Lake Ltd (In Receivership) H. C. M. A No.537/2005 (Commercial Division) and A. G Vs Dan Rubomboro & 4 Ors, HCMA No. 41/2008 (F/Portal).

A. G Vs Dan Rubomboro, Chigamoy Owiny Dollo, J. (As he then was) held \$[6]\$ thus:

> "The time frame for lodging notice of appeal is neither provided for in the CPA nor the CPR. It is instead rule 5 of the Court of Appeal Rules which provides for extension of time limited by rule 76 of the said Rules, for the doing of any act provided for under the said Rules; and clothes the Court of Appeal with the mandate to extend such time. Nowhere is it provided that such jurisdiction to extend time is exercisable by any court concurrently with the *Court of Appeal.*"

- From the above, it is clear that this application should have been filed in the Court of Appeal keeping in line with Rule 5 of the Judicature [Court of Appeal Rules] Directions S. I 13-10. The Application is therefore found to be misconceived and untenable in law. It is misplaced. Ss. 33 of the Judicature Act and 98 CPA above are therefore not applicable to this Application because of the specific rule 5 as a remedy for a party who intends to apply for extension of time to file an appeal to the court of Appeal.
- S.33 of the Judicature Act and S.98 CPA which the Applicant has also §[7]§ invoked are not applicable since it is trite law that a party seeking redress can only have recourse to these provisions of the law where there is no other specific legal provision for remedy available in the matter; Rawal Vs The Mombasa Hardware Ltd [1968] EA 392. This is not a case for prevention of abuse of court process or correction of any injustice.
- §[8]§ As a result of the above, this Application having been found misconceived and untenable in law for having been instituted in a court that lack the
- jurisdiction to entertain the matter, it is accordingly struck out with costs to the Respondent

Dated this §31^{st}§ day of May, 2024.

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