

UGANDA / JUDGMENT

Nyanzi v Kitonsi (misc.
Applic. no. 2702/2024) [2025]
UGHCLD 131 (9 July 2025)
[2025] UGHCLD 131

COURT

HC: Land Division (Uganda)

BEFORE

Kaahwa, J

CASE / FILE NUMBER

misc. Applic. no. 2702/2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND
DIVISION)

MISCELLANEOUS APPLICATION NO.2702 OF 2024 ARISING FROM THE CHIEF
MAGISTRATES COURT OF KAMPALA AT MENG0

CIVIL SUIT NO.29 OF 2020

ALONE NYANZI:.....

VERSUS

KITONSI ALI:.....

RULING.

BEFORE: HON. LADY JUSTICE CHRISTINE KAAHWA

Introduction

This Application was brought under Section 98 of the Civil Procedure Act, Cap 282, Section 37 of the Judicature Act, Cap 16 and Order 52 Rules 1 and 3 of the Civil Procedure Rules SI 282-1 seeking for orders that:

- 1. The Applicant be granted extension of time within which he appeals the decision and orders of His Worship Akera Derick Otim in Civil Suit No. 29 of 2020 at Chief Magistrate Court of Kampala at Mengo.
- 2. Costs of this Application be provided for.

The grounds in support of the Application are contained in the Affidavit of the Applicant, **Alone Nyanzi** in which he deposed that:

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- 1. That the judgement he intends to appeal against was delivered ex-parte on the 23rd June 2023 in the absence of his lawyers, and that he learnt of the judgement through his neighbors who were informed by the Respondent's agents that they had defeated the Applicant in Court.
- 2. That the subject matter of the suit is a dispute over an access road to his home which he has used for over 30 years and was recently blocked by the Respondent and that he has interest in pursuing the matter.
- 3. That he has instructed his new lawyer Mr. Kasiko Yasin who explained to him the effect of the judgement and that being dissatisfied and aggrieved with the judgement and orders, he asked his lawyer to appeal.
- 4. That he instructed and financially facilitated the lawyer through his known numbers \$+256\$ 77983488 & \$+256760847556\$ to enable him prosecute the Appeal and that he confirmed to the Applicant that he had filed the Appeal documents waiting for their endorsement by the Judicial officer.
- 5. That at the time he was working in Kayonza which is up country, he wouldn't physically follow up the appeal, he trusted his lawyer would do everything possible to ensure he succeeds on appeal.
- 6. That the Applicant would often call him to ask about the progress of the Appeal and attendance of Court, for which he was informed that High Court is quite busy and it takes time to get a date for hearing the Appeal.
- 7. That the Applicant didn't stop at that, he kept reaching out to the lawyer via WhatsApp number asking for the progress of the Appeal and sending facilitation for the appeal on +256 77983488, though the lawyer would at times not respond via WhatsApp but call the Applicant to confirm the Appeal was filed and is only waiting for a date from High Court.
- 8. That in September 2024 when the Applicant returned from upcountry, he went to Court to check on the progress of the Appeal and it's when he learnt

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with shock that there was no proof whatsoever that the appeal was filed by his lawyer and there was execution proceedings that resulted into warrant of arrest against the Applicant.

- 9. That the Applicant forthwith instructed another lawyer who followed up the file at the Chief Magistrate Court of Mengo and found out that there was indeed no proof of filing an appeal and there was a warrant issued by the same Court against the Applicant.
- 10. That on realizing the mistake and negligence done by his former lawyer, the Applicant instructed another lawyer who filed a letter requesting for record of proceedings and the notice of appeal.
- 11. That the Applicant has been advised by his lawyers that the inadvertence and mistake of his counsel ought not to be visited on him.
- 12. That the Application discloses sufficient reason for the Court to exercise its discretion and extend time within which the Memorandum of Appeal should be filed so that substantive justice is served.
- 13. That the Applicant has been advised by his lawyer that the intended appeal involves a substantial question of law and fact and the intended appeal has a high likelihood of success.
- 14. That it is in the interest of justice that this Application be allowed.

In reply, the Respondent filed an Affidavit deposed by Kitonsa Ali, in which he states briefly that: the Application is marred by falsehoods and deliberate lies intended to mislead and waste Court's time. That a judgement notice was issued on 19th June, 2023 and therefore the Judgement was delivered interparty on the 21st June, and not on the 23rd June, 2023. That the said Applicant's lawyer, Kasiko Yasin, is not an advocate of the High Court and that no sufficient evidence has been adduced to prove why no memorandum of appeal was not filed within the

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stipulated time. That this Application is an afterthought and therefore should be dismissed with costs.

Representation and hearing.

The Applicant was represented by M/s Bumpenje & Co. Advocates while the Respondents were represented by Edward Ocen Advocates. Schedules were issued to file Submissions and the same were complied with by all parties.

Issues:

The issues for determination are as follows;

1. Whether there is sufficient cause shown by the Applicant for enlargement of time to file the intended appeal?

Resolution of the issue.

Whether there is sufficient cause shown by the Applicant for enlargement of time to file the intended appeal?

Submissions for the Applicant.

Counsel for the Applicant submitted that it is a principle of law under Section 79(1) of the Civil Procedure Act that an appellate Court may for any good cause admit an appeal even where time has lapsed. Counsel fortified this argument by quoting various cases in which the considerations that amount to sufficient cause were laid down. These include; Florence Nabatanzi vs Naume Binsobedde S. C. Civil Application No. 6/1987 and Sipiriva Kvarulesirr vs Justine Bakanchulike Bagahme, Civil Appeal No. 20/1995.

Counsel further submitted that a litigant cannot be punished for mistakes or negligence of their lawyer and cited the case of Andrew Bamanya v Shamshendi Zaver Court of Appeal Civil Application No. 7 of 2001.

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Submissions for the Respondent.

Conversely, the Respondent in his submissions agrees with the principles of law cited by the Applicant. However, he states that the instant Application was filed on 9th January, 2025, a period of 1 year and 6 months from the date the Judgement was delivered by the Trial Court. While citing the case of Iriso Gabriel vs Okurut **Francis Miscellaneous Application No.0045 of 2023** counsel submitted that the Applicant is guilty of inordinate delay in filing the appeal and prayed that this Honourable Court dismisses this Application for want of sufficient cause.

Determination.

Section 79 of the Civil Procedure Act, Cap 282 (CPA) provides for the time within which appeals may be lodged, and provides for an opportunity to seek extension of time in case a party is out of time. It directs that such decision for extension of time will be made by the appellate Court. It states,

"(1). Except as otherwise specifically provided in any other law, every Appeal shall be entered \$-

- (*a*) *within thirty days of the date of the decree or Order of the Court; or*

- (b) within seven days of the date of the order of a registrar, as the case maybe, *appealed against:*

Provided that the appellate Court may for good cause admit an Appeal though the *period of limitation prescribed by this Section has elapsed.*"

From comprehension of the above provision, the Court may extend the time limit for filing an appeal for good cause. The Court has observed in its earlier decisions that sufficient cause is not prescribed by the rules but rather has been left to Court to use its discretion to determine whether a particular act constitutes sufficient cause for failure to act or for non-appearance. The Court is enjoined to exercise this discretion judiciously.

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Although the term sufficient cause is not statutorily defined, jurisprudence has interpreted "sufficient cause" to refer to a factor or a reason which occasioned a party's failure to take a necessary step in litigation within the prescribed time. What amounts to sufficient cause varies from one case to another. The law leaves the meaning of sufficient cause to judicial discretion and determination basing on the facts, surrounding circumstances and merits of each particular case for the purpose of ensuring that the ends of justice are met. (See Kabarole District Local

Government Council v Gunn paper Industries Ltd, HCMA No. 103 of 2022.)

In the instant case, I note that the Applicant blames his former Counsel, M/s Matovu, Katerega & Co. Advocates for failure to properly initiate his intended appeal. The Applicant testified in Court that he learnt of the judgement of the lower Court through "his neighbors", and that he instructed his then lawyer to lodge an appeal. That the procedure that the lawyer adopted was not sufficient to be regarded as lodgment of an Appeal, and that he only knew about this after the Bailiff came to his neighborhood looking for him during execution proceedings.

I agree with the authorities cited by Applicant's counsel in **Banco Arab Espanol v Bank of Uganda** [1999] EA 22, and **Andrew Bamanya v Shamshendi Zaver Court of Appeal Civil Application No. 7** of 2001 in which it was held that mistakes, faults, lapses and dilatory conduct of counsel should not be visited on the litigant.

While this principle against visiting the mistake of counsel on the litigant was intended to ensure that substantive justice of a case prevails, the reality is that many litigants remain complacent to the inactions of their counsel only for them to turn up at later stages with new counsel seeking to undo the earlier proceedings.

This Court in the case of **Hakan Turkmen & Anor v Petua Katerba**, HCMA No.0619 of 2024 held that the claim of mistake of counsel is not a magic wand that

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entitles a litigant to all manner of reliefs that he or she wishes. The Court went on to say that:

"The inalienable rights to a fair hearing guaranteed in Articles 28 and 44(c) of the Constitution of the Republic of Uganda, 1995 only enjoins this Court to give litigants a fair opportunity to be heard and to present their cases. If such litigants decide to misuse or not to use that opportunity at all and they end up losing their cases, they only have themselves to blame. They cannot cry foul when subsequent *court decrees and orders are executed against them.*"*(Emphasis mine)*

Therefore, it is a vigilant litigant that should not be penalized for the fault of his counsel on whose instructions he has no control. An indolent litigant, on the other hand, does not deserve such clemency even when he later turns up with new advocates. Accordingly, the Court should first examine the conduct of the litigant at the time the mistake occurred before deciding that Application.

Indeed, in *Vegol (U) Ltd v Godfrey Sentongo*, HCMA No. 72 of 2020, this Court clarified that there are general exceptions to the general principle that a litigant cannot be punished for his Advocates fault. The Court stated that, for instance, if the litigant did exercise due diligence to follow up on his case with his lawyers, a Court would be unwilling to undo its proceedings simply to accommodate him.

Furthermore, in *Kananura v Kaijuka*, SC Civil Reference No. 15 of 2016, the Supreme Court had found that:

"It is the duty of an intended appellate to follow up and inquire from his advocate on the status of his case. Following up of the Applicant's case did not require him to be knowledgeable in Court processes. In the instant case, Kananura's conduct shows that he didn't exercise any vigilance or diligence in pursuit of his intended appeal. Such conduct in the circumstances amounted to dilatory conduct and negligence on his part."

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In my considered view, a litigant should not simply instruct an Advocate and sit back. He or she should continue to engage and follow up with his or her advocate as regularly as necessary for updates and information about the progress of the case.

In the instant Application, judgement was delivered on the 21st June 2023. The Applicant therefore had thirty (30) days within which to appeal this decision. However, only a Notice of Appeal was filed on the 19th day of July, 2023 by his then lawyers M/S Matovu Kateregga & Co. Advocates.

It is noteworthy that the Applicant's first transaction with "his then new lawyer" Mr. Kasiko Yasin was made on the 10th February, 2024. This is a period of over 7 months from the time judgment was delivered in the trial Court and over 6 months from the period the Notice of Appeal was filed by M/S Matovu Kateregga & Co. Advocates, despite the timelines for appealing being thirty (30) days. I am therefore skeptical that the Applicant diligently followed up the intended Appeal with his former lawyers.

I agree with the Respondent that, as the Court record illustrates, this Application is an afterthought and has been belatedly filed after a period of more than one (1) year from the date of judgement. Just like his former Counsel, the Applicant is also guilty of dilatory and negligent conduct in prosecuting the intended Appeal.

The affidavit in support of the Application does not reflect any follow-up between the time that the Notice of Appeal dated 19th July 2023 was filed and his first transaction with his former lawyer Mr. Kasiko Yasin on the 10th day of Feb, 2024. This in my view smacks of indolence on his part as the said advocate cannot act without precise and clear instruction.

If due diligence had been done the Applicant would have discovered that his advocate had not filed the appeal. Given the Applicant's indolence conduct, I find

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that there is no sufficient cause to warrant extension of time within which to Appeal.

Consequently, this Application is dismissed with costs to the Respondent.

Dated at Kampala this 9th day of April 2025

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Christine Kaahwa JUDGE.

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