

UGANDA / JUDGMENT

Ochaya George v Ocan Ben Benson (Miscellaneous Application No. 9 of 2025) [2025] UGHC 500 (10 July 2025) [2025] UGHC 500

COURT

High Court of Uganda

BEFORE

Okello, J

CASE / FILE NUMBER

Miscellaneous Application No. 9 of 2025

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

5 THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT PATONGO MISCELLANEOUS
APPLICATION NO. 009 OF 2025 10 FORMELRY KITGUM L. D MISC. APPLICATION
NO. 105 OF 2024 ARISING FROM PURPORTED CIVIL APPEAL NO. 047 OF 2023
(ITSELF ARISING FROM PATONGO MAGISTRATES COURT CIVIL 15 SUIT NO. 22 OF
2021) OCHAYA GEORGE..... APPLICANT VERSUS 20
OCAN BEN BENSON..... RESPONDENT

25 BEFORE: HON. MR. JUSTICE GEORGE OKELLO

RULING

Introduction

This application is principally for extension of time to appeal the decision of Magistrate Grade 1 His Worship Drajole given on 11th May, 2023. I say so because whereas stay of execution of the trial court's decree is also being sought in a rather omnibus manner, yet the submission ultimately 35 filed for the applicant does not speak to it. The trial court delivered Judgment in favour of the respondent who was the plaintiff. Court declared the respondent to be the lawful owner of land measuring approximately 25 acres. The land is situated in Gulu East/ Ajali Gulu Village, Ajali Parish, Ajali Sub County, Agago District. The Court declared

- 5 the applicant to be a trespasser, and ordered him to vacate the land. A permanent injunction was also issued against him and his agents restraining him from interfering with the respondent's use and enjoyment thereof. The applicant was also ordered to pay general damages of shs. 4,000,000 which is to attract 6% interest per annum from the date of
- 10 Judgment till full payment. The applicant is also to pay costs of the suit at 6% interest per annum from the date of taxation till full payment.

The applicant lodged, in a procedural error, a Notice of Appeal in the High Court complete with an appeal number, which unfortunately, was 15 registered as such. The Appeal Number is 47 of 2023. He lodged on 23rd May, 2023, twelve days after the judgment. The Notice of Appeal was lodged at Kitgum High Court registry which at the time took appeals from, among others, Patongo Magistrates Court. A copy of the Notice of Appeal was also taken and stamped as received by the trial court on 24th May, 20 2023 (a day after lodgment in the High Court). In the Notice of Appeal, the applicant states that he would file the appeal on receiving record of the

- proceedings. The record was prepared and certified by the trial court on 9th April, 2024, almost a year after its Judgment. It is not clear whether the certified record of the proceedings and Judgment were transmitted to
- 25 the applicant by the trial court. He does not give information as to whether and when he received or picked the record from the trial court or at all.

- 5 The applicant filed the present Motion on 27th July, 2024, three months and 18 days after the record was certified. On record is evidence that execution process had commenced against him by way of a Notice of Eviction and vacant possession issued on 8th May, 2024 by the trial court. The applicant now seeks for enlargement of time to appeal, and stay of
- 10 execution. The reasons the applicant proffers are that while he was waiting for the trial court record, his father fell sick and so he had to attend to the father in Kalongo Hospital. After the father's discharge, the applicant was allegedly arrested at the instance of the respondent on 7th June, 2023 and remanded. He does not state the reasons for the arrest. The applicant was
- 15 released on bail on 27th June, 2023. The father, unfortunately died on 21st July, 2023 and was buried on 24th July, 2023. Since many mourners attended the funeral, the applicant was quite occupied. He avers that the orders of the trial court are prejudicial to him as he was ordered to vacate the land he has for long used as a source of livelihood with the family so 20 he has nowhere to go.

The respondent opposes the application on technical grounds. He asserts that the applicant lodged a Notice of Appeal in the High Court describing it as a Civil Appeal and was allocated appeal No. 047 of 2023. The respondent complains that the applicant has never served the Notice of Appeal on him. So the respondent learnt of the Notice of Appeal upon receiving the "appeal" hearing notice fixed for 1st October, 2024. The respondent relies on the lawyer's advice to depose that the instant

5 application refers to a non-existing appeal and so is incompetent and constitutes an abuse of the court process.

The history

From the evidence which appear not to be contentious as given in the trial 10 court, the parties are cousins, their fathers being brothers. The parties are grandchildren of a one **Ciro Owiny**. He is long deceased. Mr. **Ciro** owned the suit land, among other tracts of land. He had two wives. The first wife gave birth to the father of the respondent. The second wife produced the applicant's father. Mr. **Ciro** appears to have not divided his landed property

- 15 during his lifetime to the wives and children. The respondent's father unfortunately died. So the applicant's father being the surviving son took control of the whole land of Mr. **Ciro**. He did not divide the land for the children of his step brother (the respondent and siblings). The respondent approached the clan head who divided the land of Mr **Ciro**. The respondent
- 20 was given the area which is now in dispute. The applicant was apparently occupying that very portion (the approximately 25 acres). He was asked by the clan to vacate it in favour of the respondent and shift and occupy other land curved off for his father's family. The applicant refused to vacate, hence the suit.
- 25 When the file was transferred to this circuit, a cause list was generated and shared widely among the members of the legal Bar. The applicant's Nephew a one **Ojara Tom Bbosa** appeared on the first day of the hearing
- 5 on behalf of the applicant on 20th May, 2025. He informed court that the applicant was in **Patongo Prison**. The Nephew did not offer other details as to why the applicant was in Prison and who caused him to be there. He was not clear even when probed by court. All that the Nephew could say was that his uncle (the applicant) has a case in the Chief Magistrates court
- 10 of **Patongo**. He prayed for adjournment to enable the applicant attend court in this matter during the next appearance. I adjourned the matter to 12th June, 2025 without objection by the respondent. No counsel appeared for the parties, although on record, **M/S Oroma & Co. Advocates** is shown to have appeared for the applicant when the matter was still at **Kitgum High**

- 15 Court. At the time, Mr. Kinyera David appeared for the respondent. It is not clear why the lawyers did not appear before this court despite apparent knowledge of the court fixture. Be that as it may, when the matter came up during the adjourned session of 12th June, 2025, neither the applicant nor a representative or agent or his counsel appeared. The respondent
- 20 appeared prose. He prayed for dismissal of the application for want of appearance by the applicant. I declined the prayer because a submission of the applicant was on record and apparently was filed when the matter was still before Kitgum High Court. It was received at the registry of that circuit on 22nd January, 2025.
- 25 In light of the applicant's submission, this court advised the respondent to lodge submissions in reply. He informed court he lacked money to pay counsel. He left the matter to court to determine.

5 Determination

Having perused the motion and the affidavit in support, and the opposing affidavit, as well as the written arguments for the applicant, the main issue for resolution is whether there is sufficient cause for extension of time to appeal. I have left out the issue of stay of execution of the trial court decree

10 because it is not argued, and because it is wrongly being sought within an application for extension of time. Procedurally, an application for stay of execution should be filed separately.

Be that as it may, I wish to state that appeals to this court from the 15 decisions of the Magistrate Grade One is by way of a memorandum of appeal. O. 43 r.1 CPR is instructive on the form of appeal. It states

"Every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented*

20 *to the court or to such officer as it shall appoint for that purpose."*

Rule 8 of O.43 provides for the register of appeals, thus "Where a memorandum of appeal is lodged, the High Court then shall cause to be endorsed on it the date of presentation, and the appeal shall be entered*

25 *in a book to be kept for that purpose, to be called the register of appeals."*

As noted, the applicant lodged a notice of appeal complete with an appeal number which was wrong. I also think the High Court registry staff should

- 5 have realized the error and declined to give the appeal number and should have advised the applicant on the proper thing to do as he appears to have been unrepresented at the time. The Deputy Registrar Kitgum High Court ought to have guided him instead of endorsing the Notice of Appeal. That said, I think the applicant realized the futility of the steps taken and duly

- 10 instructed Oroma & Co. Advocates to seek extension of time aware that Civil Appeal No. 047/2023 was erroneously assigned an Appeal number and legally the appeal was non-existent. It appears whoever helped the applicant to draft the notice of appeal mixed up the matter and was confused on the procedural aspects of appealing the decision of the
- 15 Magistrate Court. Whereas in criminal appeals from Magistrates Court, a Notice of Appeal is the form under section 28 of the Criminal Procedure Code Act Cap 122, this is not the case in civil appeals from the Magistrate Court to the High Court. In fact the rules of civil procedure do not have a similar provision for lodgment of Notice of civil Appeals to the High Court
- 20 unlike in cases of appeals from the High Court to the Court of Appeal, and appeals from the Court of Appeal to the Supreme Court. Civil appeals to the High Court from Magistrate Court are thus preferred by way of Memorandum of appeal and not a Notice of appeal. This recognition was made by the Supreme Court in J. Hannington Wasswa & Another Vs.
- 25 Maria Onyango Ochola & 3 Others, Civil Appeal No.3 of 1992 [1992] UGSC 5.

- 5 Be that as it may, appeals to the High Court from the decision of a Magistrate Court must be filed within 30 days from the date of the decision. See section 79 (1) (a) of the Civil Procedure Act Cap 282. However, subsection (2) of section 79 allows the time taken by the trial court in making a copy of the decree or order appealed against and the proceedings,
- 10 to be excluded when computing the time within which to appeal. This provision was interpreted in Ephraim Ongom & Another Vs. Francis Benega, Civil Appeal No. 10 of 1987. In Godfrey Tuwangye Vs. Georgina Katarikwenda [1992-1993] HCB 143, it was held that time for lodgment of appeal does not begin to run against the intending appellant until the
- 15 party who applied for such record within the time allowed for appeal receives a copy of the proceedings.

Turning to the instant case, whereas the applicant did not write a letter requesting for the record of the trial court, court will liberally take his erroneous notice of appeal and guided by article 126 (2) (e) of the 20 Constitution, 1995, to avoid a technicality and do justice, to be a request for the record of the proceedings and Judgment from the trial court. This is more so, because, the applicant indicated on the Notice of Appeal that the grounds of appeal would be formulated after receiving the fully certified copies of the judgment and proceedings. It of course appears he never 25 served the "request" on the respondent. The trial court received the Notice of appeal on 24th May, 2023. Being an unrepresented litigant at the time, it appears the applicant did not see the point in notifying the respondent.

5 Of course, there is no express provision requiring service of request for record on the opposite party and courts have said it is done as a matter of courtesy. There is a need to align this requirement with the practice that obtains in the Court of Appeal and the Supreme Court which have regulatory backing. See: Otto Marcello Ludinya & Others Vs. Kinyera

10 Patrick, Civil Appeal No. 026 of 2017 [2023] UGHC 508.

In the present matter, I note that the record of the trial court was transmitted to the High Court and it is not apparent that the applicant received it. He is silent about the whole matter.

Transmission of the trial

- 15 court record to the appellate court is the procedure under O.43 rule 10 CPR. However, I hasten to note that, the record of the lower court is only called if a Memorandum of appeal has been filed in the High Court. And here, I think the High court erroneously called for the record on the erroneous belief that an appeal had been filed before it whereas not. That
- 20 said, the appellant still failed to lodge an appeal. As I have observed, he does not state at all as to when he finally received or obtained the record of the proceedings or whether he never obtained it at all. Since the record was ready from 9th April, 2024, the applicant, in my view, ought to have been vigilant in checking for it and obtaining a copy if he did not do so.
- 25 There are of course views that once a record is requested for, the intending appellant need not do anything provided he requested for it and served a copy of the request on the respondent until the record has been furnished
- 5 to him. This may of course be unfair to the party who has secured judgment. See: Dr. S. B Kinyatta & another vs. Suburamania Rajha Gopalan & another, Civil Application No. 1000 of 2000 (COA); Wanume David Kitamirike Vs. Uganda Revenue Authority, Civil Application No. 138 of 2010 [2011] UGCA 3. I note that the court in those cases was construing
- 10 rule 83 (2) of the rules of the Court of Appeal. That construction, I think should apply with equal force to the construction of section 79 (2) of the CPA and as interpreted in a catena of cases. See: Ephraim Ongom & Another Vs. Francis Benega, Civil Appeal No. 10 of 1987 (supra); and Godfrey Tuwangye Vs. Georgina Katarikwenda [1992-1993] HCB
- 15 143(supra). However, there are decisions which appear to require that an applicant ought to show some diligence as dilatory conduct of a party is not excusable. See: Shanti Vs. Hindocha & Others [1973] E. A 207. It was held in that case that the position of an applicant for an extension of time is entirely different from that of an applicant for leave to appeal. He is 20 concerned with showing sufficient reason (special circumstances) why he should be given more time and the most persuasive reason that he can show is that the delay has not been caused by or contributed by dilatory conduct on his part. But there are other reasons and these are all matters of degree.
- 25

In *Mulindwa George William Vs. Kisubika Joseph*, Civil Appeal No. 12 of 2014 [2018] UGSC 38, the Supreme Court guided that in an application

- 5 for extension of time, court should consider the following factors; the length of the delay; the reason for the delay; the possibility or chances of success; and the degree of prejudice to the other party. The Supreme Court noted that once delay is not accounted for, it does not matter the length of the delay. There must always be an explanation for the period of the delay.
- 10 Court went on to note that the discretion to grant an extension of time can be exercised in order for the appeal to be heard on its merits so that the dispute can be settled. The discretion, must, however, be exercised judicially on proper analysis of the facts and the proper application of the law to the facts.

In the present matter, the question that arises is whether the applicant by seeking extension of time on 27th July, 2024 when the trial court record was available from 9th April, 2024, has furnished sufficient reason for court to enlarge time to appeal. Is the delay to file the appeal within 30 20 days from 9th April, 2024 when the record was certified and ready for collection, accounted for?

The reasons the applicant proffers for his inaction are; the record was not availed at the time the Judgment was delivered; the applicant was 25 attending to a sick father from the time the Judgment was delivered and the father was discharged on 27th June, 2023; the father died on 21st July,

5 2023 and was buried on 24th July, 2023; the applicant was arrested after 7th June, 2023 and released on bail on 27th June, 2023.

With respect, the events enumerated are not contested. However, I note that all the reasons relate to the events of 2023 when the time for lodging 10 the appeal could not have started to run against the applicant. I also note that the applicant only instructed the current Advocates to file this application on or about 30th July, 2024 when time had expired on or about 9th May, 2024. This is contained in paragraph 10 of the applicant's affidavit and is buttressed by the notice of instruction the Advocates filed in court.

- 15 Furthermore, from paragraph 11 of his affidavit and the annexure thereto, the applicant appears to have only instructed the advocates upon being served with eviction notice which was issued by the trial court on 8th May, 2024 a day to the expiry of time for lodging the appeal if the 30 days for appealing is reckoned from 9th April, 2024.
- 20 From the sequence of the events and his deposition, I see no force in the reasons advanced by the applicant for enlargement of time. The delay from the time the record was certified and available has not been explained by the applicant. He does not say he was not aware of the availability of the record for collection. Although the delay appears to be short, just three

- 25 months and 18 days, the reason for the delay is unexplained. The application appears to be an afterthought. It was lodged because the respondent had obtained an eviction warrant otherwise the applicant was
- 5 unbothered all along. Although there is no draft memorandum of appeal, it seems to me, prima facie, the intended appeal has little chance of succeeding. The applicant appears to be generally aggrieved by the trial court decision decreeing the suit land to his cousin-the respondent. However, the evidence on record on both sides, to which I have adverted,
- 10 appear to confirm that the suit land was given by the clan of the parties in a division of the landed property of the late grand-father of the parties. In the circumstances, therefore, to allow the application would cause serious prejudice to the respondent who continues to be deprived of the suit land by the applicant and his family yet they have their share elsewhere. I,
- 15 therefore, dismiss the application with no order as to costs given the relationship between the parties. It is so ordered.

Delivered, dated and signed in Court this 10th July, 2025.

20 George Okello JUDGE

10/07/2025 09: 55 Am Attendance

25 Applicant absent Respondent present Mr. Olweny Denis, Court Clerk.

30 George Okello JUDGE

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/2025/500/eng@2025-07-10>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/ochaya-george-v-ocan-ben-benson-miscellaneous-application-no-9-of-2025-2025-ughc-500-10-july-2025-unknown-topic-unknown-court-2025--6a3ea4db3b1caa91297e8757>

Prepared on 13 October 2026 · Esheria