

UGANDA / JUDGMENT

Sanitation Africa Limited v Lutheran World Federation (Miscellaneous Application 1812 of 2024) [2025] UGCommC 67 (3 February 2025)

[2025] UGCommC 67

COURT

Commercial Court of Uganda

BEFORE

Anna B. Mugenyi, J

CASE / FILE NUMBER

Miscellaneous Application 1812 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION] MISCELLANEOUS APPLICATION NO 1812 OF 2024

[ARISING OUT OF CIVIL SUIT NO 0745 OF 2021]

SANITATION AFRICA LIMITED:.....

VERSUS

LUTHERAN WORLD FEDERATION:.....

BEFORE: HON. LADY JUSTICE ANNA B. MUGENYI

RULING

INTRODUCTION

This application was brought by way of notice of motion under Article \$126(2)(e)\$ of the 1995 Uganda Constitution, Section 79 of the Civil Procedure Act(CPA), Order 52 of the Civil Procedure Rules(CPR), Section 33 of the Judicature Act, Rules 5 & 42(1) of the Judicature (Court of Appeal Rules) Directions for orders that:

- a) The time for filing the Notice of Appeal by the Applicant be extended.
- b) The time for serving the Notice of Appeal by the Applicant be extended.
- c) The applicant be granted costs of this Application

This application was supported by the affidavit of Samuel Malinga, the applicant's Managing Director, and opposed by the affidavit in reply of Paul Orikushaba, the respondent's Head of Programmes.

BACKGROUND

The applicant sued the respondent in civil suit no. 745 of 2021 and judgment was delivered on 25th March 2024 in the absence of the applicant and their advocate.

The applicant contends that their lawyer only informed them about the judgment on 8th April 2024 and they directed him to immediately file a notice of appeal. The applicant further avers that on 9th April 2024, their advocate through a phone call informed them that a notice of appeal had been filed. The applicant averred that on follow-up with their lawyer, he informed them that he had become a judicial officer upon which they instructed their new lawyers to take over the case. The applicant

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further contend that their new lawyers discovered that the former advocate had just filed a letter requesting for typed proceedings and there was a need to file a notice of appeal out of time. The applicant contends that the mistake of counsel should not be visited on them as the litigant.

The respondent contends that an attorney serves merely as an agent of the litigant and that it is incumbent on the litigant to proactively engage with their legal team regarding the status of their case. The respondent further contends that there was a lack of vigilance and diligence on the part of the applicant who failed to follow up with the court and the law firm regarding their case. They further averred that the inaction by the applicant constitutes dilatory conduct and reflects a degree of negligence on their part which undermines the seriousness of the appeal. That the failure of the applicant to actively engage in the process effectively renders him privy to the advocates default.

REPRESENTATION

The applicant was represented by M/s Muyanja & Associates whereas the respondent was represented by M/s Verma & Partners.

DECISION

I have read the pleadings of the parties and the written submissions of counsel in this matter and the main issue for consideration is whether time should be enlarged for the applicant to file and serve their notice of appeal.

Rule 76(2) of the Judicature (Court of Appeal Rules) Directions requires a party who desires to appeal against a decision of the High Court to lodge a notice of appeal in the High Court within 14 days after the decision against which it is desired to appeal.

Section 79 of the CPA (Cap 282) provides that:

"(1) Except as otherwise specifically provided in any other law, every appeal shall be entered*

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- (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 may be, appealed against; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed."

Grant of extension of time to file an appeal is discretionary and dependent on proof of good cause. Such discretion must at all times be exercised judiciously.

Good cause that justifies a grant of enlargement of time has been the subject of many decisions as seen below:

In the case of *Roussos v Gulam Hussein Habib Virani, Nasmudin Habib Virani*, S. C. Civil Appeal No. 9 of 1993, it was decided that a mistake by an advocate, though negligent, may be accepted as sufficient cause, ignorance of procedure by an unrepresented defendant may amount to sufficient cause, illness by party may also constitute sufficient cause, but failure to instruct an advocate is not sufficient cause.

In *Andrew Bamanya v Shamsherali Zaver*, C. A Civil Application No. 70 of 2001 it was held that mistakes, faults, lapses and dilatory conduct of counsel should not be visited on the litigant; and further that where there are serious issues to be tried, the court ought to grant the application

In the instant case, the applicant contends that it was the mistake of counsel which prevented them from filing the notice of appeal in time and such should not be visited on them.

It is an established principle of the law that negligence of counsel ought not to be visited on an innocent litigant and that a litigant ought not to bear the consequences of default by an advocate unless the litigant is privy to the default or the default results from the failure on the part of the litigant to give the advocate due instructions (*Zam Nalumansi v Sulaiman Lule*, SCCA No. 2 of 1992; *Mary Kyamulabi v Ahmed Zirondemu*, CACA No. 41 of 1979 and *Andrew Bamanya v Shamsherali Zaver*, CACA No. 70 of 2001).

In the instant case, it is not in contention that both the applicant and its advocate were absent during the delivery of the judgment on 22nd March 2024.

The applicant contends that they were only informed of the judgment on 8th April 2024 to which they instructed their advocate to file a notice of appeal. The applicant also contends that their advocate confirmed to them through a phone call that the notice of appeal had been filed on 9th April 2024. A letter requesting for a typed record of proceedings marked as annexure 'A' is seen to have been filed in this court on 9th April 2024. It should be noted that by the time this letter was filed, the applicant was still within time but no notice of appeal was filed.

The applicant is also seen to have given instructions to new advocates on 6 July 2024 and this application for an extension of time was subsequently filed on the 5s of September 2024. This application was therefore filed more than five months from the date of judgment.

The applicant contends that from the date of 8n April 2024, they were constantly requesting for copies of the notice of appeal to no avail from their lawyers until 6 July 2024 when he informed them that he had joined the Judiciary.

I find that if the applicant's advocate had heeded to the instructions of the applicant and filed their notice of appeal on 91h April 2024, it would have been within time. I find that the failure to file the notice of appeal in time by the advocate of the applicant in the instant case should not be visited on the applicant. The applicant relied on the word of the advocate that he had filed the notice of appeal and cannot be held to be privy to the default.

In any case, once the unavailability of their advocate was brought to their attention, they immediately gave instructions to new advocates who confirmed that no notice of appeal had been filed and then filed this application for extension of time. I therefore disagree with the respondent's contention that the applicant is guilty of dilatory conduct as the applicant has clearly given sufficient reasons for the delay.

It has not been shown that the intended appeal is frivolous or a sham and therefore it is only fair and just that the applicant be accorded an opportunity to raise their issues and grievances on appeal.

I accordingly grant the applicant enlargement of time to file their notice of appeal. The applicant should file the notice of appeal within fourteen days from today. Each party will bear their costs of this application.

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HON. LADY JUSTICE ANNA B. MUGENYI DATED 3 ^t L

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Prepared on 13 October 2026 · Esheria