

UGANDA / JUDGMENT

Sentongo v Katende & Another
(Miscellaneous Application 2436 of 2024)
[2025] UGHCLD 22 (28 January 2025)
[2025] UGHCLD 22

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Application 2436 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLENEAOUS APPLICATION NO.2436 OF 2024

(ARISING FROM CIVIL SUIT NO. 751 OF 2014)

SENTONGO JAFFER ::::::::::::::::::::::::::::::

VERSUS

1. KATENDE NELSON

2. KIZZA JAMIL ::::::::::::::::::::::::::::::

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA RULING

Introduction;

- 1. This was an application by way of Notice of motion for orders that;
- i) That time be extended for the applicant to file his appeal out of time.
- ii) Costs of the application be paid by the applicant

Applicant's evidence;

2. The application is supported by an affidavit deponed by the applicant which briefly states as follows;
 - i) That on the 18th day of August while at Mengo Hospital I was informed by my wife that there was a judgement which was delivered by email on the 18th days of July 2024 vide Civil Suit No. 751 of 2014.
 - ii) That I tried contacting my lawyers about instituting the appeal but my lawyer informed me that he was in Mombasa for holidays and he was not to come back soon. I wrote a letter to the High Court Land Division requesting for the file so that I can use it to appeal.
 - iii) That me being sick for a long time and having spent a lot of money on medication I ran out of money to instruct a lawyer to file an appeal in time.
 - iv) That it's in the interest of justice and fairness that this honourable court grants this application.

Respondent's evidence;

3. The application is responded to by an affidavit in reply deponed by the 2nd respondent which briefly states as follows;
 - i) That the trial judge fixed the judgement for the main suit at the locus visit in the presence of the applicant and his lawyers for the 18th of July 2024.
 - ii) That the applicant states that he was at Mengo hospital when the judgement was delivered and he learnt the same through his wife however he has not attached any medical proof from Mengo hospital to corroborate the same.
 - iii) That the applicant has attached a medical report that is titled CHEST CT SCAN REPORT issued on the 13th of August 2024 by Mulago hospital, however the said report does not indicate that the applicant was in Mengo hospital for 2 months receiving treatment when the judgement was delivered.
 - iv) That the applicant attached a medical report from Mildmay Uganda laboratory titled Haematology report issued on 2nd April 2023 which does not prove that the applicant was receiving treatment before, during or after the date of delivery of the judgement.
 - v) That this application be dismissed with costs.

Representation;

4. The applicant was represented by Counsel Muhereza Robert of M/S Bumpenje & Co. Advocates whereas the 2nd respondent was represented by M/S Lugolobi Associated Advocates. Only the 2nd respondent filed written submissions which I have considered in the determination of this application.

Issues for determination;

Whether the application discloses grounds for extension of time within which to file the intended appeal?

Resolution and determination of the issues;

- 5. An order granting the extension of time to file an appeal to the Court of appeal is discretionary in nature and the applicant ought to know that at one moment litigation has to come to an end.
- 6. Court in **Across African clearing and forwarding Co. Ltd v Uganda Revenue Authority & Anor MA. No. 0003 of 2012** citing the authority of **Degeya trading stores (U) Ltd v Uganda Revenue Authority CACA No.16 of 1996**, their Lordships of the Court of Appeal observed that an applicant seeking leave to appeal must

show either that his intended appeal has reasonable chance of success or that he has arguable grounds of appeal and has not been guilty of dilatory conduct.

- 7. ***Section 66 of the civil procedure Act*** confers a right of appeal from decrees of the high court to the court of appeal and ***Section 79(1) a of the same act*** is to the effect that every appeal shall be entered within 30 days of the date of the decree or order of court.
- 8. The applicant in the instant application raises the fact that he has not been guilty of the dilatory conduct within which to file the said appeal on medical grounds as stated in his affidavit in support of the application.
- 9. The applicant states in his affidavit under paragraph 2 that he was informed by his wife on the 18th of August 2024 when he was at Mengo hospital that the judgement vide Civil Suit N0.751 of 2014 had been delivered by court on the 18th day of July 2024 and as of the 18th of August 2024 he had spent 2 months at the hospital.
- 10. The applicant attached a medical report from Mulago Hospital dated the 13th of August 2024 and a haematology report from Mild may Uganda laboratory dated the 2nd of April 2024.

- 11. The perusal of the record of proceedings for the main suit indicates that this honourable court conducted a locus visit on the 14th March 2024 in the presence of counsel for the applicant/plaintiff, counsel for the 2nd respondent/defendant and both parties where court directed that the judgement shall be delivered on the 18th of July 2024 via ECCMIS.
- 12. The averment made by the applicant that he had spent two months at Mengo hospital as of the 18th of August 2024 is not backed by any documentary evidence to allude to the same, the Chest CT scan report attached onto the application is from Mulago Hospital dated and signed on the 13th of August 2024 and does not indicate anywhere that the applicant had been at the hospital for 2 months as he alleges.
- 13. The applicant further attached a haematology report from Mildmay Uganda laboratory dated the 2nd of April 2024 which doesn't indicate that the applicant was at the said hospital for two

months nor the period the applicant had spent at the hospital. The said report indicates that the medical tests were conducted before the Judgement to the main suit was delivered.

- 14. If the applicant intended to rely on medical grounds to prove that he was not guilty of dilatory conduct as to when to file his intended appeal, he ought to have adduced evidence leading to the fact that from the time of delivery of the said judgement to when the instant application was filed, he was bed ridden at Mengo Hospital a fact that rendered him unable to file his appeal within the required time. However, the evidence adduced by the applicant speaks to the contrary.
- 15. Further, the date of delivery of the said judgement was communicated to both the applicant and the 2nd respondent in the presence of their lawyers during the locus visit conducted by court. There is no way the applicant would not have been aware of the date of delivery of the said judgement by this court.
- 16. This court is of a finding that the applicant in the instant application is guilty of dilatory conduct within which to file his

intended appeal and the instant application raises no grounds that warrant the extension of time with in which to file the said appeal.

- 17. Therefore, the instant application is hereby dismissed with costs awarded to the 2nd respondent.

I SO ORDER.

NALUZZE AISHA BATALA

Ag. JUDGE

28th/01/2025

Delivered Electronically via ECCMIS on the 28th day of January 2025.

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