

UGANDA / JUDGMENT

Ssebina David and Others v Pearl Development Group Ltd and Others (Misc.Application No. 2079 of 2024) [2025] UGHCLD 85 (10 June 2025)

[2025] UGHCLD 85

COURT

HC: Land Division (Uganda)

BEFORE

Nabakooza, J

CASE / FILE NUMBER

Misc.Application No. 2079 of 2024

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

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISC. APPLICATION NO.2079 OF 2024

(ARISING OUT OF CIVIL SUIT NO.927 OF 2019 & MISC. APPL. NO.1312 OF 2024)

1. SSEBINA DAVID

2. MOSES WADIMBA SSENTONGO DDIBA

- 3. NAKAYE JENNIFER :::::::::::::::::::::::::::::::
- 4. NANTONGO EREESI
- 5. SSEKITOOLEKO GEOFFREY KABAALE

VERSUS

1. PEARL DEVELOPMENT GROUP LTD

- 2. H. H THE KABAKA OF BUGANDA Sued through his Attorneys; Charles Peter Mayiga and David Fredrick Kisitu Mpanga
- 3. BUGANDA LAND BOARD LTD

- 4. MASTULA MULONDO ::::::::::::::::::::::::::::::

RULING

HON. LADY JUSTICE NABAKOOZA FLAVIA. K BEFORE:

This application was brought under Section 79(2) and 98 of the Civil Procedure Act Cap 282, and Order 52, Rules 1 and 2 of the Civil Procedure Rules seeking for orders that: -

- a. The late filing of the application for leave to appeal the decision of Her Lordship Justice Aisha Naluzze Bataala, dated 4th March, 2024 be validated/time in which to appeal be extended.
- b. The Respondents pay Costs of the Application.

The application is supported by the Affidavit of the ² Applicant (Mr. Moses Wadimba Ssentongo Ddiba) with written authority from the 1st, 3rd, 4th and 5th Applicants. He deposed that the Applicants filed an application to amend the plaint vide Misc. Application No. 151 of 2024 and the ruling dismissing the same was delivered by Her Lordship Aisha Naluzze on 4/03/2024\$. That the Applicants immediately applied for a certified copy of the proceedings and ruling.

That the copies were availed on 24/04/2024\$ and the application for leave to appeal was filed on 23/05/2024\$ which was done more than 30 days from the \$10\$

\$\mathsf{S}\$

Page 1 of 5

Adding 10-06-2025

date of the ruhng. Hc played that the late filing of lclave to appcal bc validatedd because the r\pplicants received the proceedings on 24/04/2024 this is a just cause.

'The application was opposed by all the Respondent their respective affrdar.its in reply on record.

I\fr. I{artick Halai (the /" Reqtondent's Director) dcposcd that the application is moot and had becn overtaken by er.ents since the court had already heatd N{r\ No. 1312 of 2024 rvhich was pending ruling on 28/02/2025. 'fhat the 1" Respondent filed an affidavit in tcply to M;\ No. 1312 of 2024 whctcin he stated that the apphcation was time barred hence the Apphcant filing the instant , \pplication as an afterthought sccking to defcat the l" Respondent's defence of trme barred. He asserted furthct that the tccord rvas availed to the ,\pphcants on 13/04/2023 and not 24/01/2024 rvhich was motc than the stanrtory 30 days within which the ,\pp)icants r.vould have filed N{A No. 1312 of 2024. Further, that the r\pphcants har.c not attached the said rccord of proccedings to their pleaclrngs in M;\ No. 131,2 ol 2024, and that the same (record of proceedingt) is not a legal requirement to Frlc an application for lclave to appcal. He ar.errcd futthct that the apphcation lor

leave to appeal was filed in May 2024 while the instant application was filed in August 2024 (4 months later) hence displayed dilatory conduct. That the 1st Respondent will be prejudiced if the application is granted.

N^r. Bashir Juma Kizito (DrPrA Chief Executive Director of Baganda Ltd Board and a defaulting holder of Powers of Attorney from the Kabaka of Buganda) opposed the application on behalf of the 2nd and 3rd Respondents. He averred that obtaining a record of proceedings is not a requirement in an application for leave to appeal; that the applicants already commenced the appeal process by filing a notice of appeal before an application for leave to appeal was filed. That the applicants would have validated the notice of appeal in the Court of Appeal and therefore, that the instant application is incompetent. Further still, that the application which the instant application seeks to validate was already heard and pending ruling by this court affirming that the instant application seeks to defeat the 2nd and 3rd Respondents' defence of limitation in N^o. 131.2 of 2024.

10 -6

Page 2 of 5

Likewise, the 4th Respondent (Ms. Mastula Mulondo) on her part deposed that the application does not disclose legitimate/sufficient grounds to allow extension/validation of time, its time barred, overtaken by events and intended to defeat her defence to MA No. 1312 of 2024. She prayed that the application should be dismissed with costs.

I have taken note of the Applicants' affidavits in rejoinder. 60

> **Representation:** The Applicants were represented by Counsel John F. Ssengooba, Counsel Kankanka represented the 4th Respondent, while Counsel Nganwa Rodney represented the 1st Respondent. All parties filed their written submissions which I have considered in this ruling.

The Applicant's Counsel raised the following issues for resolution by court:

- i. Whether the application is properly before the Court?
- ii. Whether the application for extension of time should be granted?
- Counsel for the 4th Respondent added one issue to wit; Whether this 70 Honourable Court has jurisdiction to extend time within which to file the application for leave to Appeal. Since the issue involves a preliminary objection touching the jurisdiction of this court, it is prudent that I handle it first.

75 On this objection, Counsel for the Applicants cited **Rule 40(1) (a)** of the Judicature Court of Appeal Rules and the case of Waira James Kyewalabye Majegero Sitingo v Kubeketeryo James COA Election Petition No. 16 & 17 of 2021 and submitted that the aim of validation is to make valid what has already been done. He argued that Section 79(2) of the Civil Procedure Act and the

Judicature Court of Appeal Rules are in conflict. That the section tries to oust the jurisdiction of this Court from handling an application for leave to appeal and yet the High Court has original jurisdiction which cannot be ousted.

In response, Counsel for the 2nd and 3rd Respondents contended that an appeal in the Court of Appeal is commenced by filing a notice of appeal and that by filing a notice of appeal, the applicant had already commenced an appeal in the Court of Appeal. That the notice of appeal was therefore filed without first seeking leave of the Court to Appeal. Counsel argued further that the proper forum to address all the Applicants' concerns is in the Court of Appeal and not this Court. He referred this court to the finding in the case of **Male H. Mabirizi* 90 Kiwanuka v Attorney General HCMA No. 89 of 2022* where it was held that an appeal in the Court of Appeal is commenced by filing a notice of appeal, and

Page 3 of 5

Adding

10-06-2025

the validity of the notice of appeal cannot be subject of investigation and determination by the High Court.

Counsel for the 4th Respondent on his part argued that this Court has no jurisdiction to entertain the instant application for an extension of time. He argued that the law under which the application was brought relates to the exercise of jurisdiction conferred on this Honorable Court with respect to the appeals and not applications for leave to appeal. He contended that Section 79 of the Civil Procedure Act is concerned with the extension of time for filing an appeal and not the time for filing an application for leave to appeal as Counsel for the Applicants wrongly assumed. That the Applicants sought to mislead this court by citing Rule 5 of the Judicature Court of Appeal Rules.

Counsel for the 4th Respondent argued further that the jurisdiction to extend time for filing an application for leave to appeal is set by Rule 40 (2) (a) of the Judicature Court of Appeal Rules, which is vested in the Court of Appeal and not the High Court. He also relied on the case of *Pharmaceutical Society of Uganda v Attorney General HCMC No. 260 of 2019* and argued that this Court cannot invoke Section 98 of the Civil Procedure Act because where a specific law/section/rule provides for a matter, one cannot resort to a general law/section/rules. That the Court of Appeal Rules limited the time within which an application for leave to appeal can be filed, and that they were not made under the Civil Procedure Act but under the Judicature Act.

115

In rejoinder, Counsel for the Applicants averred that the case of **Male H. Mabirizi Kiwanuka v Attorney General** (supra) as cited by the 2nd and 3rd Respondents does not apply to the instant case as the applicants are not praying that the High Court investigates the validity of the notice of appeal. He argued that Section 79(2) of the Civil Procedure Act gives power to enlarge time to an appellate court, yet the High Court has unlimited original jurisdiction.

Determination of the Preliminary Objection.

- This application was brought under Section 79 (2) of the Civil Procedure Act as 125 which provides that 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 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.

\$-2025\$

Page 4 of 5 Adding

10-06-2025

- (2) In computing the period of limitation prescribed by this section, the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be \$excluded.\$
- The wording of the above provisions clearly shows that the section is concerned 135 with appeals but not an application seeking leave to appeal. I agree with the Respondents' Counsel about that.
- The relevant law in this case is Rule \$40(2)(a)\$ of the Judicature (Court of Appeal Rules) Directions SI 13-10 of 2000. That Rule confers jurisdiction on this Court 140 to hear an application for leave to appeal in civil matters but the application must be filed within 14 days after a decision is made (Livingstone Kayaga Kizito v Charles Waligo Miscellaneous Application No. 80 of 2012).
- 145 It is undisputed that an application for leave to appeal was not filed within the said time hence the instant application. Rule 5 of the Judicature (Court of Appeal Rules) Directions (supra) provides that "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 these Rules...." 150 The court under the said provisions is defined to mean the Court of Appeal (Rule 3 of the Judicature (Court of Appeal Rules) Directions).

Since this court is not the Court of Appeal, I find that it lacks the jurisdiction to validate/extend time within which to file an application for leave to appeal. Therefore, I agree with the 4th Respondent's Counsel that this court has no jurisdiction to hear the instant application. Consequently, the preliminary objection is sustained.

In conclusion, the application is dismissed with costs.

this

Signed, dated and delivered at \$ KAMPALA of June \$2025\$

Nabakooza Flavia K Judge

165

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/ughcld/2025/85/eng@2025-06-10>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/ssebina-david-and-others-v-pearl-development-group-ltd-and-others-miscapplication-no-2079-of-2024-2025-ughcld-85-10-june-2025-unknown-topic-unknown-co>

Prepared on 11 October 2026 · Esheria