

UGANDA / JUDGMENT

The Microfinance Support Centre v Kasese Hospital and Baguma John Henry (Miscellaneous Application 42 of 2024) [2025] UGHC 404 (10 March 2025) [2025] UGHC 404

COURT

High Court of Uganda

BEFORE

David S.L. Makumbi, J

CASE / FILE NUMBER

Miscellaneous Application 42 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KASESE

HCT-25-CV-MA-0042-2024

(ARISING FROM HCT-25-CV-MA-0002-2024)

(ARISING FROM HCT-01-CV-MA-0034-2024)

(ARISING FROM TAXATION MISCELLANEOUS APPLICATION NO. 41 OF 2023)

(ARISING FROM ORIGINATING SUMMONS NO. 079 OF 2023)

THE MICROFINANCE SUPPORT CENTRE=====APPLICANT

VERSUS

1. KASESE HOSPITAL

2. BAGUMA JOHN HENRY=====RESPONDENTS

BEFORE HON. JUSTICE DAVID S. L. MAKUMBI

Applicant represented by Orima and Co. Advocates

Respondent represented by Masereka, Mangeni and Co. Advocates

RULING**BACKGROUND:**

This Application is brought by way of Notice of Motion under Section 37 of the Judicature Act; Section 98 of the Civil Procedure Act; Order 44 Rules 2, 3 and 4; and Order 52 Rules 1 and 3 of the Civil Procedure Rules by which the Applicant seeks the following orders:

1. Leave be granted to the Applicant to appeal to the Court of Appeal against the ruling and orders of the High Court of Uganda at Kasese (Hon. Justice David S. L. Makumbi) in Miscellaneous Application No. 2 of 2024 arising from HCT-01-CV-MA-0034-2024, Taxation Miscellaneous Application No. 41 of 2023 and Originating Summons No. 79 of 2023;
2. Costs of the Application be provided for.

The Application is supported by the affidavit of Simon Godfrey Kibuuto who stated that the Applicant being aggrieved by the decision of the Court in Miscellaneous Application No. 2 of 2024 intends to appeal the same before the Court of Appeal and seeks leave of the Court to appeal. It was further stated that there were serious legal questions warranting reconsideration on appeal to wit; whether the admission of one Ijuka Joab to not having followed instructions in his brief amounted to fraud and misrepresentation; and, whether the evidence on record was not sufficient to set aside the consent entered in Taxation Miscellaneous Application No. 79 of 2023. It was also stated that the application had been made without undue delay.

The Respondent filed an Affidavit in Reply sworn by Baguma John Henry who explained the circumstances leading up to the contested consent and stated that the application lacked merit. He further stated that the alleged fraud leading to the consent agreement reached in Taxation Miscellaneous Application No. 41 of 2023 had no evidence and that furthermore Miscellaneous Application No. 2 of 2024 upon which the present application is based lacked substantive points of law or evidence for the court to determine. The Respondent subsequently opposed the application on the grounds that no reasons had been shown for grant of leave to appeal.

Submissions:

Counsel for the Applicant stated that the application was founded on Order 44 Rule 2 of the Civil Procedure Rules and further cited the case of **Sango Bay Estate v Dresdner Bank & Attorney General** [1971] EA 17 as the guiding principle for an application for leave to appeal.

Counsel argued that the main issue in the application was whether there were sufficient grounds to grant the Applicant leave to appeal. Counsel then went on to argue that the circumstances under which the consent was secured involved Counsel who was holding brief acting contrary to instructions and that to that extent the consent judgment reached was fraudulent. Counsel further argued that it was in the interests of justice in terms of equity and fairness that leave to appeal be granted as the consent judgment did not reflect the intentions of the Applicant.

Counsel for the Respondent argued in reply that the Applicant had not shown the grounds of objection showing that the Court erred on the question or issues raised by way of objection and that as such the application was baseless and unmerited. Counsel further argued that the application only served to prolong the Respondent's enjoyment of their rights in terms of taxed costs. Counsel further argued that even with the uncontested elements of the disputed application the Applicant had not yet taken steps.

Counsel summed up by arguing that the alleged point of law raised by the Applicant did not raise any new issues for determination of the Court of Appeal or Supreme Court as the same had already been determined in other cases. Counsel concluded by praying that the application be dismissed.

ANALYSIS AND RESOLUTION OF THE APPLICATION:

The main issue for this Court to address is whether there are sufficient grounds raised to warrant granting leave to appeal.

In the case of **Sango Bay Estates Ltd v Dresdner Bank (1971) EA 17** it was held that leave to appeal will normally be granted where **prima facie** it appears that there are grounds of appeal which merit serious consideration.

Furthermore in the case of **Matayo Okumu v Fransisko Anudhe and 2 Others (1979) HCB 229** it was held that for an application for leave to appeal to succeed the applicant has to prove to court that there are substantial questions of law to be decided by the appellate court or that the decision against which he intended to appeal appears to have caused a miscarriage of justice.

It was also held in the case of **Venorah Margaret Bray v Raymond Jack Bray (1957) EALR 302** it was held that the court hearing an application for leave to appeal should look at the trial judge's ruling to assess whether there is an arguable case.

In this application therefore this Court is under a duty to establish whether there are sufficient grounds raised to warrant granting leave to appeal. The sufficiency of the grounds lies in whether on the face of it the said grounds merit serious consideration and furthermore that there are substantial questions of law which have occasioned a miscarriage of justice.

In this application the central premise of the application as evident in Paragraphs 6 and 7 of the Affidavit in Support sworn by Simon Godfrey Kibuuto is the contention that the consent judgment reached in Taxation Miscellaneous Application No. 79 of 2023 was fraudulent. The particulars of the fraud being that there was evidence that Ijuka Joab who was holding brief in the matter acted contrary to instructions and admitted as much in his Affidavit in Support of Taxation Appeal No. 7 of 2024.

I have had the benefit of revisiting the decision of this Court in Miscellaneous Application No. 2 of 2024 in determining whether this present application raises substantial questions for appeal. I noted from the decision which the Applicant now seeks leave to appeal that the issue of fraud was not the only question that the Court addressed. One of the key issues addressed by the Court was

whether Miscellaneous Application No. 2 of 2024 had been properly brought before the Court. In addressing that issue this very Court held that the application had been improperly filed as an abuse of court process intended to circumvent the decision of this Court to dismiss Taxation Appeal No. 7 of 2024 and furthermore that it was unfair to deny the Respondents of the fruits of their litigation for a fraud that was never proved against them.

I find it curious that in seeking leave to appeal the Applicant clearly avoids any reference to the fact that the matter for which they seek leave to appeal was already dismissed for having been filed out of time. The issue of the fraud for which the Applicant now seeks leave to appeal first needed to have been properly laid before Court in order for it to qualify as a legitimate ground of appeal. This Court held that the issue of fraud was improperly before Court and only went on to address the question of the fraud in the likelihood that the impropriety issue had been resolved wrongly.

I find that without the Applicant addressing the issue of whether the issue of fraud had been properly laid before the High Court then arguing the question of fraud before the Court of Appeal becomes pointless. This Court already made a determination that the issue of fraud could not be used as a means of circumventing the fact that the Applicant's appeal was made out of time especially given that the alleged fraud had not been proved against the Respondents. In that regard therefore I find that the Applicant has not demonstrated an arguable **prima facie** case.

ORDERS:

1. Leave to appeal is hereby denied.
2. This Application is dismissed with costs to the Respondents.

David S. L. Makumbi

JUDGE

10/03/25

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