

Uganda v Ssemuga & Another
(Criminal Application 383 of 2023)
[2024] UGHCCRD 19 (18 March 2024)
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The Applicant informed the court that they failed to prosecute the appeal in time because they needed to consult the Director of Public Prosecutions. The Applicant also said the record was bulky and required more time to prepare for the Appeal. The Respondents did not object to the Application.

Although the Criminal Procedure Code Act is silent on reinstatement of dismissed appeals for want of prosecution, Section 33 of the Judicature Act gives the Court power to grant all such remedies to ensure all matters in controversy between the parties are completely and fully determined. For ease of reference, this section provides that:

The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.

Section 33 of the Judicature Act, whose purpose is to empower the court to do justice in deserving cases, is wide enough to grant the Court power to reinstate an appeal dismissed for want of prosecution so that it is heard on merit. The obligation for cases to be heard on merit was emphasised in **Colorado River Water Conservation Dist v. United States**, 424 U. S 800,817, where it was observed that a court with jurisdiction has a **virtually unflagging obligation** to hear and resolve questions properly before it provided the case is arguable. However, before the court exercises its discretion the party must show that they are not at fault or deserve the court's mercy and are vigilant. The Court of Appeal in **Peter Muramira vs. Brian Kaggwa, Civil Application No. 104 of 2009**, observed that:

It is the duty of every intending appellant to be seen taking an active role within the time stipulated by the rules to prosecute his or her appeal.

Hence, an applicant who craves the court's permission to reinstate a dismissed appeal must show that they were prevented by sufficient cause from prosecuting it. In addition, the Applicant must show that they have an arguable appeal warranting a place in the court's docket.

I am persuaded by the Applicant's arguments that they needed time to consult the Director of Public Prosecutions for guidance on proceeding with the appeal. In taking this position, I am aware that the Office of the Director of Public Prosecutions is charged with heavy responsibilities of overseeing all prosecutions in the country and sometimes is overwhelmed with work, just as it happened in this matter. I am equally persuaded by the Applicant's vigilance in promptly filing the Application for reinstatement of the appeal after I dismissed it. I am, therefore, satisfied that this is a proper case for which I should exercise my discretion under Section 33 of the Judicature Act to reinstate the Appeal.

Decision

The Appeal is reinstated. I direct the Applicant to file the Memorandum of Appeal within 14 days from the date of this decision. It is so ordered.

Gadenya Paul Wolimbwa

JUDGE.

18th March 2024.

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