

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO. 271 OF 2018
(ARISING OUT OF CIVIL APPEAL NO. 13 OF 2015)

THE COMMISSIONER CUSTOMS, UGANDA REVENUE AUTHORITY---- APPLICANT

VERSUS

CAROLINE KAHAMUTIMA..... RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for leave to appeal out of time against the Judgment of THE Chief Magistrates Court of Nakawa delivered on against the applicants on the 25th day of January 2016 brought under Section 79 and 98 of the C.P.A and Order 43 of the Civil Procedure Rules.

The respondent filed an affidavit in reply opposing the said application on 26th February 2018.

The applicants were represented by Mwajuma Nnaku and the respondent was represented by Belinda Nakiganda. In the interest of time court directed the counsel for both parties to file written submissions.

The main ground for this application is that the applicant was on 25th August 2016 availed copies of the record of proceedings by the respondent, however they did not proceed with lodging the appeal immediately as they were under an honest

belief that the record of proceedings is supposed to be availed by the court and not counsel.

The applicant contends that they filed a letter requesting for the proceedings and a Notice of Appeal on the 28th day of January 2016.

The respondent as an interested party in having litigation come to an end expeditiously obtained the record of proceedings of the lower court and gave the same to the applicant.

The respondent in reply averred that they received a copy of the proceedings and served them on the applicant on 25th August 2016.

That on the 4th August 2017, the respondent wrote demanding for payment and informed the applicant that it has not proceeded with the filing its appeal.

I have seen a supplementary affidavit filed by the applicant. It seems to introduce different grounds and the same was filed on 18th July 2018. I realise this affidavit was filed without leave of court being sought. For this reason this supplementary affidavit is struck off and this court shall not rely on it. I'm fortified by Order 52 rule 3 which provides;

Every notice of motion shall state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

The law as it is does not provide for the so called supplementary affidavit. Although the court in exercise of its discretion can grant leave to file a supplementary affidavit.

The applicant admits that they obtained a copy of the proceedings on 25th August 2016 but was under an 'honest belief' that the record was supposed to be availed by court. After a year, on 4th August 2017 the respondent wrote a letter to them reminding them that no appeal had been filed but they ignored the said letter. After approximately 7 months, the applicant made this application seeking orders that the time for institution of the appeal be extended and an order for stay of execution be issued pending the determination of the appeal.

I wish to note that the applicant had erroneously filed a letter requesting for the proceedings and a Notice of Appeal on 28th January 2016. This procedure is not envisaged under the appeal process. Therefore the filing of the said documents could not initiate any appeal. Order 43 rule provides that;

Every appeal to the High Court shall be preferred in the form of a Memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for that purpose.

This therefore means that no appeal was ever presented to court or essential step was taken in presenting the appeal.

The applicant has applied for extension of time within which to file an appeal. The main reason availed for the extension is that they were under an honest belief the record of proceedings is supposed to be availed by the court not counsel.

It is clear this application was filed on 13th February 2013; it was after about six months that the applicant stopped having the so honest belief of getting the record or at least filing a Memorandum of Appeal.

The applicant failed to file a memorandum of appeal and the reason advanced after about two years is indeed very incredible. The applicant contends that the application has been made without unreasonable delay but this cannot be true since it is over two years.

The delay of over 24 months/two years has not been explained by the applicant in the affidavit. The delay must show a sufficient cause or explain the reason for failure to file the memorandum of appeal in spite of the fact that the record of proceedings had been availed by the opposite party whereas they should have collected the same from the court themselves.

The second reason advanced for failure to file a memorandum of Appeal in the supplementary affidavit is that the lawyer who had personal conduct left the Legal Services and Board Affairs of Uganda Revenue Authority.

This reason seems to be an afterthought by the applicant, the same was never pleaded in the affidavit, and the said reason was advanced after six months when application was filed.

This court could not believe this reason that has been advanced in a supplementary affidavit filed without leave of the court. According to the decree, the counsel who was having personal conduct of the matter was Ronald Baluku. The applicant's reasons are really false and not believable.

The applicant has failed to demonstrate that it has good cause to have the appeal admitted out of time. Good cause must relate and include the factors which caused inability to file the appeal within the prescribed period of 30 days. See ***Tight Security Ltd vs Chartis Uganda Insurance Co. Ltd HCMA 8 of 2014***

The applicant has shown any proof that they followed up the record of proceedings from the Magistrates court in order to be able to lodge the memorandum of Appeal in the stipulated time.

I agree with the submission of counsel for the respondent. The applicant has not shown any sufficient cause for the failure to file a memorandum of appeal within the prescribed time. It is indeed true that this was not mistake of counsel for the failure to file a memorandum of Appeal but rather taking a wrong decision in refusing to rely on the record of proceedings to lodge the appeal. In the case of ***Hadondi Daniel vs Yolam Egondi Court of Appeal Civil Appeal No 67 of 2003*** court held that;

“ it is trite law that time can only be extended if sufficient cause is shown. The sufficient cause must relate to the inability or failure to take necessary step within the prescribed time. It does not relate to taking a wrong decision. If the applicant is found to be guilty of dilatory conduct, the time will not be extended.”

In the same case while citing ***Capt Phillip Ongom vs Catherine Nyero Owota SCCA No. 14 of 2001***, Justice Mpagi-Bahigeine agreeing with Justice Mulenga stated that:

“ it would be absurd or ridiculous that every time an advocate takes a wrong step, thereby losing a case, his client would seek to be exonerated. This is not what litigation is all about. Counsel applied a wrong strategy....no sufficient cause has been shown to entitle the applicant relief sought.”

This application for extension of time is devoid of merit and no sufficient cause has been shown by the applicant and it is only intended to delay execution of the judgment of the lower court.

In the circumstances, the application is dismissed with costs to the respondent.

SSEKAANA MUSA
JUDGE
17th /08/2018