

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 82 OF 2021
(ARISING FROM MISC. APPLICATION NO. 373 OF 2020)
(ARISING FROM CIVIL SUIT NO. 50 OF 2020)

MRS. NAKACHWA FLORENCE OBIOCHA-----APPLICANT

VERSUS

DR. MEDARD BITEKYEREZO----- RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for leave to appeal and also seeking leave to appeal against the ruling of this Court in Miscellaneous application No. 373 of 2020 brought under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 44 rules 2 ,3 &4 and Order 50 rules 1, 2 & 3 of the Civil Procedure Rules for the following orders;

- 1. Leave be granted to the applicant to appeal the decision of the learned trial judge of the High court in Miscellaneous Application No. 373 of 2020 which he granted.*
- 2. The proceedings in HCCS No. 50 of 2020 be stayed until final disposal of this application.*
- 3. Costs of the application be provided for*

The main grounds for this application are set out in the notice of motion and affidavit briefly are that;

- a) The court delivered the said ruling on 15th December, 2020 in favour of the respondent and ordered the applicant to furnish an astronomical figure of 25,000,000/= as security for costs within 5 months after the date of the ruling.
- b) There are many issues of law and fact that constitute grounds of appeal which require serious judicial consideration of the appellate court.
- c) That it is a legal requirement that leave of the trial court be sought before the appeal is preferred.

The respondent filed any affidavit in reply to this application and vehemently opposed the application on main ground that the court delivered the ruling on 28th September 2017.

- 1. The applicant's suit against the respondent seeks to compel the 1st defendant (Attorney General) to renew the contract as Chairman National Drug Authority and the respondent was wrongly joined as a party to be sued since he could not be held liable for acts done collectively by National Drug Authority.
- 2. That the court in its ruling to furnish security held that the plaintiff's claim is without any basis is an extended fight for the determination of her contract of employment.
- 3. That the applicant does not state or disclose what constitutes grounds of appeal which require judicial consideration by the appellate court hence rendering the instant application an abuse of court process.

The applicant was represented by *Mr Kituumma Magala* and while the respondent was represented by *Ms Lelia Katusiime*. In the interest of time court directed the

counsel for both parties to file written submissions which I have considered in this ruling.

Submissions

The applicant's counsel has introduced a lot of facts not set out in the notice of motion which in my view is evidence from the bar. The said facts have relate to the delay of ruling or failure to access the same and then mistake of counsel.

Counsel also submitted that he be allowed to make some amendments in the said application in the 1st prayer to read thus;

- i) ***The applicant/plaintiff be granted extension of time within which to lodge his application for leave to appeal against the decision in Miscellaneous Application No. 373 of 2020.***
- ii) Further he begged that section 96 of the Civil Procedure Act and Article 126(2)(e) of the Constitution be part of the enabling laws under which the application is brought..

The applicant raised one issue; ***Whether the applicant/plaintiff merits to be granted the reliefs sought.***

The applicant's counsel submitted on mistake of counsel and stated that the principle is that it relates to the omission, oversight, mistake, negligence or error whether it amounts to a sufficient cause. It was his case that after making the submissions, counsel who had the conduct of the case inadvertently forgot to follow it up to the time of delivery of the ruling.

Therefore, counsel submitted that sections 96, 98 of the Civil Procedure Act and Section 33 of the Judicature Act and Article 126(2)(e) of the Constitution, this Honourable court at its descretion(discretion) can extend the period of 14 days prescribed in Rule 40 (2) (b) so that the applicant is grated the extension after the court is satisfied that there is sufficient cause or reason since the applicant was not part of the blunder by counsel who was in conduct.

The applicant also argued that he has good grounds of appeal which merit serious judicial consideration since the court presumed that the applicant had no property. The court would be denying justice to her and yet the respondent has not proper defence for contemplating orders which were ordered by court in miscellaneous application no. 186 of 2017.

The respondent's counsel raised some preliminary objections to the application under the following head;

The application for leave to appeal the ruling under Miscellaneous Application No. 373 of 2020 was filed out of the stipulated statutory time.

The respondent's counsel submitted that the application was filed out of time since the ruling was delivered on 15th December 2020 and the applicant lodged the application almost 2 months later and out of time without first obtaining an order extending time within which to file an application out of time. Instead of formally filing an application for extension/enlargement of time, the applicant's counsel sought to do so within the written submissions thereby seeking remedies for orders not prayed for in the application.

Analysis

The application is indeed filed out of the stipulated time and the applicant or her counsel has opted to use an irregular procedure of bringing an application for extension of time through their written submission. This is a wrong procedure adopted by counsel since it amounts submission of evidence from the bar and amending the orders sought in the application in a wrong manner.

Procedural requirements like making an application for extension/enlargement of time are designed to further the interest of justice and any consequence that goes contrary to those interests must be treated with reservation. Rules of procedure are to be obeyed no matter how little and there has to be an explanation for the disobedience. The Supreme Court case of ***Utex Industries Ltd v Attorney General Civil Application No. 53 of 1995*** is quite instructive on the application of the Article 126(2)(e) of the Constitution. This Article is only applied with due regard to the circumstances of each case. Therefore, it is dangerous not to follow rules laid

down for the administration of justice. The rules of court are intended for the protection of litigants and ensuring that justice is accessed in an orderly manner. Justice looks both ways but it must be administered in accordance with the law, not whim, caprice or sympathy. In the case of ***Kasirye Byaruhanga & Co Advocates v Uganda Development Bank SCCiv App No. 2 of 1997*** the Supreme court held that;

“...a litigant who relies on the provisions of Article 126(2)(e) of the Constitution must satisfy the court that in the circumstances of a particular case before the court it was not desirable to pay undue regard to the relevant technicality. Article 126 (2)(e) is not a magic wand in the hands of defaulting litigants”

This court cannot allow the applicant to devise his own procedure of making an application for extension of time in written submissions. This would set a bad precedent in our civil practice and encourage floppiness and laziness. The applicant ought to have withdrawn the current application and filed a fresh application supported with cogent evidence for extension of time instead of seeking to make a substantive application for extension of time in written submissions.

Secondly, this court does not agree with the submissions of the applicant's counsel that time limits are technicalities and should be dispensed with. In the case of ***Uganda Revenue Authority v Uganda Consolidated Properties Ltd CACA 31 of 2000***; The court of Appeal noted that; *Time limits set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.*

The rules of court must be adhered to strictly and if hardship or inconvenience is thereby caused, it would be easier to seek an amendment to the particular rule. It would be wrong to regard rules of the court as of no substance. A rule of practice, however technical it may appear, is almost always based on legal principle, and its neglect may easily lead to disregard of the principle involved. See ***Onjula Enterprises Ltd v Sumaria [1986] KLR 651***

This application would fail since it was filed out of time without seeking leave to extend the time prescribed under the rules. The said application was supposed to be made within 14 days from 15th December 2020 but it was filed on 05th February 2021.

For completeness, I will proceed to determine the application on merit.

The respondent counsel also submitted that the applicant's counsel stated that there are issues of law and fact that constitute grounds of appeal which require judicial consideration by the appellate court. The applicant did not state or delve into what these grounds are hence leaving this court with a heavy burden of deciphering what grounds are.

The respondent contended that the application is devoid of justifications that would warrant the grant of an order for leave to appeal. The grounds set out in the application are wanting, they are silent on the serious judicious considerations in fact no ground was raised whatsoever. There are no questions of law raised in the instant application.

Analysis

The law governing the application for leave to appeal is set out in Order 44 rule 2 of the Civil Procedure Act and it provides as follows;

An appeal under these rules shall not lie from any order except with leave of the court making the order or of the court to which an appeal would lie if leave were given.

In the case of **Sango Bay Estate vs Dresdner Bank & Attorney General Spry V.P** stated the principle upon which an leave to appeal may be granted as follows:

"as I understand it, leave to appeal from an order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious judicial consideration...."

The Court further noted that;

"At this stage of litigation we are satisfied that the grant of leave to appeal is necessary to protect the applicant's right of appeal and for attaining the ends of justice in instant case."

The issue for determination is; *Whether there are sufficient grounds to grant leave to appeal?*

The main consideration for the grant of leave is whether *prima facie* there are grounds of appeal which merit serious judicial consideration. In the present application the applicant has not set out any grounds of appeal and this leaves court in total darkness about the intended grounds of appeal or whether it is a fishing expedition. In the case of ***Dr. Jotham Musiime & 3 Others v M/s Pearl Advocates & Solicitors SCCA No. 11 of 2016*** the Supreme Court (Justice Mugamba) underscored the importance of setting out grounds of appeal and noted; *"The Court of Appeal found that no grounds of appeal were put forward and it went on to state that the appellants appeared to be on a fishing expedition following what they have been doing in filing several applications. Respectively, I share the same view. This is an exercise in abuse of court process by appellants. Evidently for years they have a series of meaningless applications"*

The court should have taken into account the intending appellant's strong feelings of injustice when considering whether to grant permission, at least where those feelings are arguably objectively justified. Whether or not the court would grant leave to appeal is matter of discretion of the court and as in all discretions exercisable by courts, it has to be judicially considered.

Leave to appeal will be given where: the court considers that the appeal would have prospect of success; or there is some compelling reason why the appeal should be heard. The court will only refuse leave if satisfied that the applicant has no realistic prospects of succeeding on appeal.

In the case of ***Swain v Hillman [2001] 1 All ER 91*** Lord Woolf, MR noted;

"that a real prospect of success means that the prospect for the success must be realistic rather than fanciful. The court considering a prospect for permission is not required to analyse whether the grounds of the proposed

appeal will succeed, but merely whether there is real prospect of success"
See also **Degeya Trading Stores (U) Ltd vs Uganda Revenue Authority Court of Appeal Civil Application No. 16 of 1996**

Leave to appeal from an order in civil proceedings will normally be granted where *prima facie* it appears that there are grounds of appeal which merit serious consideration. But where the order from which it is sought to appeal was made in exercise of a judicial discretion, a rather strong case will have to be made out. See **GM Combined v AK Detergents SCCA No. 23 of 1994**

This court is alive to the fact that the grant of leave to appeal is necessary to protect the applicant's right of appeal and for attaining the ends of justice but in this case the applicant has failed to set out any grounds upon which this court would exercise its discretion to grant the leave to appeal.

In the result for the reasons stated herein above this application on merits would also have failed and is dismissed with costs.

It is so ordered.

SSEKAANA MUSA

JUDGE

29th April 2022