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The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Application No. 0211 of 2023

*(Arising from Kaberamaido Civil Suit No. 008 of 2021)*

10 Okodi Joseph ..... Applicant

Versus

Ejoku Albert Anthony ..... Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

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Ruling

1. Introduction.

This application was brought by way of notice of motion under Order 51 rule 6, Order 52 rules 1 & 2 of the Civil Procedure Rules, section 33 of the Judicature Act Cap. 13, section 79, 96 and 98 of the Civil Procedure Act for orders that;

- 20 a) Time within which to file a Civil Appeal in Civil Suit No. 008 of 2021 in the High Court of Uganda at Soroti be extended.  
b) Costs of this Application be provided for.

2. Grounds.

25 The grounds of this application as set out in the application and supporting affidavit sworn by the applicant are briefly that;

- a) The applicant was sued by the respondent on the 28<sup>th</sup> day of September 2021 and on the 14<sup>th</sup> day of September 2023 judgment was entered in the



5 respondent's favour but court promised to provide a copy of the typed judgment on a later date.

b) The applicant through his lawyers' M/s Ngamije Law Consultants and Advocates wrote a letter requesting for certified copies of the judgment, decree and record of proceedings on the 6<sup>th</sup> day of October 2023 but  
10 despite frequent follow ups by both the applicant and his advocates the court officials always said the certified judgement, decree and record of proceedings were not ready.

c) That contrary to what was frequently being told by the court official to the applicant and or his lawyers, the applicant was given the decree for onward  
15 transmission to his lawyers on the 2<sup>nd</sup> day of November 2023, though the same was dated 14<sup>th</sup> of September 2023.

d) That further the court officials delivered a copy of the certified record of proceedings to the lawyers late on the 20<sup>th</sup> day of November 2023.

e) That his lawyers could not formulate grounds of appeal without the record  
20 of proceedings.

f) Sufficient cause exists for extension of time within which to file a Civil Appeal in Civil Suit No. 008 of 2021 in the High Court of Uganda at Soroti.

The respondent in his affidavit in reply briefly stated that;

a) This application was prematurely filed because it seeks leave to appeal out  
25 of time before the expiry of the mandated period after certification of the record of proceedings and as such is an abuse of court process that can only be cured by dismissal.

b) The record of proceedings was ready by the 16<sup>th</sup> day of November 2023 and certified by court on the 20<sup>th</sup> day of November 2023 and the period

5 within which the applicant was to file a memorandum of appeal started running from the 20<sup>th</sup> of November 2023.

In rejoinder, the applicant reiterated his averments maintaining that his advocates advised him that the time within which to appeal in Civil Suit No. 008 of 2021 has since lapsed and this court has the discretion to admit the appeal in the interest of justice. That his application is proper before this court and the same should be allowed for the interests of justice to be met.

3. Representation.

The applicant was represented by M/s Ngamiye Law Consultants and Advocates while the respondent was represented by M/s Amodoi Associated Advocates.

15 The applicant argued his application by way of written submissions.

4. Determination.

This application is for the extension of time within which to file a civil appeal in respect of Civil Suit No. 008 of 2021 in the High Court of Uganda at Soroti and for the costs of this Application be provided.

20 The law in this respect is Section 79 of the Civil Procedure Act which provides that;

(1) Except as otherwise specifically provided in any other law, every appeal shall be entered—

(a) within thirty days of the date of the decree or order of the court; or

25 (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.

- 5 (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.

10 In this application, Counsel for the applicant submitted extensively on extension of time. I have not reproduced his submissions herein but I have taken them into account.

I have also carefully perused this application and record of the lower court and the following facts are true.

Firstly, the judgment of the lower trial court in Civil Suit No. 008 of 2021 was delivered on the 14<sup>th</sup> of September 2023.

- 15 Secondly, on the 6<sup>th</sup> of October 2023 the applicant through his lawyers requested for certified copy of the judgment, decree and record of proceedings

Thirdly, on the 16<sup>th</sup> of November 2023, the record of proceedings was certified.

Thereafter the same was presented to the applicant on 20<sup>th</sup> of November 2023.

This application was filed on the 11<sup>th</sup> day of December 2023.

- 20 These facts are even uncontested by the respondent.

Accordingly, by virtue of section 79(2) of the Civil Procedure Act, the time taken to prepare the decree and proceedings is excluded from calculating the days within which an appeal ought to be filed.

- 25 This means that in the instant case, the 30 days for which the applicant is required by law to file an appeal began to run from the 20<sup>th</sup> of November 2023 when the applicant received the record of proceedings.

5 Given the fact that this application was filed on the 11<sup>th</sup> day of December 2023, I do find that the 30 days within which to file an appeal was still running as that would expire on 20<sup>th</sup> December, 2023.

That being so, I would find and conclude that this application is premature as the time within which to file an appeal had not yet lapsed.

10 Conclusion:

This application is premature. It is dismissed with no order as to costs.

For the reason that there appears to have been misconception as to when the time for appeal had begun running, resulting into this application which has thus caused further delay, I do extend the time for filing any appeal to 30 days from  
15 the date of this ruling.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

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Judge

2<sup>nd</sup> July 2024