

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

CIVIL. APPLICATION NO. 016 AND 018 OF 2022

(Arising from Civil Appeal No. 03 of 2022)

HERMAN SSEMAKULA ===== APPLICANT/RESPONDENT

VS

IVAN ASIIMWE ===== RESPONDENT/APPLICANT

RULING OF MIKE J. CHIBITA, JSC

These are two applications, brought under Rules 2, 5, 42 (1), 43, 78, 79 and 80 of the Judicature (Supreme Court Rules) Directions, seeking the following orders:

1. Time be extended within which to file an appeal out of time in Civil Appeal No. 3 of 2022
2. Alternatively, the appeal filed on 14th February, 2023, out of time, be validated.
3. Civil Appeal No. 003 of 2022 be dismissed for being incompetent.
4. Costs of the Applications be provided for.

The Notice of Motion in Civil Application No. 016 of 2022 is supported by the affidavit of Ivan Asimwe, the 1st Applicant, sworn on the 8th day of June, 2022.

The Notice of Motion in Civil Application No. 0018 of 2022 is supported by an affidavit sworn by Jacob Kalaabi on 7th July, 2022.

The brief facts of the case are as follows: -

Herman Ssemakula intended to file Civil Appeal No. 003 of 22 in the Supreme Court. It would appear that he did not take the necessary steps to follow up the appeal.

Consequently, Ivan Asiimwe filed Civil Application No. 016 of 2022 seeking to dismiss the Civil Appeal No. 003 of 2022 for being incompetent.

Resultantly, Herman Ssemakula filed Civil Application No. 018 of 2022 praying for extension of time within which to file Civil Appeal No. 003 of 2022. In the alternative, he prayed that the appeal, filed out of time, be validated.

REPRESENTATION

At the hearing of the instant application on 21st February, 2023, the Applicant was represented by learned Counsel Obed Mwebesa and Godfrey Akakimpa while the Respondent was represented by learned Counsel David Sempala. The Applicant was in court.

APPLICANT'S CASE

Learned Counsel for Applicant, contended that the appeal was filed on 14th February, 2022, which is outside the 60 days within which to file an appeal. He further stated that the appeal should have been filed on or by 3rd February, 2022.

Learned Counsel cited Rule 110(2) of the Supreme Court Rules, Rule 4 of Order 51 of the Civil Procedure Rules and the Covid 19 Guidelines to support his assertion.

He therefore prayed that the application, No. 018 of 2022 be dismissed with costs.

RESPONDENT'S CASE

The Respondent opposed the application in an affidavit sworn by the Respondent's lawyer, Jacob Kalaabi. He prayed that the time for filing Civil Appeal No. 003 of 2022 be extended.

is evidence that the affidavit is technically, and maybe factually, misleading and therefore unreliable.

Regarding the substance of the application, learned Counsel for the respondent referred to **Registered Trustees of the Hindu union vs Kagoro Epimarc and 2 others SCCA No. 46 of 2021.**

In that case Tibatemwa, JSC, enumerated the principles that should guide court in concluding whether or not there was sufficient cause to warrant extension of time.

1. Applicant should prove that sufficient cause is not personally or indirectly attributed to him
2. That the applicant did not directly or indirectly contribute to the delay
3. That there was failure to take a particular step within the prescribed time
4. That the delay must not be on the part of the applicant.

In the instant case, the Record of Proceedings was received on 2nd December, 2021. The record of Appeal was filed on 15th February, 2022. The applicant's lawyers displayed a high degree of sloppiness and are therefore guilty of laches in prosecuting the applicant's appeal.

The argument regarding the inability to file during the Christmas holiday, while lame in its own right, does not even arise. Whereas there is a Christmas holiday, the Registry remains open except for the known designated Public holidays of Christmas and Boxing Day.

Christmas holiday cannot and should not be used as a reason for failure meet statutory deadlines, save for the two designated Public Holidays during that season.

I agree with Counsel for the Respondent that the appeal was filed out of time. The days between 2nd December 2021 and 15th January, 2022, even excluding the Christmas holiday give sufficient time within which to file and still be within time.

CONSIDERATION

I have keenly and analytically considered the affidavits and other pleadings on record and evaluated all the available evidence.

The two applications SCCA No. 016 of 2022 and No. 018 of 2022 were argued together. We shall consider SCCA No. 18 of 2023 first given that if the prayers sought are granted then it disposes of SCCA No. 016 as well.

SCCA No. 018 of 2022, applying for extension of time within which to file an appeal was received in the Registry of the Supreme Court on 7th July, 2022.

SCCA No. 16 of 2022, seeking to dismiss Civil Appeal No. 3 of 2022, had been received in the Registry on 8th June, 2022. In effect, the Application to extend time was received after the threat to dismiss had been filed.

I take note that the affidavit in support of the application was deposed, not by the Applicant but by an Advocate. There is no law against such practice but it leaves questions in the mind of court as to why the applicant would not depose to an affidavit in support of his application.

Be that as it may, I would agree with the submissions of Counsel for the Respondent in No. 018 of 2022 that the affidavit is full of technical glitches.

Paragraphs 8, 9, 10, 11 and 13 indeed refer to a collective "we" yet at paragraph 19 the deponent stated that what was deposed was within "his" knowledge.

Why use the collective term 'we' for an affidavit of an individual? Moreover, not just once, in which case it could be discounted as a mistake. The practice was repeated several times.

Was this affidavit a collective effort or was it an affidavit of an individual as required by law? The fact that such a question arises

I find the applicant's allusion to Covid 19 as a reason for delay quite pathetic. There were clear Guidelines issued that mandated the Registries, including the one of the Supreme Court, to remain open and receive pleadings from parties.

Indeed, many matters were filed during the period of Covid 19. The Supreme Court Registry remained open against many odds to continue to receive pladings.

The applicant has failed to convince court that sufficient cause exists to warrant grant of extension of time within which to file appeal No. 003 of 2022.

He has failed to meet the conditions set out by Tibatemwa JSC, (supra).

In the result, I am persuaded by learned counsel for the respondent that SCCA No. 0018 of 2022 is ripe for dismissal.

In the result, I make the following Orders.

1. SCCA No. 0018 of 2022 be, and is hereby, dismissed with costs to the respondent.
2. Consequently, SCCA No. 016 of 2022 is allowed with costs to the applicant.
3. Civil Appeal No. 003 of 2022, having no leg to stand on, is struck out.

Dated at Kampala, this 14th day of April 2023


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Mike J. Chibita

Justice of the Supreme Court

Delivered as directed by the
Hon. Justice Bagge 14/04/2023