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

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU, J.A.

CIVIL MISC. APPLICATION NO.37 OF 1997

1. MULTIPLE & PROFESSIONAL SERVICES LTD]  
2. P. SSENTAMU ::::::::::::::::::::] :::: APPLICATION  
V E R S U S  
ARVIND CITY PROPERTIES LTD ::::::::::::::::::::: RESPONDENT

R U L I N G:

This application is brought under Rules 4, 42 and 75 of the rules of this court; where the applicants are seeking for an extension of time to file an appeal against the decision of Tinyinondi, J. in H.C.C.S. No 651 of 1992, delivered on 2.9.97. The application was filed in this court on 8/9/97, barely one month after judgment was delivered. It is supported by the affidavit of P. Ssentamu deponed to on 8/10/97.

The grounds if this application are in the Notice of Motion as follows:-

1. The applicants'/defendants' advocate at the time of judgment Mr. Moses Mukiibi was appointed a High Court Judge.
2. The applicants/defendants' have taken a short time to engage another advocate.
3. It took sometime for the new advocate to access the judgment, peruse the same and discuss the same with the applicants/defendants before deciding to appeal, and

4. That in the interest of justice the applicants/defendants should be allowed an extension of time to appeal.

In the 1st ground of the application, learned Counsel for the applicants argued that the applicants who are defendants in H.C.C.S No. 651/92, were being represented by Mr. Moses Mukiibi who was an employee of M\ s Sendege, Senyondo & Co. Advocates. It transpired later that the said Moses Mukiibi became a partner in the law firm of M\ s Mukiibi, Semakula & Kiyemba-Mutale Advocates. He was all along having personal conduct of the suit. He received judgment on behalf of the applicants on 2/9/97, before being sworn as an Ag. Judge of the High Court the following day, i.e, 3/9/97. In the premises, it was submitted that it would not be proper for Mr. Mukiibi to conduct further representation of the applicants on appeal when he became a judge.

Mr. David Matovu for applicants submitted on the 2nd ground of this application that the applicants had taken a short time to engage another advocate. The application for extension of time was filed in court on 8/10/97, about one month only after the delivery of judgment in the original suit.

In the 3rd ground, learned Counsel for applicants submitted that it took sometime for the new advocate to access the judgment, peruse the same and discuss the same with the applicants before deciding to appeal. He submitted, therefore, in the 4th ground that, in the interest of justice that the applicants should be allowed an extension of time to appeal.

In conclusion, learned Counsel for the applicants relied on the authority of: Shiv Construction Co. Ltd vs. Endesha Enterprises Ltd [1992] IV KARL, Where the Supreme Court held, inter alia, that the delay through Counsel's absence would be a ground upon which court would allow an extension of time for the applicant to file a notice of appeal. If the delay is quite short, the

merits of the appeal do not arise, if it is the ordinary type of appeal to be argued on the merits.

The learned Counsel submitted that Mr. Moses Mukiibi who was at the time of receiving judgment in the original suit, could not continue representing the applicants when he was appointed High Court judge one day only after the judgment. In his opinion, the applicants had exercised due diligence by engaging another advocate in a very short period of time. In the premises, this application should be allowed.

Mr. Richard Mugenyi for the respondent disagreed. He contended that in civil proceedings, an appeal to this court should be lodged within 14 days from the date of a judgment. Under Rule 4 of this court, it is provided that unless there are sufficient reasons which are advanced by the party seeking to appeal, court should not extend time. In his opinion, no sufficient reasons have been advanced for grant of this application. Given the circumstances of the original suit, this application was filed 30 days after the delivery of judgment. The swearing of Mr. Moses Mukiibi as a judge of the High Court one day thereafter, could not have acted as a sufficient reason for the learned judge not to advise one of his 4 partners to lodge an appeal.

Learned Counsel for the respondent strongly submitted that 30 days is not a short time during which to lodge an appeal. In any case, no new advocate has been engaged; it is the same firm of advocates representing the applicants. In the premises, there was no need for the so-called new advocate to require sometime to access the judgment, peruse the same and discuss the same with the applicants since Mr. David Matovu was in partnership with Mr. Moses Mukiibi at the time judgment in the original suit was delivered. In the same breath, the learned Counsel submitted that in any case a notice of appeal was not filed to meet the deadline of <sup>14</sup>the days.


Finally, learned Counsel for the respondent submitted that the

advocates representing the applicants should have advised them on the question of time and also on what to do since the delivery of judgment. The firm which represented the applicants is the one which did not advise them in time and was responsible for the unreasonable delay. Learned Counsel said that the case of Shiv Construction Co. Ltd (supra) can be distinguished from the facts of this application. In this application the Counsel was not absent at all. At least the Counsel received the judgment, thus he was possessed of the knowledge that his clients would need an appeal.

Learned Counsel submitted that in the interest of justice, this application should be rejected to bring the litigation to an end. In his opinion, the bringing of this application one month after judgment, is an abuse of court process since the reasons advanced are not sufficient. Accordingly, this application be dismissed with costs to the respondent.

After hearing both Counsel for the parties, it is evident that judgment in the original H.C.C.S No.651/1992 was delivered on 2.9.97. This application for extension of time was filed on 8./10/97, one month after the delivery of the said judgment, but just 8 days only after obtaining the new advocate. That suggests to me considerable diligence. Overall the application was filed just outside one month. The delay was through Counsel's absence and it was a short delay for grant of indulgence.

In the result, an extension of time being sought is granted. Notice of Appeal to be lodged within 7 days from today's date. Costs of this application shall be in the cause.

  
S.G. Engwau,  
JUSTICE OF APPEAL.

12.12.97