

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
(Coram: Egonda-Ntende, Obura & Madrama, JJA)
CIVIL APPLICATION NO. 40 OF 2008

RICHARD NUWAGIRA:..... APPLICANT

VERSUS

- 1. ATTORNEY GENERAL)**
- 2. THE INSPECTOR GENERAL OF GOVERNMENT)**
- 3. MICHAEL WANYAMA) RESPONDENT**

RULING OF HELLEN OBURA, JA

I have had the benefit of reading in draft the ruling of my brother, Madrama, JA. I wholly concur with his findings and conclusion.

Dated at Kampala this.....^{10th} day of.....^{Aug}.....2020.



.....
Hellen Obura

JUSTICE OF APPEAL

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

[Coram: Egonda-Ntende, Obura & Madrama, JJA)

Civil Application No. 40 of 2008

(Arising out of Miscellaneous Application No. 6 of 2005)

BETWEEN

Richard Nuwagira=====Applicant

AND

Attorney General

The Inspector General of Government

Michael Wanyama

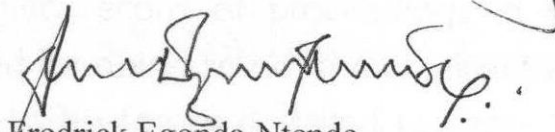
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Respondents

Ruling of Fredrick Egonda-Ntende, JA

- [1] I have had the opportunity to read in draft the ruling of my brother, Madrama, JA and I agree with it.
- [2] I regret the inordinate delay of this court in hearing this matter and bringing it to a close.
- [3] As Hellen Obura, JA, also agrees, this application is dismissed with costs.

Dated, signed and delivered at Kampala this 10th day of Aug 2020


Fredrick Egonda-Ntende
Justice of Appeal

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

CIVIL APPLICATION NO 40 OF 2008

(EGONDA – NTENDE, OBURA, MADRAMA JJA)

RICHARD NUWAGIRA}APPLICANT

10

VERSUS

- 1. ATTORNEY GENERAL}**
- 2. THE INSPECTOR GENERAL OF GOVERNMENT}**
- 3. MICHAEL WANYAMA}RESPONDENTS**

RULING OF CHRISTOPHER MADRAMA IZAMA

15 This is an application for leave to extend time within which to serve a notice of appeal on the respondents and transmit it to the Registrar of the Court of Appeal. Secondly, the applicant seeks leave for time to be extended within which to serve, out of time, a letter applying for the typed and certified record of proceedings. Lastly, the applicant prays that the costs of

20 the application abide the final outcome of the appeal. The application is brought under Rule 5 of the Judicature Court of Appeal Rules.

The grounds of the application as set out in the notice of motion are that:

- 1. The applicant lodged the notice of appeal and the letter applying for the typed and certified record of proceedings in the High Court
- 25 within the time limited for doing so but the applicant was let down by a clerk of his counsel who forgot or failed to serve them on to the respondents and transmit the notice of appeal to the Registrar of this court.
- 2. That the applicant is not to blame because he relied on the clerk who
- 30 he verily believed had done what the law requires.

- 5 3. That the intended appeal has high prospects of success.
4. That it is fair and reasonable and in the interest of justice that the application be granted.

The application is supported by the affidavit of the applicant, who states therein that he is aggrieved and dissatisfied with the decision of the High Court dated 3rd August, 2007. On 15th August, 2007, he instructed Messieurs Ngaruye Ruhindi, Spencer & company advocates to appeal against the decision whereupon they drafted a notice of appeal, signed it on 16th August, 2007 and passed it onto Fred Byaruhanga, a clerk in his lawyers Chambers with instructions to file a notice of appeal and serve 10 copies thereof on the respondents with a Registry copy to be transmitted to the Registrar of the Court of Appeal. Fred Byaruhanga travelled to Kampala on 17th August, and filed the documents according to copies of the notice of appeal and later requesting for the record of proceedings attached. The deponent also facilitated Byaruhanga Fred for purposes of 15 filing, service and transmission of the documents. He called Fred Byaruhanga on 18th August, 2007 to confirm whether he had done everything as instructed and Fred Byaruhanga answered him in the affirmative. When he contacted his lawyers because of the delayed preparation of the record of proceedings, he discovered that the notice of 20 appeal had been filed but copies thereof had not been served on the respondents or transmitted to the Registrar of the Court of Appeal as required by law.

The applicant further states that he also discovered that the letter applying for the typed and certified record of proceedings and judgment had never 30 served on to the respondents. Mr Fred Byaruhanga confessed that he filed papers but forgot to serve them as required by law. He states that the negligence of Mr Fred Byaruhanga, the clerk of his advocate, should not be visited on him. Further, on the basis of information of his advocates, he

5 states that the intended appeal has high prospects of success as it raises matters of far-reaching public importance and it is advantageous to the nation and the public.

In further support of the application Mr Fred Byaruhanga swore an affidavit in which he states that on 17th August, 2007 he received copies of notice of
10 appeal together with the copies of a letter applying for the typed and certified record of proceedings from the above stated advocates of the applicant. He filed the documents and went back to Mbarara but forgot about the documents. He feared to tell the firm of Messrs Ngaruye Ruhindi, Spencer and Co advocates that he had failed to serve the documents or
15 transmit the said documents to the Registrar of the Court of Appeal. Mr Fred Byaruhanga further stated that he was facilitated to do what was required and the failure to do so was his sole fault.

In reply, Clare Olaki a State Attorney with the Ministry of Justice and Constitutional Affairs stated that she had read and understood the
20 applicant's application and supporting affidavits dated 10th March, 2008. In reply thereof Ms Clare states that the applicant does not have a good arguable case. Secondly, the application is misconceived and barred by law as the correct procedure required by the law was not followed. In light of the failure to follow the correct procedure she prays that the application be
25 dismissed with costs to the respondents.

On the behalf of the Inspector General of Government, Sydney Asubo, acting Director of Legal Affairs of the Inspectorate of Government swore an affidavit in reply in which he states that he was conversant with all the factual issues surrounding the application. In reply he stated that both the
30 affidavits of the applicant and that of Fred Byaruhanga are misconceived and do not raise sufficient grounds to entitle the applicants to the reliefs sought. He asserts that the applicant was not vigilant enough and so did not file his application for extension of time in a timely fashion. Asubo

5 contends that the applicant had given instructions on 15th August, 2007 but
checked on his lawyers on 10th March, 2008. Further, the inclusion of the
third respondent who is a Principal Inspectorate Officer is erroneous as he
has legal protection under section 22 of the Inspector General of
Government Act 2002. Further, he asserts that granting the application will
10 frustrate the constitutional and statutory functions, mandate and powers of
the IGG. Mr. Asubo contended that applicant has not disclosed the nature
of any irreparable injury which he would suffer and the nature of the matter
of public importance to justify the extension of time. He further stated that
the notice of appeal which the applicant intends to serve the respondents is
15 a nullity for failure to comply with the Court of Appeal Rules. Mr Asubo
asserts that the application is founded on defective and incompetent
affidavits and is incurably defective and barred by law. He contends that it
is an abuse of the process of court. He prayed that the application is
dismissed with costs.

20 At the hearing of the application Patricia Mutesi, Principal State Attorney
represented the first respondent while Ms Solomy Mwanja appearing jointly
with Pauline Nansamba represented the second respondent. The applicant
appeared in person and prayed that the court accepts address by way of
written submissions. With leave of court the hearing of the application
25 proceeded by way of written submissions and ruling was reserved on
notice.

Submissions of the applicant's counsel

The applicants counsel stated the facts as contained in the affidavits in
support of the application and submitted that the applicant should not
30 been blamed for the negligence of the clerk over whom he has no control.
Secondly, he submitted that the applicant will suffer irreparably unless the
application is granted. He submitted that it is trite law that a mistake or
negligence of counsel is not necessarily a bar to a litigant obtaining

5 extension of time. Secondly, it is trite law that the administration of justice should normally require that the substance of disputes is investigated and decided merit and the errors and lapses should not necessarily debar a litigant from the pursuit of his rights (see the **Estate of the late Christine Namatovu Tebajjukira & another versus Noel Grace Shalita Stananzi; Civil Application No 8 of 1988 [1992 – 1993] HCB; Godfrey Tuwangye Kazoora v Georgina Katarikwenda; Civil Appeal No 16/1993 [1992 – 1993] HCB page 145.**)

15 The applicant's counsel submitted that the intended appeal involves serious questions of law. The applicant's application was dismissed on a preliminary objection yet in the ruling the learned trial judge delved into questions of fact that were in the affidavits without allowing the applicant to present his application and argue it. He submitted that it is trite law that a preliminary objection that raises matters of evidence should not be entertained and a preliminary objection should be on matters of law only. He relied on **Gunya Company Ltd v Attorney General; High Court Civil Suit No 031/2011**. In the premises he submitted that the intended appeal has a high possibility of success and prayed that the application is allowed.

Submissions of the second respondent's counsel

25 In reply the second respondent's counsel submitted that the application and the affidavits of both the applicant and Mr. Fred Byaruhanga are misconceived and intended to frustrate the constitutional and statutory functions and mandate of the second respondent and do not raise sufficient grounds to entitle the applicant to the remedies sought. He submitted that under Rule 5 of the Rules of this court, the court may extend time prescribed in the rules for sufficient reason and sufficient reason was defined in **Boney M. Katatumba v Waheed Karim (administrator of the estate of the late Hajj Suleiti) Civil Application No 27 of 2008**. Mulenga JSC held "sufficient reason" means sufficient reason in the courts unfettered

5 discretion. It means that the court will accept either a reason that prevented
the applicant from taking an essential step in time or other reasons why the
intended appeal should be allowed to proceed out of time. An application
that is promptly filed has more sympathy than a belated application.
Further the court may grant the application if not doing so appears to
10 cause injustice.

He submitted that the ruling in Miscellaneous Application No 06 of 2005
from which the application for extension of time to appeal was delivered on
3rd August, 2007. The applicant gave instructions on 15th August, 2007.
Notwithstanding, promptly, filing a notice of appeal, the applicant did not
15 follow up his appeal until 10th March, 2008 when he discovered that the
notice of appeal and letter applying for proceedings had not been served
on the respondents. The second respondents counsel submitted that the
applicant was not vigilant enough to follow up his appeal with his lawyers.
He contacted his lawyers eight months after filing a notice of appeal and
20 the letter requesting for the typed record of proceedings. The lack of
diligence of the applicant demonstrates that he did not have any interest in
ensuring that his instructions to appeal were pursued diligently by his
counsel.

Counsel submitted that the applicant never furnished the court with
25 reasons for the delay. Further, the applicant's counsel submitted that there
was nothing to show that counsel exercised due diligence to act on the
applicant's instructions. He also never bothered to follow up his instructions
to the clerk. He did not bother to establish from the clerk whether service
had been effected or not. The fact that the clerk did not report back to him
30 with the return of service was an indication that service had not been
effected. He waited until he was prompted by the applicant. In the premises
the respondent's counsel submitted that the applicant and his counsel were

5 guilty of ordinate delay and showed a lack of diligence and no sufficient reason has been furnished to this court to explain the delay.

Secondly, the applicant has not shown that without any extension of time, he would suffer injustice. For instance the applicant states that the intended appeal raises matters of far-reaching public importance but does not
10 disclose what the matters of public importance are to justify the extension of time.

The second respondents counsel submitted that the application is an abuse of court process and does not raise sufficient grounds for this court to exercise its discretion under Rule 5 of the Rules of Court to grant extension
15 of time.

Consideration of the application

The background to this application is a ruling of the High Court that was delivered on 3rd August, 2007 about 13 years ago, which the applicant wishes to contest by appeal to this court. The ruling was delivered pursuant
20 to a preliminary objection to Civil Miscellaneous Application No 6 of 2005 arising from Civil Miscellaneous Application No 220 of 2004. In the ruling it is indicated that the applicants sought a declaration that the Inspector General of Government had no power to question or review the decision of any court or any judicial officer in the exercise of his or her judicial
25 functions.

The facts in the attached ruling show that the applicant sought an order of certiorari quashing the decision of the Inspectorate of government to take away the court files as contained in the document left behind by the Regional Inspectorate Officer Mr Wanyama Michael and an order that the
30 files be returned. The applicant further sought an order of prohibition prohibiting the Inspectorate of Government from questioning or reviewing the decisions of the magistrate in the said files made in the exercise of his

5 judicial function and a permanent injunction restraining the Inspectorate of Government from ever enquiring into, questioning, or reviewing the said decision. The applicant also sought general and exemplary damages and costs of the proceedings.

10 The matter before the lower court arose from an investigation conducted by officials of the IGG into how the applicant, the magistrate in question spent money he received as a judicial officer.

15 The learned trial judge found that the applicant was being investigated for his acts as a public officer while performing the duties of an administrator or financial controller of government revenue. On the issue of whether the Inspector General of Government had legal capacity to investigate any officer of the court in the exercise of his duties other than his judicial duties the learned trial judge found that the magistrate was duty bound to account for the receipt, custody and disbursement of every bit of money that came into his possession by virtue of his office as an administrator and
20 accounting officer.

The learned trial judge dismissed the applicant's application for judicial review and held that he could not grant the reliefs which were not available to the applicant. The basis of the ruling is that the Inspector General of Government has the mandate to investigate any financial impropriety and enjoys immunity from prosecution in the performance of that function. The
25 learned trial judge held that the investigations of the Inspector General of Government could not be subjected to judicial review remedies such as certiorari and prohibition.

30 The applicant being dissatisfied with the ruling lodged a notice of appeal in the High Court on 17th August, 2007.

I have carefully considered the applicants application and agree that an application can be granted for sufficient reason. In the facts and

5 circumstances of this application, the applicant should demonstrate that he
was unable to take the essential steps in time for sufficient good reason.
Such grounds give the reason why he failed to carry out the required steps
with the prescribed time. The second step should be to demonstrate to the
10 satisfaction of court that his intended appeal raises matters of public
importance as asserted or the grounds the court should consider to grant
his application. However, both the grounds in the notice of motion and the
affidavit in support of the applicant and Fred Byaruhanga only show that
there was lapse on the part of the applicant's lawyers to take essential
15 steps. They do not disclose any intended grounds of appeal for the court to
consider. The court cannot presume the grounds, if any, which the applicant
intends to, argue on appeal so as to consider whether they are of public
importance. The discretion of this court should not be exercised in a
vacuum but in light of the facts and grounds of the intended appeal.
20 Having raised no grounds for the court to determine whether the intended
grounds of appeal raise matters of public importance or other reasonable
ground, we cannot exercise our mandate to grant the applicant's
application for extension of time to file an appeal 13 years after a decision
of the High Court dismissing his application for judicial review.

I further hold that the law on judicial review requires prompt consideration
25 and determination of the grievance brought by the person aggrieved by
administrative action. Judicial review applications are intended to be
handled in a timely fashion under **the Judicature (Judicial Review) Rules
2009**. Rule 5 of **the Judicature (Judicial Review) Rules** provides that:

5. Time for applying for judicial review.

30 (1) An application for judicial review shall be made promptly and in
any event within three months from the date when the grounds of
the application first arose, unless the Court considers that there is

5 good reason for extending the period within which the application shall be made.

10 (2) Where the relief sought is an order of certiorari in respect of any judgement, order, conviction or other proceedings, the date when the grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceedings if that decision is delivered in open court, but where the judgment, order, conviction or proceedings is ordered to be sent to the parties, or their advocates, (if any), the date when the decision was delivered to the parties, their advocates or prison officers, or sent by registered post.

15 (3) This rule shall apply, without prejudice, to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

20 The rule envisages prompt filing and handling of applications for judicial review which applications are required to be filed within three months from the time the grounds for judicial review first arise. Secondly, for the court to consider extension of time to file the application after three months, good reasons for the exercise of the courts discretion to file the application outside the stipulated three months have to be advanced. Failure to provide the grounds of intended appeal make it impossible for this court to consider whether the interest of justice require extension of time and whether the applicant stands to suffer any injustice by a refusal to extend time in the circumstances of this application. By applying for extension of time eight months after filing a notice of appeal and thereafter arguing the application 13 years from the time the grievance arose pursuant to the administrative decision, this would circumvent the provisions for judicial review matters to be handled promptly.

5 In the premises, I find that the applicant's application lacks merit, is over delayed and I would dismiss it with costs.

Dated at Kampala the 10th day of ~~March~~ ^{Aug} 2020



Christopher Madrama

Justice of Appeal

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