THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPLICATION NO.07 OF 2020

(CORAM: KISAAKYE, ARACH-AMOKO, MUGAMBA, MUHANGUZI; CHIBITA, JJ.S.C)

BETWEEN

UGANDA BAATI LTD ::APPLICANT

AND

MUBANGIZI JULIUS ::RESPONDENT

(An application under rules 78,79 and 80 of the Rules of the Supreme Court)

REASONS FOR THE RULING OF THE COURT.

On 1st July 2020, when this application was called for hearing, counsel for the applicant was present. The respondent and his counsel were absent. Counsel for the applicant, Mr. Nicholas Mwasame, told court that they had served notice of hearing of this application to M/s Muhwezi & Co. Advocates, the firm of lawyers who had filed the Notice of Appeal in this court. He added that the said lawyers for the respondent had of late indicated that they had lost touch with the respondent. Counsel for the applicant prayed that under Rule 53(2) of the Rules of this court he be allowed to proceed with the application since the respondent had failed to appear in court. Consequently, we allowed counsel for the applicant to proceed.

Counsel for the applicant proceeded to make his application which we granted after hearing his submission. However, we reserved the reasons for our decision. We give those reasons now.

Background

The facts as found by the Court of Appeal are that the respondent was employed by the applicant in its factory as a roller man. While on duty, the former got involved in an industrial accident that reduced his performance capacity and led to his eventual dismissal. He sued the applicant by plaint seeking a declaration and orders for wrongful dismissal, terminal benefits and general damages.

The applicant did not file a written statement of defence within the statutory period and the respondent applied by letter for the suit to be set down in order for the hearing to proceed ex-parte, under Order 9 Rules 10 and 11 of the Civil Procedure Rules.

The applicant was served with a hearing notice. At the hearing, Counsel for the respondent objected to the applicant's participation in the proceedings arguing that its written statement of defence was invalid having been filed out of time without leave of court. It was further argued for the respondent that the applicant should be deemed to have admitted liability and that in the premises what remained for court to do was to restrict itself only to assessing the quantum of damages. Counsel for the applicant in his reply contested the ex-parte hearing arguing in response that the applicant had participated in the scheduling of the case. He added that filing a defence out of time did not prejudice the respondent.

Counsel for the applicant then made an oral application for leave to file a written statement of defence out of time. He sought for an adjournment to do so.

In his written ruling dated 10th June 2009, the trial judge then disallowed both the applicant's objection and application and ordered that the ex-parte hearing should proceed. The judge explained the right of appeal to the parties.

That Judge was eventually transferred from the station in the course of time. Meanwhile the applicant made yet another

application to which the respondent's counsel deponed an affidavit in reply on a point of law objecting to the application. The subsequent trial judge allowed the application and made no decision on the applicant's objection to the affidavit in reply sworn by counsel for the respondent. The respondent, being dissatisfied, appealed to the Court of Appeal. That appeal was dismissed with costs. Thereafter the respondent lodged a Notice of Appeal in this court on 25th June 2015.

Counsel for applicant in his written submission filed in this court on 29th June 2020, pointed out that the respondent's Notice of Appeal had been filed out of time. He averred that the judgment of the Court of Appeal was delivered on 2nd June, 2015 and the respondent filed the Notice of Appeal on 25th June 2015. According to counsel it was filed 9 days beyond the statutory 14 days, which offends rule 72 of the Rules of this court. Counsel contended that on record there was no application filed by the respondent for extension of time.

Counsel further submitted that the respondent had not filed his memorandum of appeal and record of appeal within the prescribed time stipulated by Rule 79 of the Rules of this court.

This application is mainly based on Rule 78 of the Rules of this Court which states:

" 78. Application to strike out notice of appeal or appeal.

A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time."

The respondent lodged his Notice of Appeal in this court on 25th June 2015. Since then he has not taken any serious step to pursue his appeal. The Court does not have on record his Memorandum of appeal or letter to show that he requested for the record from

the lower court in order to arrange and file appeal. Needless to say, this offends rule 79 of the Rules of this court regulating the mode of institution of appeals in this court.

We find instructive the dicta of Lord Woolf in the British case of **Arbuthnot Latham Bank Ltd v Trafalgar Holdings Ltd [1998] 1 W.L.R. 1426,1437** at the dawn of procedural reform there. He stated:

"Whereas hitherto it may have been arguable that for a party on its own initiative to in effect 'warehouse' proceedings until it is convenient to pursue them does not constitute an abuse of process, when hereafter this happens this will no longer be the practice. It leads to stale proceedings which bring the litigation process into disrespect. As case flow management is introduced, it will involve courts becoming involved in order to find out why the action is not being progressed. If the claimant has for the time being no intention to pursue the action this will be a wasted effort. Finding out the reasons for the lack of activity in proceedings will unnecessarily take up the time of the court. If, subject to any directions of the court, proceedings are not intended to be pursued in accordance with the rules they should not be brought. If they are brought and they are not to be advanced, consideration should be given to their discontinuance or authority of the court obtained for their being adjourned generally. The courts exist to assist parties to resolve disputes and they should not be used by litigants for other purposes..."

The applicant in its letter dated 15 June 2020, addressed to the Registrar of this court, informed court that they tried to serve a copy of the application to Mr. Mubangizi Julius through the chambers of M/s Muhwezi & Co. Advocates who had filed the Notice of Appeal in this Court. The said firm of Advocates had declined service on the ground that they no longer had instructions from the respondent. Counsel for applicant during the hearing stated that the applicant had no knowledge of the physical address

or any contact of the respondent. Counsel was emphatic the whereabouts of the respondent were not known to them.

Needless to say, the respondent had a duty to follow up and prosecute his appeal. Since the respondent is not in a position to prosecute his appeal, no one can do it for him without instruction.

We find that the appellant has lost interest in the appeal. This is evinced from the fact that he took inordinately long without taking the necessary steps to institute the appeal, contrary to the Rules of this court. In any case litigation should never be treated as an indefinite pastime.

It is for all the aforesaid reasons that we allowed the application and struck out the Notice of Appeal lodged by the respondent on 25th June 2015. The applicant is entitled to the costs of this application.

Dated at Kampala the 10th day of Sept 2020.

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HON. JUSTICE Dr. ESTHER K. KISAAKYE,
JUSTICE OF THE SUPREME COURT.

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HON. JUSTICE STELLA ARACH-AMOKO,
JUSTICE OF THE SUPREME COURT.

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HON. JUSTICE PAUL MUGAMBA,
JUSTICE OF THE SUPREME COURT.

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HON. JUSTICE EZEKIEL MUHANGUZI,
JUSTICE OF THE SUPREME COURT.

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HON. JUSTICE MIKE CHIBITA,
JUSTICE OF THE SUPREME COURT.