**Katurature and another v Karegyera and others**

**Division:** Court of Appeal of Uganda at Kampala

**Date of ruling:** 28 February 2003

**Case Number:** 128/02

**Before:** Okello JA

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*Appeal – Time – Extension of time to lodge notice of appeal – Parties alleging ignorance and failure of*

*their lawyer to advise on time of lodging appeal – Whether sufficient cause – Principles upon which*

*extension to be granted – Rules 4 and 42 – Court of Appeal Rules Uganda*

**RULING**

**Okello JA:** By this application, the Applicants sought an order of this Court to extend the time within which to lodge a notice of appeal against the decision of the High Court in civil appeal number 14 of 1993. Though the notice of motion does not specifically say so, the application must have been brought under rules 4 and 42 of the Rules of this Court. Briefly, the Applicants had a long legal battle with the Respondents in trespass over a piece of land comprised in leasehold LWM/5918 Volume 981 folio 2 which the Applicants claimed they were its joint proprietors. The Applicants lost the battle all along from the courts of Magistrate Grade II, Chief Magistrate and on a further appeal to the High Court. The High Court sitting at Mbarara dismissed the Appellants’ appeal on 7 October 2002, hence this application. The grounds on which the application was based were stated to be: “(1) That the judgment in the said appeal was delivered by the High Court at Mbarara on 7 October 2002 and the Applicants who are illiterate were advised and they did believe that they had 30 days within which to appeal. (2) That it is only when they approached M/S *Tusasirwe* and Company Advocates that the Applicants were informed the true period within which to file the appeal had expired. (3) That they were, in the circumstances prevented by sufficient cause from taking the necessary steps. (4) That the intended appeal stands a very high chance of success”. The application was supported by an affidavit of John Katurature, the First Applicant, sworn on 27 November 2002. There is also an affidavit in reply sworn by George Karegyera, the First Respondent, on 20 February 2003. The only ground that can be discerned from those listed above as grounds is that the Applicants who are illiterate were wrongly advised/ not advised as to the time within which to commence their appeal process against that decision of the High Court. That is derived from paragraph 4 of the supporting affidavit of the deponent which states: “That although we were represented by a lawyer, Mr Katembeko, whom we informed that we were desirous of appealing against the said decision, the said Mr Katembeko did not advise us that the law required us to file a notice of appeal within 14 days of the judgment and since, in the appeal to the High Court, we had been told we had 30 days within which to appeal, we thought that even in the instant appeal, we had a similar period within which to file notice of appeal”. Mr *Tusasirwe*, learned counsel for the Applicants, argued that the Applicants were illiterate and ignorant of the rules of procedure. Failure of Mr Katembeko, who had represented them on that appeal in the High Court, to advise them after the judgment about the time required to commence their appeal process constituted a sufficient cause to justify grant of the extension sought. He added that the Applicants had brought this application without any undue delay after learning that time had run out against them. Mr *Mwene-Kahima*, learned counsel for the Respondents, opposed the application. He contended that there is no evidence that the Applicants had instructed their former lawyers on the further appeal. He also rejected the argument that the Applicants brought this application without delay when they had taken one month and two days in a matter which required only 14 days. Rule 4 of the Rules of this Court gives this Court wide discretion in granting extension of time within which to take a particular step required by the Rules. Like any other judicial discretion, this discretion must be exercised judicially and on sound principle. It is established that this discretion is exercised in favour of the Applicant when he/she has shown by evidence sufficient cause. The sufficient cause must relate to the failure to take the particular steps in time. (See *Mugo v Wanjiri* [1970] EA 481.) The Applicant must show that the delay was not caused or contributed to by his dilatory conduct (see *Shanti v Hundocha and others* [1973] EA 207). For example that he/she has not delayed in instructing his lawyers (see *Balyejusa v Development Finance Company Limited* civil application number 34 of 2000 (UR)). In the instant case, the Applicants stated in the supporting affidavit that they had informed their lawyer who had represented them on the appeal in the High Court, of their desire to appeal against that decision. Mr *Tusasirwe* argued that the lawyer should have, upon that information, advised the Applicants about the time within which they were to commence their appeal process if they wanted to appeal. With respect to counsel, I do not agree. The lawyer had no such obligation as that was not an instruction. If the Applicants wanted his services on a further appeal they would have instructed him. Merely informing the lawyer of their desire to appeal was not enough to clothe the lawyer with responsibility to give out that advice. Had they told the lawyer, “we are dissatisfied with this judgment, please commence appeal process against it on our behalf” that would have been different. That would have amounted to asking the lawyer to act on their behalf. In the circumstances, I find that the Applicants have not shown sufficient cause to justify grant of the extension sought. They have not shown that they were blameless for the delay. In the result, the application is dismissed with costs to the Respondents.

For the Applicants:

Mr *Tusasirwe* instructed by *Tusasirwe and Co*

For the Respondents:

Mr *Mwene-Kahima* instructed by *Mwene-Kahima, Mwebasa and Co*