THE REPUBLIC OF UGANDA

THE HIGH COURT OF UGANDA AT KOLOLO

Anti-corruption Division

Miscellaneous Application 45 0f 2020

(Arising from Criminal Application No. HCT- 00 – CSC – 182 – 2010.

Ocepa Geofffrey :: Applicant

Versus

Uganda :: Respondent

Ruling

(Before Lady Justice Margaret Tibulya).

This is a ruling on a Notice of Motion Application for leave to appeal out of time. On **29th October 2010** the Applicant was inter-alia charged with Forgery contrary to **Sections 342 and 348 of the Penal Code Act.** He was tried and convicted by a Magistrate Grade 1 court on the **28/10/2011.** With respect to the offence of forgery, he was sentenced to payment of a fine with the option of an imprisonment term. He paid the fine the very day of the sentence (**28/10/2011**).

He filed this application on **4th November 2020,** contending that he did not file the Appeal in time because at the time of Judgment and sentence he had no legal representation and did not know what to do after conviction and sentence. He contends that his lawyer abandoned him from the time he was put on his defence due to lack of facilitation and that though the trial Magistrate informed him of the right to appeal, she

did not explain the time limitations fully so as to make him understand what to do.

The court is alive to the legal positon that in considering applications for grant of leave to file an appeal out of time the court must be satisfied that for sufficient reason it was not possible for the **appeal** to be lodged in the time prescribed (***Charles*** **Kangamiteto** ***Versus Uganda Court of Appeal Criminal Application No.l of*** **1978-(Page 4, last paragraph)**).
In a bid to show that there is sufficient cause for his failure to appeal in time, the Applicant maintains that his lawyer abandoned him due to lack of facilitation when he was put on his defense. Further that on the day he was convicted and sentenced the learned trial magistrate did not explain to him **anything with regard to right of appeal**, specifically relating to the time within which to lodge an appeal, and that she only mentioned in her judgment that right to appeal explained to the accused in the following manner; ***"R/A*** **exp",** as seen in Annexure B at page 55.

I however find this submission in a way contradictory to the Applicants evidence (paragraph 4 of the applicant's affidavit in reply) that **though the trial Magistrate informed him of the right to appeal**, she did not explain the time limitations **fully** so as to make him understand what to do.

There is a difference between something not being explained at all (which the submission that the learned trial magistrate did not explain to him **anything with regard to right to appeal** suggests), and something not being explained **fully** (which the submission that **though the trial Magistrate informed him of the right to appeal**, she did not explain the time limitations **fully** so as to make him understand what to do suggests).

The Applicants own evidence that the right of Appeal, (including the time limitations) was explained to him, though the time limitations were not **fully** explained, counters any suggestion that the learned trial magistrate "**only mentioned in her judgment that the right to appeal explained to the accused by noting that: *"R/A* exp",** (which seems to suggest that the Magistrate did not verbally explain the right of appeal at all, but only wrote that ***"R/A* exp",** as indicated **at page 55 of Annexure B.**

The mere fact that the magistrate made a note that ***"R/A* exp",** on the court record (Annexure B at page 55) does mean that she did not verbally explain to the Applicant the right of appeal. The use of the word "**fully**" by the applicant suggests that some explanation was in fact made. The Applicant however does not indicate the nature and extent of the explanation in order to give the court an opportunity to evaluate its sufficiency/insufficiency for his decision making purpose at the time.

The Applicant's Assertion that it was not until when he was charged with a second case in which he had another legal representative counsels **Opyene Vincent and Masanga Isaac** when ***he started learning of the word Appeal*** is an outright lie in view of his admission that the trial magistrate **informed him of the right to appeal**, though she did not explain the time limitations **fully** so as to make him understand what to do. It is obvious that he first learnt of the word "Appeal" from the trial magistrate, and not from his advocates in the second trial as he wants the court to believe.

On the basis of the Applicants own affidavit evidence that **the trial Magistrate informed him of the right to appeal**, but that she did not explain the time limitations **fully** so as to make him understand what to do, and given that he does not indicate the nature of and how much information he was given for the court to determine its relevancy and sufficiency, in agreement with the respondent **I find that the right of appeal was in fact explained to the Applicant the fact that he was not represented at the time notwithstanding.**

It is important to note that though the Applicant was not legally represented during his conviction and sentence in criminal case **HCT-00-ACD-00-CSC-182-2010**, when he was charged in 2013, he did not indicate to **counsels Opyene Vincent and Masanga Isaac** who he

claims were the first to educate him about the word **"appeal",** his desire to appeal which he apparently harbored by then (he for example claims that while in prison he discussed **his situation** with the Paralegal officers and the Prison's administration who advised him **that all is not lost, that he can still be allowed to appeal out of time**), meaning that by 2013 he harbored a desire to lodge an appeal. That he did not discuss his situation with lawyers and instead discussed it with paralegals and Prisons administration renders his account unconvincing.

The Applicant drew the courts attention to the ruling in **Bahati Ronald V.s Uganda, Criminal Misc. Application No.134 of 2018 (unreported)** where the learned judge considered the ground of non-access to legal services in granting the application. The facts in **Bahati** which are that the Applicant failed to access legal services as he was impecunious, and the Remand prison had no stationery to help him, and so he was unable to prepare the Notice of Appeal in time are distinguishable from this case. In **Bahati**, the applicant clearly took steps to file a Notice of Appeal in time but his efforts were hampered by the lack of stationery at the prison facility.

I find no sufficient cause for the applicant's failure to lodge an appeal in time being that his right to appeal was explained to him by the trial magistrate, and he did not indicate a desire to file an appeal to his lawyers in 2013, the earliest opportunity he had.

Turning on the proposed grounds of appeal, the Applicant inter-alia alleges that there is illegality on the face of the court record, and that he would be prejudiced if he is not allowed to present his appeal. He in particular cited the fact that the trial magistrate presided over the case when she had no jurisdiction over it.

It is true that the offence of forgery under sections **342** and **348** of the Penal Code Act attracts a maximum sentence of Life Imprisonment, and is therefore not triable before a Magistrate Grade one court (**section 161 (1) (b) of the Magistrates Court Act).** Given however that the Applicant was represented in the initial stages of the trial and counsel never raised the issue, further that the trial magistrate did not sentence the accused to life imprisonment but to a fine which was within her sentencing jurisdiction, and that the applicant is seeking to appeal 9 years after conviction and sentence which amounts to inordinate delay I am not persuaded that the ends of justice will be served by allowing this application which comes as an afterthought.

I accordingly dismiss it.

Margaret Tibulya (L.J).

Judge

26th February 2021.