

IN THE CIRCUIT COURT HELD AT AMASAMAN – ACCRA ON
FRIDAY THE 28TH DAY OF OCTOBER, 2022 BEFORE HER HONOUR
ENID MARFUL-SAU, CIRCUIT COURT JUDGE

SUIT NO:C1/08/2018

EMMANUEL OPPONG

H/NO. 357 WEIJA

...

PLAINTIFF

VRS.

MUSTAPHA

UNNUMBERED HOUSE

ABLEKUMA-ACCRA

MICHAEL NYANKUM ADJETEY

OKUSHIBIADE

...

DEFENDANTS

PARTIES: PLAINTIFF PRESENT

1ST DEFENDANT ABSENT

2ND DEFENDANT PRESENT

*COUNSEL: MUDA LAWAL ESQ. HOLDING BRIEF FOR K. ADJEI-LARTEY
ESQ.*

FOR PLAINTIFF/JUDGMENT CREDITOR/RESPONDENT

PRESENT

*JAMES ACQUAYE HOLDING BRIEF FOR HUBERT SEVOR ESQ.
FOR 2ND DEFENANT/ JUDGMENT DEBTOR/ APPLICANT
PRESENT*

RULING

This is an application for extension of time within which to appeal pursuant to Order 51 rule 4 filed by the Defendant/Judgment Debtor/Applicant (hereinafter referred to as Applicant) on 5th August, 2022.

It is the case of the Applicant that this court delivered Judgment in this matter on 13th April, 2022 and that he is dissatisfied with the Judgment. He says that he instructed his lawyer to appeal against the Judgment. According to him, his counsel then applied for the Judgment which was made available to him and a month after, his counsel gave him the terms for the further conduct of the case. He says that he was unable to meet the terms and his counsel travelled outside the jurisdiction and advised him to look for another willing lawyer. Applicant says that he consulted two other lawyers but they could not take up the matter, so he went back to the law firm of his former lawyer and appealed for his brief to be reassigned to another lawyer. According to him, the time allowed to file an Appeal as of right has lapsed and his Appeal has a good chance of success. He in the circumstance prays that the court grants him an extension of time to file his Appeal.

The Plaintiff/Judgment Creditor/Respondent (hereinafter referred to as Respondent) filed an affidavit in opposition on 30th September, 2022. He contends that the instant application is frivolous and an abuse of the court process. He states that the Applicant was unable to pursue the Appeal within time because he was impecunious and that is not a substantial reason for which the Court could grant extension of time to Appeal. He states also that the Applicant failed to attach a proposed Notice of Appeal to show that his

grounds have a reasonable chance of success. Respondent contends that this application has been brought to frustrate him from enjoying the fruit of his victory.

This application is made pursuant to Order 51 rule 4 of the Rules of Court. I consider that the said order relied upon applies to Appeals from the District Court and is thus inapplicable in this case. It is the Court of Appeal Rules, 1997, C.I. 19 which regulates Appeals from the Circuit Court/High Court to the Court of Appeal. Rule 9 of C.I. 19 provides as follows:

“(1) Subject to any other enactment for the time being in force, no appeal shall be brought after the expiration of—

(a) twenty-one days in the case of an appeal against an interlocutory decision;

or

(b) three months in the case of an appeal against a final decision unless the court below or the Court extends the time.

(2) The prescribed period within which an appeal may be brought shall be calculated from the date of the decision appealed against.

(3) An appeal is brought when the notice of appeal has been filed in the Registry of the court below

(4) No application for extension of time in which to appeal shall be made after the expiration of three months from the expiration of the time prescribed by this rule within which an appeal may be brought.

(5) An application for extension of time must be supported by an affidavit setting out good and substantial reasons for the application and grounds of appeal which prima facie, show good cause for the extension of time to be granted...”

I note that Judgment was delivered in this matter on 13th April, 2022. Therefore, computing the time allowed by the rules, three months from this date is 12th July, 2022. Rule 9(4) of C.I. 19 requires that no application for

extension of time in which to appeal shall be made after the expiration of three months from the expiration of the time prescribed by the rule within which an Appeal may be brought. This therefore means that an application for extension of time within which to Appeal cannot be made in this case beyond 12th October, 2022. As already indicated, the instant application was filed on 5th August, 2022. The Application is thus within time.

Rule 9(5) of C.I. 16 requires that an application for extension of time must be supported by an affidavit setting out good and substantial reasons for the application and grounds of appeal which prima facie, show good cause for the extension of time to be granted. The grounds of appeal Applicant relies upon are set out at paragraph 18 of the affidavit in support as follows:

- a. "The High Court erred in not commissioning the drawing of a composite plan when the facts before it suggests that the grantors of the plaintiff and 1st defendant share common boundaries and more so, the parcel of land in dispute formed part of a large tract of land of the aforesaid grantors.
- b. Additional grounds of appeal may be filed upon receipt of the record of proceedings."

In his argument before the court, counsel for Applicant argued that he relies on a Practice Direction which states that a composite plan must be drawn. This court notes as a fact that directions in this matter was taken as far back as 28th November, 2017 before this court differently constituted and no such order for Composite plan was made. However, there is no mandatory and binding law on a court to make orders for composite plans once a matter borders on a land dispute. Indeed, what counsel refers to as a practice direction was a circular from the former Chief Justice and the said circular did not make it compulsory for composite plans to be drawn in every land matter.

Therefore, prima facie, I do not consider that the sole ground of appeal shows a good cause for the extension of time to be granted.

The reasons advanced for the delay in filing the Appeal are that a month after receiving the Judgment, Applicant's then counsel gave him his terms of conduct which he could not meet. According to him, before he could meet his terms, his counsel travelled out of the jurisdiction and returned his brief to him. Applicant says that he approached two other lawyers who could not take the brief because the legal year was ending so he went back to his original lawyer's law firm to be reassigned a lawyer.

In the case of **REPUBLIC v. ASOGLI TRADITIONAL COUNCIL AND OTHERS; EX PARTE TOGBE AMORNI V II (NO. 1)**[1992] 2 GLR 347-367; it was held by Acquah J (as he then was) as follows:

"In applications for extension of time, lateness per se, was not a disabling factor. The main consideration was whether the delay was excusable, bona fide and reasonable, such that refusal to enlarge the time would cause injustice to the applicant..."

In this case, I do not consider the reason advanced for the delay in filing the Appeal within time reasonable. A failure to meet terms of engagement by a lawyer one has engaged should not inure to the benefit of that person. Again, when substantive counsel was informed by the Applicant that he sought to Appeal and he gave his new terms of engagement, Counsel was aware that there was a time lapse to the Appeal, therefore having handed over the brief after a month and leaving the jurisdiction when the Applicant was finally ready to meet his demands is not reasonable excuse enough, this is especially so having regard to the fact that there were other lawyers in the law firm and one was eventually assigned to Applicant. A lawyer cannot sleep on his client's rights and subsequently complain that the said rights have

disappeared. See: **NEW INDIA ASSURANCE CO., LTD. v. MANANG**
[1968] GLR 538

Based on the foregoing reasons, I consider that the delay for failing to file the Notice of Appeal is not reasonable. Accordingly, in the absence of any other evidence to the contrary, the application is hereby refused.

H/H ENID MARFUL-SAU
CIRCUIT JUDGE
AMASAMAN