

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

**CORAM: HON. JUSTICE S.G. ENGWAU, JA
HON. JUSTICE A. TWINOMUJUNI, JA
HON. JUSTICE S.B.K. KAVUMA, JA**

CIVIL APPLICATION NO. 63 OF 2005.

BETWEEN

WILLIAM GIBONI WANENDEYA :::APPLICANT.

AND

ERIAS LUKWAGO :::RESPONDENT.

[Arising from High Court Misc. Application No. 108 of 2004]

RULING OF THE COURT.

This is an application seeking an order to strike out the Notice of Appeal filed by the respondent on 29-03-2005 on the ground that no appeal lies in this Court. It is brought under rules 81, 82 and 83 of the Court of Appeal Rules Directions, 1996, by a notice of motion, supported by the affidavit of William Giboni Wanendeya, the applicant, sworn on 29-06-2005. Briefly, the grounds of this application are twofold, namely that:

- 1. The respondent has not filed the appeal within 60 days after receipt of the proceedings from the High Court or at all.**
- 2. It is just and equitable that the Notice of Appeal be struck out.**

The background facts leading to this application are that in Miscellaneous Application No.108 of 2004, a ruling was delivered on 16-03-2005, dismissing the application on the ground that neither the applicant was personally served nor through an advocate who had instructions to represent him. It is against that dismissal that prompted the respondent to file the Notice of

Appeal in the High Court at Kampala on 29-03-2005. A letter requesting for the certified copies at the Proceedings and ruling to enable the respondent to file a memorandum and record of appeal accompanied the Notice of Appeal. The respondent was availed those documents on 21-4-2005.

As the ruling in Misc, application was not appealable as of right, the respondent in Misc. Application No.349 of 2005 sought leave of court as provided for under Order 44 rr 1, 2, 3 and 4 of the Civil Procedure Rules. That application was dismissed on 12-10-2005. On the 25-10-2005, the respondent filed in this Court Misc. Application No. 100 of 2005 for leave to appeal be granted and for an extension of time during which to file a record of appeal. That was done only after the applicant had filed Civil Application No. 63 of 2005 for an order to strike out the Notice of Appeal filed by the respondent on 29-03-2005.

Rule 81 of the Rules of this Court reads:

“A person on whom a Notice of Appeal has been served may at anytime, 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.”

Under rule 82 of the Rules of this Court, an appeal shall be instituted in the Court by lodging in the Registry, within sixty days after the date when the Notice of Appeal was lodged. If a party who has lodged a Notice of Appeal fails to institute an appeal within the prescribed time, his or her appeal shall be deemed withdrawn under rule 83 of the Rules of this Court.

In the instant case, the respondent was availed certified copies of proceedings and ruling in Misc. Application No. 108 of 2004 on the 21-4-2005. Since then no appeal lies in this Court within the prescribed period of sixty days from the date when the Notice of Appeal was served on the applicant. Failure to comply, Civil Application No. 63 of 2005 has merit.

In the result, the Notice of Appeal filed on the 29-03-2005 is hereby struck out with costs to the applicant.

Dated at Kampala this 25th day of January 2006.

S.G. Engwau
Justice of Appeal.

A. Twinomujuni
Justice of Appeal.

S.B.K. Kavuma
Justice of Appeal.