

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

**CIVIL APPLICATION NO. 104 OF 2009**  
*(ARISING FROM CIVIL APPEAL NO. 26 OF 2009)*

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**Coram: Hon. Justice A.S. Nshimye, JA.**  
**Hon. Justice M.S. Arach Amoko, JA.**  
**Hon. Justice Remmy Kasule, JA.**

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**PETER**  
**MURAMIRA:.....APPLICANT**

**VS**

**BRIAN**  
**KAGGWA:.....RESPONDENT**

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**RULING OF THE COURT.**

The Applicant, Peter Muramira, filed the instant application under **Rules 82 and 43 of the Judicature (Court of Appeal Rules) Directions S.I 13-10** seeking orders that:-

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- 1.The notice of appeal herein be struck out***
- 2.That the costs be provided for.***

25 The application was based on three grounds which were set out in the body of the Notice of Motion and detailed in the affidavit deponed by the applicant dated 16<sup>th</sup> July 2009. The grounds were that:-

- 30 **(a) That no appeal lies.**  
**(b) That important steps have not been taken by the appellant/ respondent.**  
**(c) That time for filing a memorandum of appeal lapsed before the memorandum of appeal**  
35 **was filed in this court.**

The respondent opposed the application by filing an affidavit in reply dated 17<sup>th</sup> September 2009.

### **Background of the application.**

40 On February 2009, the applicant obtained judgment against the respondent in the High Court, in Civil Suit No. 64 of 2008. Being dissatisfied with the said judgment, the respondent filed a Notice of Appeal on 4<sup>th</sup> February 2009 coupled with a letter requesting for a copy of  
45 proceedings. In his affidavit in reply, the respondent stated that his previous lawyer failed or omitted to serve counsel for the applicant a copy of the letter requesting

for proceedings and retain proof of service within the time prescribed by law.

50 On 17<sup>th</sup> July 2009, when the applicant moved this court to strike out the Notice of Appeal, the respondent also moved Court under **Rule 2 (2), 5, 43 (1) and (2) of the Court of Appeal Rules** and obtained leave to serve the applicant with the letter requesting for proceedings out of  
55 time thus validating Civil Appeal No. 26 of 2009. The proceedings were attended by both parties.

During the joint conferencing, the parties agreed on the issues for determination as being:-

***(1) Whether there is an appeal.***

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***(2) Whether the respondent is entitled to the remedies sought.***

### **Representation.**

Mr. Kenneth Kakuru appeared for the applicant while Mr.  
65 Othieno Brian appeared for the respondent.

### **Submissions for the applicant.**

Counsel for the applicant submitted that the respondent had no appeal. He should have filed his memorandum of

70 appeal before the expiry of 60 days after the Notice of Appeal.

The respondent did not apply for extension of time within which to file a memorandum of appeal. Counsel cited rule 83 (1) of this Court's rules to support his submission.

75 He referred to paragraph 5 of the respondent's affidavit in reply in which he admitted the non compliance with rule 83 of this Court's rules.

Counsel prayed that the appeal be struck out with costs.

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### **Submissions by the respondent.**

Counsel for the respondent strongly opposed the application and admitted that they had no proof of service of the letter applying for the record of  
85 proceedings.

He however submitted that after he realized the mistake made by the respondent's previous counsel M/s Kibuka Musoke & Company Advocates, he decided to file **Miscellaneous Application No 130 of 2009** to rectify  
90 the anomaly. That both parties argued the application to its finality without objection and it was granted by the Registrar on 5<sup>th</sup> March 2010 and had the effect of

validating the documents already filed. Counsel relied on the case of ***Dr. James Rwanyarare & 5 Others V. Peter Mukidi Walubiri, Court of Appeal Civil Appeal NO. 67 of 2006*** in which this Court stated that, if one realised that a mistake has been made, the prudent step is to file an application for extension of time, which according to counsel, his client had done.

He hence, submitted that the appeal was proper and valid since the memorandum of appeal and record were on file and that the application had been overtaken by events as a result of the order to extend time.

Counsel prayed that the application be dismissed with costs.

### **Submissions in rejoinder.**

Counsel K. Kakuru in rejoinder submitted that the respondent should have applied for leave to file the appeal out of time. That the respondent waited until an application to strike out the appeal was filed and served and then thought of applying for extension of time.

In counsel's view, the application had no legal consequence and that the Registrar had no jurisdiction to

hear an application whose effect was to defeat a substantive application pending before court.

In conclusion, he submitted that the Registrar's ruling was not an authority worth relying on.

120 Counsel reiterated his earlier prayer to strike out the appeal with costs.

### **Findings of Court.**

This Application is premised on rules 82 and 43 of this  
125 Court's Rules. Rule 82 provides:-

***"... A person may make an application to strike out a notice of appeal or appeal on grounds that no appeal lies where an essential step in the proceedings had not been or has not been taken within the prescribed time".***

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**Rule 82** envisages the taking of essential steps in prosecuting one's appeal.

**Rule 83 (1)** of this Court's rules provides that an appeal is commenced by filing a notice of appeal. The rule  
135 further gives an allowance of 60 days within which an appellant should have filed a memorandum of appeal and a record of proceedings.

Rule 83(2) and (3) provides:

140 ***“(2) That where an application for a copy of  
the proceedings in the High Court has been  
made within thirty days after the date of the  
decision against which it is desired to  
appeal, there shall, in computing the time  
within which the appeal is to be instituted,  
145 be excluded such time as may be certified by  
the Registrar of the High Court as having  
been required for the preparation and  
delivery to the appellant of that copy.***

150 ***(3) An appellant shall not be entitled to rely  
on sub rule (2) of this rule, unless his or her  
application for the copy was in writing and a  
copy of it was served on the respondent, and  
the appellant has retained proof of that  
155 service”.***

The main purpose of the rule is to freeze time within  
which to file an appeal while taking into account the time  
spent during the preparation of the record of proceedings  
160 before the High Court.

The respondent under the above rule had to apply for proceedings by letter within 30 days from the date of judgment which he did.

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In order for an appellant to be able to benefit from the rule, he or she had to file and later serve a Notice of appeal on the opposite party within thirty days from the date of the decision to be appealed from and also apply  
170 in writing for the record of proceedings, serve the opposite party within thirty days from the date of the decision and retain evidence of that service.

In this case the respondent wrote a letter requesting for  
175 the record of proceedings and according to the affidavit evidence of the Law Clerk to the respondent's former counsel, he received the notice of appeal and letter requesting for a copy of proceedings for filing and service on the applicant's counsel on 5<sup>th</sup> February 2009 which he  
180 duly served on them but by mistake and oversight did not bother to check whether the letter applying for the record of proceedings was stamped as well.

The inadvertence of counsel to retain service of the said  
185 letter cannot be visited on his client- the respondent.



Counsel for the applicant did not contest the fact that a letter was written to the Registrar applying for the record.

190 It is the duty of every intending appellant to be seen taking an active role within the time stipulated by the rules to prosecute his or her appeal.

After the respondent knew of the mistake or inadvertence  
195 of his former counsel, he took the most essential step which was to apply for the extension of time within which to serve the other party a letter requesting for the record of proceedings. The application was argued by both counsel without any objections.

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In the case of ***Godfrey Magezi & Brian Mbazira V. Sudhir Ruperelia, Supreme Court Civil Application NO. 10 of 2002***, Court quoted with approval the decision of the East African Court of Appeal in ***Shanti V.***

205 ***Hindocha [1973] EA 207***, where court held that:-

***“... We think that when the time for lodging a document is extended, the document is duly lodged if lodged within the time as so***

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***extended, whether the actual lodging is before or after the order of execution...”***

The legal effect of extension of time was stated by Odoki B. JSC in the case of ***The Executrix of the Estate of Christine Mary Tibaijuka & Anor. V. Noel Grace Shalita, Supreme Court Civil Application No.8 of 1999*** that:-

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***“... to validate or excuse the documents, the applicant need not file fresh documents if those already filed are completed and in proper form...”***

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This application raises basically two issues namely:-

***1. Whether the learned Registrar had jurisdiction to hear and determine the application for the extension of time.***

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***2. Whether leave to serve the letter out of time validated Civil Appeal No. 26 of 2009.***

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On the issue of the Registrar’s jurisdiction, we wish to refer to rule 3 of this Court’s Rules which defines ‘Court’ to mean:-

***“The Court of Appeal of Uganda established under Article 129 of the Constitution, and includes any division of the court and a single Judge exercising any power vested in him or her sitting alone”.***

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The Registrar is also defined to mean:-

***“The Registrar of the Court and includes a Deputy and an Assistant Registrar of the Court”***

240 The Judicature Act Cap. 13, Section 43 (1) provides that:-

***“ there shall be such officers of court of Judicature as may be necessary for the performance of any special duties in connection with the business of the Courts of Judicature, and such officers shall include the Chief Registrar, Registrars, Deputy Registrar and Assistant Registrars”***

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Sub Section (2) goes further to provide that:-

***“Subject to Article 133 of the Constitution, the officers of the Courts of Judicature shall perform such duties as may be assigned to them under the rules of court and shall be***

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***subject to the general direction and supervision of the Chief Justice”.***

255 While Section 41(1) provides that:-

260 ***“The Rules Committee may, by Statutory Instrument, make rules for regulating the practice and procedure of the Supreme Court, the Court of Appeal and the High Court of Uganda and for all other courts in Uganda subordinate to the High Court”***

Under the ***Court of Appeal (Judicial Powers of the Registrars) Practice Direction No. 1 of 2004, pursuant to the Court of Appeal Directions 1996***  
265 ***made under Section 41 (i) (v) of the Judicature Act, 2000,*** and in order to ensure expeditious disposal of case, the powers of the Registrars shall include but not limited to entertaining matters under the following rules:-

**Rule 4- extension of time (now rule 5)**

270 The Practice Directions remain in force and the power to make such rules is Statutory thus, the Registrar is clothed with the jurisdiction to hear any application there under provided.

275 Prior to 2004, the power to hear such applications was  
vested in a single Judge of the Court of Appeal however,  
after the issuance of the Practice Direction No. 1 of 2004;  
the power is now exercised by the Registrar of the Court  
of Appeal.

280 In this case, the Registrar had powers to hear the  
Application for extension of time within which to file the  
letter requesting for proceedings.

285 ***Did the leave that was granted validate Civil  
Appeal No. 26 of 2009?***

***Rule 5 of the Judicature (Court of Appeal) Rules,***  
provides that:-

290 ***“The Court may for sufficient reason  
extend the time limited by these rules or  
by any decision of the Court or of the High  
Court for the doing of any act authorized or  
required by these rules, whether before or  
after the expiration of that time and  
whether before or after the doing of the  
act; and any reference in these rules to any  
such time shall be construed as a reference  
to the time as extended”.***

300 The Registrar on 5<sup>th</sup> March through his Order to serve the letter on the applicant resurrected the appeal.

The applicant did not in any way show that the application for extension of time within which to serve would cause him any miscarriage of justice. It was so held  
305 by the Supreme Court in the case of ***Plaxeda Semmbatya Vs Tropical Africa Bank [1993] KALR 105.***

Since the respondent in the main suit was not afforded a  
310 fair trial, we feel that his appeal should be given a chance to be heard on merit

The application is disallowed.

Each party shall bear its own costs for this application.

315 We so order.

**DATED THIS ...23<sup>rd</sup>...DAY OF...November...2012.**

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**HON. JUSTICE A. S. NSHIMYE,  
JUSTICE OF APPEAL**

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**HON. JUSTICE M. S. ARACH AMOKO,  
JUSTICE OF APPEAL**

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**HON. JUSTICE REMMY KASULE,  
JUSTICE OF APPEAL.**