

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NUMBER 0142 OF 2012**

KAHUNDE COVLYNE..... APPELLANT

**VERSUS**

PAULINE NABAKOOZA..... RESPONDENT

*(Appeal arising from the Judgment and decree of the High Court of Uganda at Fort Portal, sitting at Kampala, delivered by His Lordship Mike J. Chibita, on the 23<sup>rd</sup> day of March, 2012 in original HCT-00-CV-CA No079 of 2009)*

**Coram:** Hon. Justice Eldad Mwangusya, JA

Hon. Lady Justice Faith E. K. Mwendha, JA

Hon. Lady Justice Professor Lillian Tibatemwa Ekirikubinza, JA

**JUDGMENT**

The appellant, Kahunde Covlyne being dissatisfied with the orders of the High Court sitting at Fort Portal filed an appeal against the respondent, Pauline Nabakooza on 23<sup>rd</sup> October 2012. The appeal was against the whole judgment and orders. The appeal was not called for hearing till the 4<sup>th</sup> June 2015 and when it was called for hearing Ms. Rachel Mulindwa Counsel for the appellant had lodged a Notice of withdrawal of the Appeal under Rule 94 of the Judicature (Court of Appeal Rules) Directions and had come to Court to

formalize the withdrawal. She stated that the Notice of withdrawal had been filed on 20<sup>th</sup> May 2015 well before the appeal was fixed for hearing and in accordance with the said rule the Notice had been served within seven days of its filing and the parties were consenting to the withdrawal.

In reply Mr. Kibirango Peter Counsel for the respondent opposed the application for withdrawal and instead prayed that the appeal be dismissed with costs. Counsel denied having been served with the notice of withdrawal in accordance with Rule 94 of the rules of this Court and submitted that once the appeal had been fixed for hearing it can only be withdrawn with consent of this Court.

In support of Mr. Kibirango's submission Mr. Ivan Bagyenda also Counsel for the respondent submitted that the respondent did not consent to the withdrawal because the stated reason for the withdrawal of the appeal was not correct.

Withdrawal of appeal in the Court of Appeal is governed by rule 94 of the Judicature (Court of Appeal Rules) Directions S.I. 13 – 10 which states as follows:-

**“(1)An appellant may at any time after instituting his or her own appeal in the Court and before the appeal is called for hearing, lodge in the registry notice in writing that he or she does not intend further to prosecute the appeal.**

**(2) The appellant shall, before or within seven days after lodging the notice of withdrawal, serve copies of it on each respondent who has complied with rule 80 of these Rules**

**(3) If all parties to the appeal consent to the withdrawal of the appeal, the appellant may lodge in the appropriate registry the**

**document or documents signifying the consent of the parties, and the appeal shall then be struck out of the list of pending appeals.**

**(4) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appeal shall stand dismissed with costs, except as against any party who has consented, unless the Court, on the application of the appellant, otherwise orders.**

**(5) An application under sub rule of this rule shall be made within fourteen days after the lodging of the notice of withdrawal.”**

The notice of withdrawal was filed in this Court on 20<sup>th</sup> May 2015. The contents of the Notice which were contested by the respondent were as follows:-

**“The appellant hereby withdraws the above appeal as the same has been overtaken by events.**

**The rights of ownership of the property for which she had instructed her lawyers to file for revocation of Letters of Administration, that had included her property as part of the deceased’s estate, have since been enforced by the judgment in KAS- PP-CV-032 of 2012 delivered on 29<sup>th</sup> August, 2013. A copy of which is enclosed.”**

There is no evidence that the notice of withdrawal was served on the respondent or that she consented to it. No application was made under sub rules 4 and 5 of the Rule 94 and our observation was that the notice of withdrawal did not comply with the rule under which it was purportedly made. Outside the rule a withdrawal of an appeal is only possible with Leave of Court

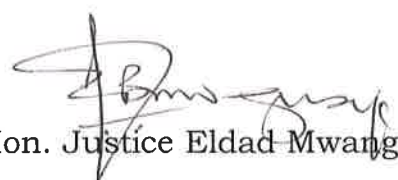
as was stated by the Supreme Court in the case of **BRITISH AMERICAN TOBACCO (U) LTD VS SEDRACH MWIJAKUBI (SUPREME COURT CIVIL APPEAL NO 01 OF 2012)** where Counsel for the appellant sought to withdraw an appeal by a letter and the Court had this to say:-

**“Dr. Bayamugisha’s letter does not state under which rule he was withdrawing the appeal but all the rules require further action from the party withdrawing the appeal. Rule 1 is supported by rule 2 which requires that a notice in writing is lodged in the registry and copies served on the respondent. I do not think that this letter meets the requirement of a notice and in any case, there is no proof of copies being served on the respondent. Rule 3 similarly requires documents to be lodged in the registry. Moreover, the notice was lodged after the appeal had been called for hearing and was pending judgment. The rules are silent on the withdrawal of appeal after the appeals has been called for hearing but it should be possible with Leave of the Court.”** (Underlining for emphasis)

The respondents Counsel declined to consent to the withdrawal on the ground that the contents of the withdrawal notice went into the issue of ownership of the estate property which the respondent did not agree with. We wish to observe that a withdrawal in whatever form does not delve into any matter concerning the status of the case. The consequence of a withdrawal is simply dismissal of the appeal with or without costs. In essence a dismissal does not interfere with the judgment appealed against because the Court would not have dealt with the substance of the appeal which is terminated with order of dismissal.


In the circumstance Leave is granted to the appellant to withdrawal the appeal as a consequence of which it is dismissed. We make no order as to costs because the respondent's objection to the withdrawal was not well grounded. The contents of the withdrawal were irrelevant and in any case the withdrawal was outside Rule 94 which was not complied with by the appellant.

Dated at Kampala this .....11.....day of .....June 2015



Hon. Justice Eldad Mwangusya

**JUSTICE OF APPEAL**



Hon. Lady Justice Faith E. K. Mwendha

**JUSTICE OF APPEAL**



Hon. Lady Justice Professor Lillian Tibatemwa Ekirikubinza

**JUSTICE OF APPEAL**