

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Egonda-Ntende, Barishaki Cheborion & Mutangula Kibeedi JJA]

CIVIL REFERENCE NO.174 OF 2015

(Arising from Civil Application No. 200 of 2015)

BETWEEN

Jomayi Property Consultants Ltd=====Applicant

AND

Andrew Maviiri=====Respondent

*(Reference from a decision of a single Justice of Appeal, Mwondha JA,
delivered on 15th September 2015 at Kampala.)*

Ruling of Fredrick Egonda-Ntende, JA

Introduction

- [1] The applicant filed an application no. 200 of 2015 seeking that this court grants the applicant extension of time within which to file a notice of appeal against the decision of the High Court in Civil Suit No. 334 of 2011. The applicant further sought extension of time within which to file and serve a memorandum and record of appeal or in the alternative validate the applicant's appeal vide Civil appeal No 162 of 2014 filed on 6th October 2014.
- [2] The applicant was the unsuccessful party in the original suit no. 334 of 2011. It had filed a notice of appeal against the decision of the High Court and subsequently filed a memorandum and record of appeal on the 6th October 2014. Prior to this event the respondent had filed Misc Application No. 274 of 2014 seeking to strike out the notice of appeal on the ground that an essential step had not been taken in the matter by the applicant. This application was heard, *inter partes*, and determined by this court on 7th July 2015. The applicant's notice of appeal was

struck out for reasons that this court provided in its ruling of the said date.

- [3] It is after that ruling that the applicant subsequently filed the present application which was fixed before a single Justice of this court who decided to allow it hence this reference to a full panel of the court.
- [4] The applicant opposes this reference and prays that the decision of the single Justice of this court be upheld.

Submissions of Counsel

- [5] At the hearing of this reference the applicant was represented by Mr Joseph Kyaze while the respondent was represented by Mr Gilbert Nuwagaba.
- [6] Mr Gilbert Nuwagaba argued three grounds in support of the reference. Firstly, it was his submission that a single Justice of this court had no jurisdiction to hear this matter both under section 12 of the Judicature Statute and rule 53 of the Rules of this court. Secondly that the learned Justice of appeal incorrectly and wrongly distinguished the decision of the Supreme Court in Goodman Agencies Limited v Attorney General and Anor [2014] UGSC 14 which held that the effect of striking out an appeal is for practical purposes the same as when an ordinary appeal fails after hearing of the same. Lastly Mr Nuwagaba submitted that learned single Justice of appeal in effect sat on appeal of the decision of this court that struck out the appeal which was an error.
- [7] Mr Joseph Kyaze submitted that Rule 82 of the Rules of this court that authorises striking out a notice of appeal does not bar an intended appellant from pursuing his or her right of appeal. He relied on UNEB v Mparo General Contractors Ltd S C Civil Application No. 19 of 2004 (unreported). Secondly Mr Kyaze submitted that a single of Justice of this court had jurisdiction to hear the application that was heard in light of the provisions of section 12 of the Judicature Act and rule 53 (1) and (2) of the Rules of this Court. In support thereof he referred us to Kyamanungu John v Jane Nyaisanga Commissioner for Land Registration C A Civil Application No. 116 of 2015 (unreported) in which a single Justice of this court handled a similar application.
- [8] Mr Kyaze submitted that there is no conflict between UNEB v Mparo General Contractors Ltd (supra) and Goodman Agencies Ltd v Attorney General and Anor (supra). The Supreme Court in Goodman

Agencies did not hold that a decision under rule 82 was a final decision of the Court. It was only in case that no further action was taken in the matter that it would have that practical effect. He submitted that the learned single Justice of this court did not error in not applying that decision as the respondents would have preferred.

- [9] Mr Kyaze further submitted that the single Justice of this court was wrongly attacked that she had sat on appeal of the decision of this court striking out the appeal. She merely observed that the striking out of the appeal was due to inadvertence of counsel. He prayed that the reference be dismissed with costs.

Analysis

- [10] Prior to the enactment of the Judicature Statute, 1996, hearing of applications by a single Justice of this court was only governed by rule 53 of the Rules of this court. It states,

‘53. Hearing of Applications.

(1) Every application, other than an application included in subrule (2) of this rule, shall be heard by a single judge of this court; except that any such application may be adjourned by the judge for determination by the court.

(2) This rule shall not apply to –

(a) an application for leave to appeal, or for a certificate that a question or questions of great public or general importance arise;

(b) an application for stay of execution, injunction or stay of proceedings;

(c) an application to strike out a notice of appeal or an appeal;

(d) an application made as ancillary to an application under paragraph (a) or (b) of this subrule or made informally in the course of the hearing, including an application for leave or to extend time if the proceedings are found to be deficient in the matters in the course of the hearing.’

- [11] Subsequently the Judicature Act provided for the jurisdiction of a single Justice in section 12 thereof. It states,

‘12. Powers of a single Justice of the Court of Appeal.

(1) A single Justice of the Court of Appeal may exercise any power vested in the Court of Appeal in any interlocutory cause or matter before the Court of Appeal.

(2) Any person dissatisfied with the decision of a single Justice of the Court of Appeal in the exercise of any power under subsection (1) shall be entitled to have the matter determined by a bench of three Justices of the Court of Appeal, which may confirm, vary or reverse the decision.’

- [12] Clearly a single Justice of this court is clothed with jurisdiction to hear and determine all interlocutory applications filed in this court with a dissatisfied party having a right to refer to a full panel of the court that decision.
- [13] Prior to the coming into force of Judicature Act a single Justice of the court, under rule 53 would hear all applications save those that he or she was barred from hearing under subrule 2 of rule 53.
- [14] In my view, section 12 of the Judicature Act, being an Act of Parliament, overrides the provisions of rule 53 of the rules of this court and must now be taken to be the primary legislation providing for jurisdiction of a single Justice of this court. It follows that the question that is before us is whether or not the application that was heard by the single Justice of this court was an interlocutory matter or not. If it was an interlocutory matter the single Justice of this court had jurisdiction to hear the same. If it was not an interlocutory matter the single Justice was not clothed with jurisdiction to hear the same.
- [15] The question then arises as to what is an interlocutory matter? Blacks Law Dictionary, 5th Edition, at page 731 defines the word interlocutory as
- ‘Provisional, interim, temporary, not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy.’
- [16] In relation to proceedings at the Court of Appeal interlocutory therefore must refer to a proceeding that is between the commencement of the appeal and prior to the final decision on the appeal. If no proceedings in relation to the appeal have been commenced, i.e. no notice of appeal has been filed, the initial proceeding relating to leave


to file a notice of appeal, out of time, or for whatever cause, such proceeding would not be interlocutory.

- [17] At the time the application was filed and heard there was no existing appeal before this court as the notice of appeal had been struck out. A decision to reinstate or validate an appeal is not an interlocutory matter in this court. It is a decision that would commence the proceedings before this court rather than arising in proceedings before this court. On the other hand, a matter is interlocutory when it arises in the course of an already subsisting cause in this court before a final decision of this court is made in that matter. As there was no appeal or subsisting notice of appeal in the matter this application could not have been an interlocutory matter. It would follow, in my view, that the single Justice of this court had no jurisdiction to entertain the matter.
- [18] Secondly even if one applied rule 53 (2) of the rules of this court a single Justice of this court would not be clothed with jurisdiction to handle the same. Rule 53 (2) (a) bars a single Justice of this court from hearing applications for leave to appeal. An application for leave to appeal out of time or extension of time to file a notice of appeal, or to validate an appeal filed out of time, is in effect an application for leave to appeal. It would follow that a single Justice of this court is barred from hearing the same pursuant to rule 53 (2) (a) of the Rules of this court.
- [19] I would therefore agree with the respondent that the learned single Justice of this court did not have jurisdiction to hear the application she heard. Her decision was therefore a nullity and I would set it aside. I would further order that the application be heard by a panel of this court, rather than dismissing the application itself, when it was not the fault of either party that the same was put before a single Justice of this court.

Decision

- [20] As Barishaki Cheborion and Mutangula Kibeedi, JJA agree, this reference is allowed. The ruling of the single Justice of this court is set aside. The main application shall be heard by this court on a date we shall notify the parties. Costs will abide the outcome of the application.

Dated, signed, and delivered at Kampala this ^{19th} day of *March* 2020



Fredrick Egonda-Ntende
Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Egonda- Ntende, Barishaki Cheborion & Mutangula Kibeedi, JJA)

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BETWEEN

Jomayi Property Consultants Ltd:.....:Applicant

AND

Andrew Maviiri:.....:Respondent

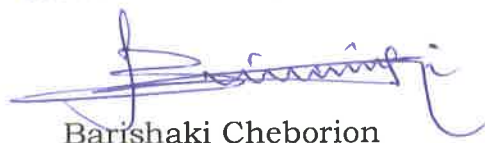
(Reference from a decision of a single Justice of Appeal, Mwondha, JA delivered on 15th September, 2015 at Kampala)

RULING OF BARISHAKI CHEBORION, JA

I have had the benefit of reading in draft the ruling prepared by my learned brother Egonda-Ntende, JA in this application and I agree that the learned single Justice of this Court lacked jurisdiction to strike out the applicant's Notice of Appeal in Miscellaneous Application No. 274 of 2014. Her ruling ought to be set aside.

I also agree with the orders that the main application be heard on its merits by the present panel and the costs abide the outcome of the application.

Dated at Kampala this^{19th} day of ^{March}.....2020



Barishaki Cheborion

Justice of Appeal

THE REPUBLIC OF UGANDA

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AND

Andrew Maviiri=====Respondent

(Reference from the decision of a single Justice of Appeal, Mwendha JA (as she then was), delivered on 15th September 2015 at Kampala.)

Ruling of Muzamiru Kibeedi, JA

I had the advantage of reading in draft the Ruling prepared by my Lord Egonda Ntende, JA and I agree with the reasons and orders he has given.

Dated, signed, and delivered at Kampala this day of
2020

Muzamiru Kibeedi
Justice of Appeal

Muzamiru Kibeedi
19/03/2020