

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO. 301 OF 2018**

(CORAM: R. Buteera, DCJ; C. Bamugemereire & S. Musota, JJA)

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**POST BANK (U) LTD ..... APPELLANT**

**VERSUS**

**WILLIAM BARIGYE ..... RESPONDENT**

10     *(An Appeal arising from the decision of Margaret Oguli Oumo, J, in High Court Civil Appeal No. 53 of 2017 (Civil Division), dated 13<sup>th</sup> September 2018)*

**JUDGMENT OF BUTEERA, DCJ**

**Background**

15     This is a second appeal. The respondent filed Civil Suit No. 1386 of 2016 before the Chief Magistrate's Court of Mengo against the appellant. He sought for UGX 15, 362, 412 (Uganda Shillings Fifteen Million Three Hundred and Sixty-Two Thousand Four Hundred and Twelve) being money paid by the appellant negligently and by mistake of fact from the Directorate of Citizenship and Immigration Control Office meant for the respondent, interest at the rate of 24% from December 2012 until payment in full, general and exemplary damages for negligence, declarations that the respondent is  
20     entitled to a refund of the money and costs.

25     The respondent argued that he had never operated an account with the appellant but there was a different person with the name 'William Baligye' that operated an account with the respondent and it is through this person's account that monies worth UGX 15, 362, 412 from the Directorate of Citizenship and Immigration Control Office meant for the respondent were paid.

The trial Magistrate heard the matter and in her Judgment dated 14<sup>th</sup> February 2017 but delivered on 28<sup>th</sup> April 2017, found in the respondent's favour ordering the appellant to refund the UGX 15, 362, 412, pay interest thereon of 24% per annum from December 2012 until payment in full, to further pay  
5 general damages of UGX 10, 000, 000, exemplary damages of UGX 5, 000, 000 and costs of the suit.

Dissatisfied with that decision, the appellant lodged an appeal to the High Court on 29<sup>th</sup> May 2017 on the following grounds:

- 10 1. That the learned Chief Magistrate erred in law and fact when she failed to properly evaluate the evidence on record and arrived at the following erroneous conclusion:
  - a) That the appellant acted negligently when it diverted UGX 15, 362, 412.
  - b) That the appellant is liable to pay exemplary damages.

15 At the hearing of the appeal, counsel for the respondent raised a preliminary objection that the appeal was filed out of time. Counsel contended that as per the record, judgment was delivered by the trial court on 28<sup>th</sup> April 2017 and the Memorandum of Appeal was filed in court on 29<sup>th</sup> May 2017, contrary to the law which requires appeals from Magistrate Grade One and the Chief  
20 Magistrate to be lodged in the High Court within 30 days from the date of the decree or order. Counsel prayed that the appeal be struck out.

In response, counsel for the appellant submitted that the judgment was rendered on 28<sup>th</sup> April 2017 and the Memorandum of Appeal was filed in court on 29<sup>th</sup> May 2017 which was a Monday. The 30 days run out on 28<sup>th</sup> May 2017  
25 which was a Sunday. Counsel contended that Order 51 Rule 3 of the Civil Procedure Rules directs a person to do an act on the next working date in case time elapses on the date when offices are closed.

The High Court upheld the objection and struck out the appeal for being filed out of time without leave of court. Dissatisfied with that decision, the appellant lodged this Appeal in this honorable court.

### **Grounds of Appeal**

- 5        1. That the learned Judge erred in law when she struck out High Court Civil Appeal No. 53 of 2017 on grounds that it was filed out of time.
2. That the learned Judge erred in law when she failed/ omitted to consider any of the appellant's grounds of appeal.

The appellant sought for orders that:

- 10        a) The appeal be allowed and the ruling and orders of the lower court be set aside.
- b) The matter be referred back to the High Court for hearing before a different Judge on its merit.
- c) The respondent meets the appellant's costs in this Court and all the
- 15        courts below.

### **Representation**

At the hearing of the Appeal, the appellant was represented by Arcadia & Co. Advocates while the respondent was represented by Mr. Justine Semuyaba. The respondent was in Court. Counsel for the appellant not being present in

20        court, Mr. Semuyaba applied to Court to adopt the written submissions that had been filed by both parties. Counsel further pointed out that the respondent had filed a Notice of cross- appeal and asked court to consider it together with the submissions. This Application was granted.

In deciding this Appeal, Court shall consider the written submissions together

25        with other relevant authorities.

## Issues/ grounds to be resolved

At conferencing, counsel for both parties substantially agreed to the following grounds. The third ground was to incorporate the respondent's ground of cross- appeal.

- 5 1. The learned Judge erred in law when she struck out High Court Civil Appeal No. 53 of 2017 on grounds that it was filed out of time.
2. The learned Judge erred when she failed/ omitted to consider any of the appellant's grounds of appeal.
3. The learned appellate Judge erred in law when she failed to strike out the  
10 appellant's appeal for lack of extraction of a decree first.

## Ground 1

### Case for the appellant

Counsel for the appellant cited Section 79 (1) (a) of the Civil Procedure Act which provides that every appeal shall be entered (a) within thirty days of the  
15 date or order of the Court. He also cited Order 51 Rule 3 of the Civil Procedure Rules which provides that in instances where the time for doing any act or taking any proceedings expires on a Sunday, that act or proceeding shall be held to be duly done on the day when the offices shall next be open. He further cited Section 34 (1) of the Interpretation Act that provides for  
20 computation of time.

He submitted that the Judgment of the trial Magistrate having been rendered on 28<sup>th</sup> April 2017 and the Memorandum was filed in court on 29<sup>th</sup> May 2017, since the 30 days expired on 28<sup>th</sup> May 2017 which was a Sunday, 29<sup>th</sup> May 2017 was still in good time. He referred to **William Kyobe v Geoffrey Gatete,**  
25 **Angella Maria Nakigonya, Supreme Court Miscellaneous Application No. 10 of 2005** to support his submission.

Counsel argued that there was no contention as to when the Judgment was rendered or when the Memorandum of Appeal was filed. In his view, a simple



calculation of the days indicated the last day to be a Sunday, 28<sup>th</sup> May 2017 and the Memorandum of Appeal was filed on the next working day, 29<sup>th</sup> May 2017. He thus contended that it was erroneous for the appellate Judge to uphold the preliminary objection and find that the appeal at the High Court had been filed out of time and without seeking leave to appeal out of time. He prayed that this ground be allowed.

### **Case for the respondent**

Counsel submitted that the first appellate Judge was right to decide that the appellant had failed to file an application to seek extension of time within which to file an appeal. He cited Section 79 of the CPA that prescribes that an appeal shall be filed within thirty days of the decree or order of the court. Counsel argued that the learned Judge should have struck out the appeal for failure to extract and serve the respondent with the decree plus a letter requesting for proceedings.

He submitted that under Order 43 rule 1 of the CPR, appeals to the High Court are preferred in the form of a Memorandum of Appeal and under Section 79 (1) of the CPA, the appeal shall be entered in the High Court within thirty (30) days from the date of the decree or order of the court. It was counsel's contention that from the facts on the record, the appeal was filed outside the thirty days.

He argued that a party could only rely on Section 79 (2) of the CPA to exclude the period for the preparation of the record of proceedings if the appellant had applied for the record of proceedings and adduced evidence of this application. He contended that in this case, the appellant never applied for a copy of the proceedings of the lower court. In counsel's view, the appeal was filed prematurely before extracting a decree from the Chief Magistrate's Court.

## Ground 2

### Case for the appellant

Counsel pointed out that the first appellate Judge struck out the Appeal on the 2<sup>nd</sup> ground of the preliminary objection and dismissed the Appeal with costs to the respondent. He argued that the learned Judge was duty bound to hear the grounds of appeal, re- consider and re- evaluate the entire evidence and arrive at her own conclusion. Counsel cited **Kifamunte Henry v Uganda; S.C. Criminal Appeal No. 10 of 1997** that states the duty of the first appellate court. He prayed that this Court finds that the learned trial Judge erred in law in failing to re- consider the evidence as had been placed before her.

### Case for the respondent

Counsel for the respondent submitted that the first appellate Judge having upheld the preliminary objection raised by the respondent, she did not err in omitting to consider any of the appellant's grounds of appeal

## Ground 3

Counsel stated that it was an agreed fact that no decree was extracted. He cited Article 139 (2) and Sections 14 (1) and 16 of the Judicature Act on the appellate powers of the High Court. He also cited Order 21 Rule 1 of the Civil Procedure Rules (CPR) which requires any court after hearing a case to render its judgment which must contain the points for determination, the decision of the case and the reasons for the decision. He referred to Rule 6 which provides that the decree must agree with the judgment.

Counsel was of the view that a decree was a summation of the judgment, citing Section 2 (c) of the Civil Procedure Act that defines a decree to mean a 'formal expression of any adjudication, which so far as regards the Court expressing it determines the rights of the parties with regard to any of the matters in controversy...' He referred to **Tumuhairwe Lucy v Electoral**

**Commission & Tumwebaze Jessica; High Court Electoral Petition Appeal No. 2 of 2011, where Bashaija, J, stated that:**

5                   **“...Clearly, a decree is simply a summary of the court’s decision as to the rights of the parties in controversy...it is in view of these legal stipulations that this fully endorses the position in Mbakaina Mumbere case (supra) that an appeal against a decree is, in the real sense, an appeal against the judgment.”**

10           Counsel submitted that Court further held that the lack of a properly extracted decree was a mere technicality that would not be a ground to strike out a Memorandum of Appeal duly filed in court.

15           He also referred this court to the cases of **Kibuuka Musoke William v Dr. Apollo Kagwa; Civil Appeal No. 46 of 1997, John Byekwaso, Jane Namubiru Nakato v Yudaya Ndagire; High Court Civil Appeal No. 78 of 2012, and Banco Arabe Espanol v Bank of Uganda; Court of Appeal Civil Application No. 42 of 1998.**

20           Counsel contended that any appeal is premised on a party’s grievance and not on the decree but the judgment. He argued that it is the decision and the reasons thereon that create the premise to appeal or not to. He thus argued that a failure to extract a decree cannot be fatal to lead to the striking out of an appeal.

He prayed that the Appeal be allowed with costs.

#### **Case for the respondent**

25           Counsel argued that it was wrong for the first appellate Judge to rule that the appellant’s appeal was properly filed in the High Court without first extracting a decree. He submitted that under Section 220 (1) (a) of the Magistrate’s Courts Act, it is provided that an appeal from the Chief

Magistrate's Court or Magistrate Grade One is from the decree or order from the decision of the trial court.

He referred to the cases of **Kiwege and Mgude Sisal Estates Land v Manilal Ambala Nathwani; Civil Appeal No. 69 of 1952 (Court of Appeal for Eastern Africa); Alexander Morrison v Mohammedrasa Suleman & Anor; Civil Appeal No. 88 of 1952 (Court of Appeal for East Africa); W.T.N. Kisule v Nampera; Civil Appeal No. 110 of 1982 and Robert Biiso v May T. Tibamwenda [1991] HCB 92**. He submitted that an appeal to the High Court must be against a decree which must be extracted and filed together with a Memorandum. That failure to extract a formal decree before filing the appeal was a defect going to the jurisdiction of the court and could not be waived.

It was counsel's argument that this was not a mere technicality which was curable under Article 126 (2)(e) of the Constitution. He prayed that the ground succeeds.

#### **Court's consideration**

This is a matter that started in the Chief Magistrate's Court of Mengo. The appellant appealed to the High Court. The matter coming before us is a second appeal. Our jurisdiction is derived from S. 72 of the Civil Procedure Act. It provides:

#### **"72. Second appeal.**

**(1) Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely that—**

**(a) the decision is contrary to law or to some usage having the force of law;**

**(b) the decision has failed to determine some material issue of law or usage having the force of law;**

(c) a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits.

5 (2) An appeal may lie under this section from an appellate decree passed ex parte."

The duty of a second appellate Court was stated by the Supreme Court in *Kifamunte Henry v Uganda; SCCA No. 10 of 1997*, wherein it was held that:

10 "On a second appeal, the Court of Appeal is precluded from questioning the findings of facts of the trial Court provided there was evidence to support those findings though it may think it possible or even probable that it would not have itself come to the same conclusion; it can only interfere where it considers that there was no evidence to support the finding of  
15 fact this being a question of law."

In executing the above duty to resolve this Appeal, I have carefully studied the record of proceedings and the submissions filed by counsel for both parties. I shall resolve the grounds in the same order as they were submitted on.

20 **Ground 1**

**The learned Judge erred in law when she struck out High Court Civil Appeal No. 53 of 2017 on grounds that it was filed out of time.**

It was the respondent's argument that the appellant failed to file the appeal at the High Court within thirty days as is required by Section 79 (1) of the  
25 Civil Procedure Act, and that as such, the learned appellate Judge rightly dismissed the appeal. Section 79 (1) provides:

**“Except as otherwise specifically provided in any other law, every appeal shall be entered—**

**(a) within thirty days of the date of the decree or order of the court; or**

**(b) within seven days of the date of the order of a registrar, as the case may be, appealed against; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.”**

In this case, it is not in dispute that the Judgment by the Magistrate was delivered on 28<sup>th</sup> April 2017 and that the Memorandum of Appeal at the High Court was filed on 29<sup>th</sup> May 2017. In finding that the Appeal had been filed out of time, the learned Judge held as follows:

*‘Section 79 of the Civil Procedure Act herein is couched in mandatory terms that is by the use of the word ‘shall’ which implies that it is mandatory that it should have been filed within 30 days and the appellant in this case has not given any reason as to why it failed to lodge its Appeal within the mandatory thirty days required by law.*

*Besides that the law permits a party who is out of time to file an Application for leave to Appeal out of time but this was not done here.*

*Having failed to seek for leave to file out of time, I am compelled to find and agree with counsel for the Respondent that the Appeal is incompetent and therefore a nullity.’ (Sic)*

Whereas it is true that Section 79 of the CPA is couched in mandatory terms, the facts of this case are that 28<sup>th</sup> May was a Sunday. That being the case, the appellant was permitted to file the Memorandum of Appeal by 29<sup>th</sup> May 2017. Section 34 of the Interpretation Act, as well as Order 51 Rule 3 of the CPR

provide for situations where time lapses on a date when offices are closed.  
Section 34 provides:

**34. Computation of time, etc.**

**(1) In computing time for the purpose of any Act—**

5       **(a) a period of days from the happening of an event or the  
doing of any act or thing shall be deemed to be exclusive of  
the day in which the event happens or the act or thing is done;**

10       **(b) if the last day of the period is a Sunday or a public holiday  
(which days are in this section referred to as “excluded days”),  
the period shall include the next following day, not being an  
excluded day;**

15       **(c) where any act or proceeding is directed or allowed to be  
done or taken on a certain day, then if that day happens to be  
an excluded day, the act or proceeding shall be considered as  
done or taken in due time if it is done or taken on the next day  
afterwards, not being an excluded day; or**

**(d) where any act or proceeding is directed or allowed to be  
done or taken within any time not exceeding six days, excluded  
days shall not be reckoned in the computation of time.**

20    Order 51 Rule 3 provides:

**“3. Time expiring on Sunday or close day.**

25       **Where the time for doing any act or taking any proceeding  
expires on a Sunday or other day on which the offices are  
closed, and by reason thereof the act or proceeding cannot be  
done or taken on that day, that act or proceeding shall, so far  
as regards the time of doing or taking the act or proceeding,**

be held to be duly done or taken if done or taken on the day on which the offices shall next be open."

The Supreme Court addressed a similar matter in the case of *William Kyobe v Geoffrey Gatete, Angella Maria Nakigonya, Supreme Court Miscellaneous Application No. 10 of 2005*, and found as follows:

This means that the 60 days would run up to 3<sup>rd</sup> June, which we are satisfied by evidence on record, was Friday and a public holiday. In terms of section 34 (1)(b) and (c) of the interpretation act, the filing would have to be done on the next working day. Section 34 reads as follows:

34 (1) "In computing time for the purpose of any Act -

2. if the last day of the period is a Sunday or a public holiday (which days are in this section referred to as 'excluded days'), the period shall include the next following day, not being an excluded day;

2. where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day."

In the circumstances, we are satisfied that the filing of the memorandum of appeal on 6<sup>th</sup> June, 2005 was within the time allowed by law."

In the instant case, it is not in dispute that the last date for filing the Memorandum of Appeal was 28<sup>th</sup> May 2017 and it fell on a Sunday. Naturally, 29<sup>th</sup> May 2017 being the day on which the offices would next be open, the appellant was still in good time to file the Memorandum of Appeal on that



date. As such, I would find that the learned appellate Judge erred when she disregarded both the substantive and procedural law on filing court documents and took the strict interpretation of Section 79 of the CPA. This certainly occasioned the appellant a miscarriage of justice since it took away  
5 a legally-availed remedy. I would, therefore, allow this ground of appeal.

## **Ground 2**

**The learned Judge erred when she failed/ omitted to consider any of the appellant's grounds of appeal.**

I have found under ground 1 that the first appellate Judge erred when she  
10 disregarded the law on computation of time as provided for under S. 34 of the Interpretation Act and Order 51 Rule 3 of the CPR.

Had she rightly applied the law, she would have considered the appellant's appeal on merit. It is, therefore, imperative that High Court Civil Appeal No. 53 of 2017 is heard and decided on merit. This ground of appeal succeeds.

## **Ground 3**

**The learned appellate Judge erred in law when she failed to strike out the appellant's appeal for lack of extraction of a decree first.**

The first appellate Judge found that a decree was a summation of a judgment and that an Appeal against the Judgment, constitutes an appeal against a  
20 decree even if it was not extracted. She further found that extracting a decree in the presence of a judgment on record was a mere technicality.

I would have no justifiable reason to fault the learned appellate Judge's reasoning and finding. Indeed, a look at Section 2 (c) of the Civil Procedure Act, defines a 'decree' as follows:

25 **"decree" means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to any of the**

**matters in controversy in the suit and may be either preliminary or final..."**

'Judgment' is also defined under Section 2 (i) as follows:

**"judgment" means the statement given by the judge of the grounds of a decree or order"**

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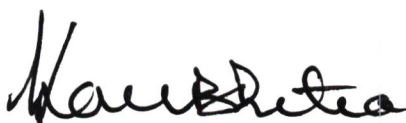
In my view, a decree is an abridged version of the Judgment. That being the case, an appellate court should be concerned with having before it a judgment where it can carefully study the trial court's findings and the reasons for the findings, than just a summary of the same. An appeal by its very nature is against the judgment on a reasoned order. And so, I would not find it fatal that an appeal is filed before extracting a decree. This ground is, therefore, answered in the negative.

15

I would allow this Appeal and reject the cross- appeal. The lower court decision is set aside. The matter is remitted back to the High Court to be heard and determined on its merits before a different Judge. The respondent is to meet the costs of this Appeal and in the High Court.

Dated at Kampala this 23<sup>rd</sup> day of Feb 2023

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Richard Buteera  
Deputy Chief Justice

THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CIVIL APPEAL NO. 301 OF 2018  
(CORAM: R BUTEERA, DCJ, C BAMUGEMEREIRE AND S MUSOTA JJA)

POST BANK (U) LTD :::::::::::::::::::::::::::::::::::APPELLANT

WILLIAM BARIGYE :::::::::::::::::::::::::::::::::::RESPONDENT

(An appeal arising from the decision of Margaret Oguli Oumo J, in the High Court Civil  
Appeal No. 53 of 2017 (Civil Division)  
dated 13<sup>th</sup> September 2018)

**JUDGMENT OF CATHERINE BAMUGEMEREIRE JA**

I have had the privilege to read to draft opinion of my learned brother, the Hon. Justice Richard Buteera, DCJ. I agree with his re-evaluation, reasoning and conclusions. I would decline the cross-appeal and would allow the appeal with costs in this court and in the courts below.



21/02/2023

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Catherine Bamugemereire  
JUSTICE OF APPEAL

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO. 301 OF 2018**

*(Arising from the decision of Margaret Oguli Oumo, J, in High Court  
Civil Appeal No. 53 of 2017 (Civil Division) dated 13<sup>th</sup> September  
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**POST BANK (U) LTD ::::::::::::::::::::::::::::::::::: APPELLANT**

**VERSUS**

**WILLIAM BARIGYE ::::::::::::::::::::::::::::::::::: RESPONDENT**

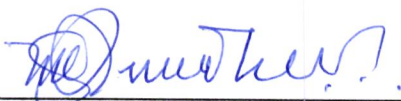
**CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ**  
**HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA**  
**HON JUSTICE STEPHEN MUSOTA, JA**

**JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA**

I have the benefit of reading in draft the judgment by my brother Hon. Justice Richard Buteera, DCJ.

I agree with his analysis, conclusions and the orders he has proposed. I have nothing useful to add.

Dated this 24<sup>th</sup> day of Feb 2023

  
\_\_\_\_\_  
**Stephen Musota**  
**JUSTICE OF APPEAL**