

REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(COMMERCIAL COURT DIVISION)

HCT-00-CC-MA-0537-2005

(Arising from HCT-00-CC-CI-0009-2005)

IN THE MATTER OF THE COMPANIES ACT (CAP 110)

AND

IN THE MATTER OF RANCH ON THE LAKE LIMITED (IN RECEIVERSHIP)

**BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE**

**RULING**

1. The applicant, Ms East African Development Bank, have applied for leave to appeal to the Court of Appeal against a decision of this court providing directions to the Receiver of the Ranch on the Lake Ltd made on the 15<sup>th</sup> day of June 2005. When this application came up for hearing, Mr. Nalyanya, learned counsel acting for the Receiver raised a preliminary objection to the effect that this application was out of time, and should therefore be dismissed. Mr. Adriko, learned counsel for Development Finance Company Uganda Limited, joined in this objection.
2. Mr. Kabatsi, learned counsel for the applicant, submitted that this application is governed by Order 40 Rules 1(2) & (4) and Order 39 of the Civil Procedure Rules, both of which are silent on time. As a result this court should turn to Section 80 of the Civil Procedure Act which provides 30 days within which appeals may be filed. Mr. Kabatsi further indicated that he was aware the Court of Appeal Rules provided for a time period of 14

days but this was extendible. And as the intended appeal involved very important questions of law, this application ought to be heard, and the appeal filed.

3. Rule 39(2)(a) of the Court of Appeal Rules provides,

“where an appeal lies with leave of the High Court, application for leave shall be made informally at the time when the decision against which it is so desired to appeal is given; or failing that application, or if the Court so orders, by notice of motion within fourteen days of the decision.”

4. Section 80 of the Civil Procedure Act provides for the time within which appeals may be lodged, and provides for an opportunity to seek extension of time in case a party is out of time. It directs that such decision for extension of time will be made by the appellate court. It states,

“(1) 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: Provided that the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.”

5. It is for the appellate court to grant extension of time for filing an appeal in respect of those appeals that are governed by Section 80 of the Civil Procedure Act, and these are appeals as of right without leave of the court of first instance. It is not for the court of first instance to make this decision.

6. The applicable rule here is Rule 39(2)(a) of the Court of Appeal Rules. It requires that application for leave to appeal out of time, should be made within 14 days of the decision intended to be appealed from. In this case the decision intended to be appealed against

was made on the 15<sup>th</sup> June 2005. This application was lodged into this court on 11<sup>th</sup> July 2005, more than 14 days since the decision intended to be appealed against was made.

This application is time barred.

7. Mr. Kabatsi submitted that I should disregard this rule suggesting that there are numerous cases where courts have done so. Unfortunately he did not refer me to a particular case. I am not sure that it would be prudent for the High Court not to follow the rules of the Court of Appeal. I can only say I am not persuaded that this is a viable option for this court.
8. Accordingly I find that this application was made out of time and it is accordingly dismissed with costs.

Dated at Kampala this 24<sup>th</sup> day of August 2005.

FMS Egonda-Ntende  
Judge