THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL APPEAL NO 13 OF 2013

[ARISING FROM MISCELLANEOUS CASE NO 27 OF 2011]

NATIONAL SOCIAL SECURITY FUND}..APPELLANT

VERSUS

JOSEPH B BYAMUGISHA T/A}

J.B. BYAMUGISHA AND CO ADVOACTES}................................... RESPONDENT

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Appellant commenced this appeal under section 62 (1) of the Advocates Act and Regulations 3 (1) of the Advocates (Taxation of Costs) (Appeals and References) Regulations for orders that the appeal is allowed and that the orders of the learned Registrar/Taxing Officer in Miscellaneous Cause Number 27 of 2011 is set aside and/or substituted with appropriate orders. The Appellant also seeks for costs of the appeal to be provided for.

The appeal came for hearing on 4 September 2013 when the Respondents Counsel raised preliminary objections to the effect that the appeal was incompetent and could not be maintained. The Appellant is represented by Paul Rutisya of Messrs Kasirye, Byaruhanga and Company Advocates while the Respondent is represented by Counsel Albert Byamugisha of Messrs Byamugisha and Company Advocates.

The objection to the appeal is that the Registrar has no jurisdiction to enlarge time within which to file the appeal out of time. Secondly that HCCS number 526 of 2012 which was filed on the basis of a bill of costs has a decree of the High Court and the appeal against the Taxing Officer's ruling, if it succeeds, will have the effect of setting aside the decree.

Subsection 2 of section 60 Advocates Act provides that:

> "The certificate of the Taxing Officer shall unless set aside or altered by the court be final as to the amount of costs covered thereby and the court may make such orders in relation thereto as it thinks fit, including in a case where retainer is not disputed, an order that judgment be entered for the judgment certified to be due with costs."

The Respondent's bill of costs was taxed by consent of parties by the Taxing Officer on the 28th August 2012 whereupon the bill was certified. Under section 62 (1) of Advocates Act Cap 267, the Appellant had 30 days within which to file an appeal against the Taxing Officer's decision but did not do so. The Respondent filed a suit to recover the taxed costs and the decree was satisfied on 7th May 2013 pursuant to garnishee proceedings. Subsequently the Appellants were granted leave by the Registrar on the 6th of June 2013 to appeal out of time and filed the appeal within 2 weeks thereafter. The Respondent's objection is that Section 62 (1) of the Advocates Act was considered in the case of **Makula International vs. Cardinal Nsubuga [1982] HCB 11** where the Court of Appeal held that courts have no jurisdiction to enlarge time fixed by statute. Furthermore Counsel relied on the case of **Attorney General vs. Kamoga [2008] 2 EA** pages 3 and at page 10 thereof where the Supreme Court of Uganda held that the Registrar is not a subordinate court to the High Court for appeal purposes. The powers of a Registrar of the high court are circumscribed and Registrars can only exercise powers delegated to them under Order 50 of the Civil Procedure Rules.

Lastly the Appellant filed MA 792 of 2012 to set aside the decree in High Court civil suit 526 of 2012 and the application was dismissed by Hon. Justice Musene on the 5th of April 2013.

In reply Counsel Paul Rutisya submitted on the question of whether the Registrar had jurisdiction to extend the fixed time of 30 days prescribed by section 62 (1) of the Advocates Act within which an aggrieved person by the order of the taxing master awarding costs may appeal. Secondly he submitted on the issue of whether the decree can only be set aside by way of appeal or review.

On the objection relating to powers of the court to extend time limited by statute, Counsel submitted that this issue was dealt with by Hon. Justice Masalu Musene in **High Court Civil Appeal No. 19 and 20 of 2012.** As far as the case of **Makula International** (supra) is

concerned, it was considered by the Supreme Court in **Sitenda Sebalu vs. Sam Njuba and Another Election Petition Appeal No. 26 of 2007.** In that case the Supreme Court departed from the holding in **Makula International** (supra) that the court has no jurisdiction to extend time fixed by statute. The Appellants Counsel argued that the Supreme Court gave a relaxed interpretation of specific timelines set by statute. In that case an application for extension of time was granted.

Counsel further submitted that they appeared before Hon. Justice Wilson Masalu Musene and his Lordship at page 7 stated that application for extension of time should first be handled by the Registrar and referred the file to Registrar. At that point the Respondent ought to have objected to the extension of time. No appeal was filed against the decision extending time. MA 855 of 2012 went back to the court that issued the decision. Secondly the Appellants Counsel contends that the case of **Makula International** (supra) is inconsistent with the constitution which came over a decade after that decision was made. By the time it was decided article 126 (2) (e) had not yet come into force. Secondly the Supreme Court in the **Sitenda Sebalu** case (Supra) departed from it. Thirdly Section 62 (1) provides that a person may appeal within 30 days to a judge of the High Court. The word “may” in the section demonstrates that the section it is not mandatory. The objection was improperly before the court. The Respondent ought to have appealed or sought review of the order of the Registrar of the High court.

The Appellants Counsel further submitted that section 96 of the Civil Procedure Act, gives this court wide powers for enlargement of time. Therefore the Registrar had jurisdiction to entertain and grant an application for enlargement of time or grant the orders in that application. The Respondent had two opportunities to raise objection to jurisdiction but did not do so. On the 6th of June 2013 when the order was made, the Respondent did not use the available avenue to challenge the orders. The court should therefore disregard the point of law on the question of jurisdiction of the learned Registrar.

On the second point of law the Appellants Counsel submits that taxation between advocate and client are unique proceedings. The Advocates Act provides particular procedure for it and for its enforcement. Section 62 of the Act provides that any person dissatisfied “may appeal” from that decision. The Appellants were dissatisfied and appealed from the decision of the Taxing Officer as prescribed. Regulation 3 (1) of the Advocates (Taxation of Costs) Appeals and References

Regulations provides that the appeal shall be by chamber summons supported by affidavit as prescribed. High Court Miscellaneous Application No 285 of 2013 which is an application for leave to appeal the decision of Justice Wilson Musene is still pending. Counsel prayed for the objections to be overruled with costs and the appeal heard on merit.

In reply Counsel Albert Byamugisha submitted that the Appellant's Counsel had made reference to **civil appeals 19 and 20**. The two appeals were filed two days out of time. In that ruling and in overruling the objections the learned judge in his ruling stated that there would be no prejudice caused to the Respondent. Each case must be decided on its own facts. Jurisdiction is not about prejudice or facts. Once an appeal is incompetent, it should be struck out. The ruling is further the subject of an appeal.

Secondly it is not true as submitted that the Supreme Court in the **Sitenda Sebalu** case (Supra) departed from the earlier decision in **Makula International vs. Cardinal Nsubuga** (supra). Nowhere in that judgment did the Supreme Court overrule the earlier decision. On the other hand the **Sitenda Sebalu case** dealt with Election Petitions Act on the question of service of a petition within 7 days on the Respondent under section 62 of the Parliamentary Elections Act. It gave the court powers to enlarge time appointed by the rules namely rules 6 and 19 of the Parliamentary Elections (Election Petition Rules). At page 126 courts held that the court had powers to enlarge time and the question is whether 62 of the principal Act ousted the jurisdiction to enlarge time. They referred to section 93 which gave the Chief Justice power to make rules on practice and procedure. By giving the Chief Justice Power to make rules and the Chief Justice did make the rules for enlargement of time, nothing was superfluous or ultra vires. Furthermore Counsel submitted that he could not have raised the objection earlier because on that day the Registrar granted the order proceedings show that he was not in court. Secondly the decision of a judge does not confer jurisdiction which is a creature of statute.

As far as the contention that the decision was in **Makula International** (supra) was made before the promulgation of the 1995 Uganda Constitution and article 126 (2) (e) thereof, the question of time limits is not a matter of technicalities but substantive law.

On the second point of law, a taxation decision is a decision of this court. A decree was extracted and has been satisfied. There is therefore nothing to appeal. They can only appeal the decree of the court. In the circumstances Counsel prayed for dismissal of the appeal with costs

Ruling

I have carefully considered the objections raised by the Respondents Counsel and the submissions of both Counsels on the objections raised. I have further considered the authorities relied upon.

I will start with the first point raised in objection which is whether the Registrar had powers to extend the time prescribed by section 62 (1) of the Advocates Act within which an aggrieved party may appeal from a taxation decision of a taxing master. If it is established hereinafter that the Registrar had no jurisdiction to extend the time as he did for the Appellant's appeal to be filed over five months out of time, the appeal would fail and there would be no reason to consider the other points raised in objection and reply thereto.

The applicants Counsel submitted that the question of the appeal being filed after extension of time within which to appeal ought to have been raised in **Civil Appeal Number 19 of 2012 between National Social Security Fund vs. Joseph Byamugisha T/A J.B. Byamugisha**. The said appeal was argued before my learned brother Hon. Mr. Justice Wilson Masalu Musene. In the appeal it was contended that the appeal ought to have been filed within 30 days but it was filed one day late. The honourable judge decided that no prejudice had been caused to the Respondent because the appeal was filed in just one day late. He distinguished the case of **Makula International Ltd** (supra) on the ground that in those cases the appeal had been filed several months after expiry of the statutory period. The learned held that the use of the word "may" under section 62 of the Advocates Act did not render the provision mandatory but discretionary. Finally the honourable judge felt bound by the decision of the Supreme Court in the case of **Sitenda Sebalu vs. Sam Njuba and the Electoral Commission**, which he held overruled, the ratio decidendi in **Makula International Ltd versus His Eminence Cardinal Nsubuga and another [1982] HCB 11 on the** question of extension of time to the effect that courts have no jurisdiction to extend limitation periods fixed by statute. Furthermore the honourable judge held that the provisions of section 62 of the Advocates Act were directory in

character and the court had powers to enlarge the time contained therein. He relied on the powers of the court under section 96 of the Civil Procedure Act to enlarge the time provided for doing anything as prescribed by section 96 of the Civil Procedure Act. He consequently overruled the preliminary objection with costs in the cause.

The Respondent's contention on the other hand is that the decision is the subject of an appeal to the Court of Appeal. It is evident from the ruling availed to court that the decision was delivered on the 20th of March 2013. The affidavit in support of the appeal in paragraph 10 thereof avers that the learned Registrar his worship Thaddeus Opesen granted leave for the Appellant to appeal out of the time prescribed by section 62 of the Advocates Act. The leave was evidently granted after the 7th of May 2013 according to a letter attached to the affidavit in support, paragraph 8 thereof from Standard Chartered bank complying with the order of the court attaching from the Appellant's account a sum of **Uganda shillings 428,438,894/=**. The decision extending time was therefore in line with the ruling of honourable Justice Wilson Masalu Musene.

The present matter is however a separate matter arising out of an appeal from a taxation decision, a suit to enforce it and the decree thereof that led to the recovery of **Uganda shillings 428,438,894/=** from the Appellant's account. It is not in dispute that the Respondent pursuant to the taxation of the Registrar awarded taxed costs on 28 August 2012 in Miscellaneous Cause Number 27 of 2011 of **Uganda shillings 379,816,359/=** against the Appellant. This appeal was filed on 14 June 2013. The specific objection of the Respondents disputes the jurisdiction of the Registrar to extend time within which the Appellant could appeal under section 62 (1) of the Advocates Act.

I am not bound to follow the decision of my learned brother honourable justice Wilson Masalu Musene if I believe that it is conflict with the judgment of a Higher Court among other grounds. I will therefore carefully consider the matter on the merits with the greatest to respect my brother judge. I will consider the objection on the merits having in mind decisions of Higher Courts which are binding and interpretation of that decision.

I will start with the statutory provisions. Appeals and references from a Taxing Officer’s decision are governed by section 62 of the Advocates Act cap 267 laws of Uganda. Particularly section 62 (1) which provides as follows:

"Any person affected by an order or decision of a Taxing Officer made under this Part of the Act or any regulations made under this Part of the this Act may appeal within 30 days to a judge of the High Court who on that appeal may make any order that the Taxing Officer might have made."

Before making any comments on the above quoted provision, section 62 (1) of the Advocates Act was considered in the case of **Makula International Ltd versus His Eminence Cardinal Nsubuga and another reported in [1982] HCB at page 11** and must receive first attention**.** It was considered in a decision of the Court of Appeal which was the highest appellate court at that time and was delivered on 8 April 1982. The Court of Appeal considered whether courts have jurisdiction to enlarge the time prescribed by section 62 (1) of the Advocates Act for an aggrieved party by a Taxing Officers decision to appeal out of the prescribed time. The Court of Appeal in the digest of this case at paragraph 11 said as follows:

"A court has no residual or inherent jurisdiction to enlarge a period of time laid down by statute and therefore the judge's order extending the time within which to appeal, several months after the expiry of the statutory period, was made without jurisdiction, was a nullity and would be set aside. The appeal heard from this order was consequently incompetent.

The background of the decision was that it concerned an appeal against a taxation award by a Registrar of the High Court, to a High Court judge which was objected to on the ground that it was time barred. It was submitted that an appeal had to be filed within 30 days according to section 61 (1) (revised section 62 (1)) of the Advocates Act and the appeal was dismissed for being time barred. On further appeal, it was submitted that the court had jurisdiction to enlarge time to file the appeal outside the stipulated 60 days. The Court of Appeal disagreed hence the holding that the court has no residual or inherent jurisdiction to enlarge a period of time laid down by statute.

It was submitted for the Appellant in this case that the decision in **Makula International versus His Eminence Cardinal Nsubuga** (supra) has been overruled by a subsequent case decided by the Supreme Court of Uganda namely the case of **Sitenda Sebalu vs. Sam K Njuba and another Election Petition Appeal Number 26 of 2006.** The facts of the Election Petition

Appeal were that the trial judge refused an order to extend time within which to serve the notice of presentation of an election petition. Notice of presentation of the appeal had been filed out of time. The contentious provision considered by the court is found under section 62 of the Parliamentary Elections Act 2005 quoted in the decision as follows:

> *"Notice in writing of the presentation of petition accompanied by a copy of the petition shall, within seven days after the filing of the petition, be served by the petitioner on the Respondent or Respondents, as the case may be."*

The court noted that the provision is repeated in the rule 6 (1) of the Parliamentary Elections (Election Petition) Rules which provides that within seven days after the filing of the petition, the petitioner or his or her advocate shall serve on each Respondent notice in writing of the presentation of the petition, accompanied by a copy of the petition. Finally rule 19 of the same rules provides and the court quoted the same as follows:

> *"The court may of its own motion or on application by any party to the proceedings, and upon such terms as the justice of the case may require, enlarge or abridge the time appointed by the rules for doing any act if, in the opinion of the court, there exists certain special circumstances as make it expedient to do so."*

The trial judge relied on the case of **Makula International Ltd versus His Eminence Emmanuel Cardinal Nsubuga** (supra) to hold that he had no jurisdiction to extend time. Reference was made by the Supreme Court to a constitutional court ruling in which they considered the case of **Makula International** (supra) to the effect that the ratio decidendi was that if there was no statutory provision or rule which gives the court discretion to extend or abridge the time set by statute, then the court has no residual or inherent jurisdiction to enlarge the period of time laid down by the statute. The Constitutional Court decision referred to is the case of **Besweri Lubuye Kibuka vs. Electoral Commission and Another Const Petition No. 8 of 1998**. The Supreme Court in **Sitenda Sebalu** (supra) concluded after considering some decisions on whether an enactment with imperative directives should be considered directory or mandatory that breach of section 62 of the Parliamentary Elections Act would not render any act done in disobedience of the enactment void. In other words they held that the provision was directory and not mandatory. Secondly in the same statute particularly section 93, the Chief

Justice in consultation with the Attorney General was given the mandate to make rules of practice and procedure under the Parliamentary Elections Act. Consequently legislature authorised the making of the rules and rule 6 of the Parliamentary Elections (Election Petitions) Rules which provided for seven days within which to serve the notice of presentation of the petition read together with rule 19 which permitted the enlargement of time for service gave the court jurisdiction.

I have carefully considered the decision of the Supreme Court. The Supreme Court never overturned the judgement of the court in **Makula International versus Cardinal Nsubuga** (supra) and I respectfully disagree with the ruling of my learned brother already referred to in the case of **National Social Security Fund versus Joseph Byamugisha civil appeal number 19 of 2012.** This is a question of fact. It is a question of fact that the ruling of the Supreme Court was that because legislature empowered the Chief Justice to make rules for the better carrying out of provisions of the Act, and the Chief Justice made rules for enlargement of time, the court had jurisdiction to enlarge time under the rules made in the circumstances of that case. The Supreme Court agreed with the judgement of the Constitutional Court on the same issue. The Constitutional Court had agreed with **Makula International** (supra) that where there was no statutory provision or rule which gives the court discretion to extend or abridge the time set by statute or rule, then the court has no residual or inherent jurisdiction to enlarge the period of time laid down by the statute or law. In other words the decision in **Makula International versus Cardinal Nsubuga** (supra) is still good law.

Secondly learned Counsel for the Appellant submitted that section 62 (1) was directory. I do not agree with the classification of this section as directory. With the greatest respect to the decision of my learned brother Hon. Justice Wilson Masalu Musene, the effort of the courts to consider whether a statute is mandatory or directory arises from an effort to consider whether an act done in disregard of a statute with an imperative command should be rendered void or not. Where the courts hold that a statutory provision is mandatory, anything done in disregard of the statutory provision is null and void and of no legal effect. If the courts find that the provision is directory, then anything done in disregard of the statutory provision can be saved. The underlying matter to be considered is whether the provisions of the statute are couched in imperative terms. Secondly there has to be an act done in disregard of the statute which the court need to consider for a

finding of whether the disregard of an imperative legislative command renders the act done in disregard null and void. The underlying statute normally has a legislative command and this is evident from the case of **Cullimore v Lyme Regis Corporation [1961] 3 All ER 1008** at page 1011 where Edmund Davis J quotes from Maxwell on the Interpretation of Statutes. He said:

> Other cases may provide some assistance in determining what the general principles to be applied are, and those general principles are conveniently stated in summary form in Maxwell On Interpretation Of Statutes (10th Edn), at p 376:
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> > *"It has been said that no rule can be laid down for determining whether the command is to be considered as a mere direction or instruction involving no invalidating consequence in its disregard, or as imperative, with an implied nullification for disobedience, beyond the fundamental one that it depends on the scope and object of the enactment … A strong line of distinction may be drawn between cases where the prescriptions of the Act affect the performance of a duty and where they relate to a privilege or power. Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred, and it is therefore probable that such was the intention of the legislature. But when a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative." (Emphasis added).*

There are three clear elements that I need to highlight in the principles applied by courts to determine whether a statutory command is directive or mandatory. There are firstly that there has to be a legislative command or directive. Secondly whether a disregard of the directive will have no invalidating consequence or lastly whether disregard renders the act done in disobedience of the command or directive null and void.

A provision of the statute is couched in imperative terms if it uses words like "shall". In the case of **Sitenda Sebalu** (supra) the court underlined the word "shall" in section 62 of the Parliamentary Elections Act. It went ahead to consider whether the provision because of the use of the word "shall" was mandatory or directory. For emphasis the provision reads as follows:

> *"Notice in writing of the presentation of petition accompanied by a copy of the petition shall, within seven days after the filing of the petition, be served by the petitioner on the Respondent or Respondents, as the case may be." (Emphasis added)*

Section 62 (1) of the Advocates Act on the other hand reads as follows:

> *"Any person affected by an order or decision of a Taxing Officer made under this Part of the Act or any regulations made under this Part of the this Act may appeal within 30 days to a judge of the High Court who on that appeal may make any order that the Taxing Officer might have made." (Emphasis added)*

The provision merely provides that any person aggrieved by an order or decision of the Taxing Officer made under the Act may appeal within 30 days to a judge of the High Court. The discretionary right of appeal is conferred on the aggrieved person. In other words, the person may or may not appeal. The provision is not couched in imperative terms. The prescription of 30 days within which to appeal is the limitation period prescribed by Parliament within which to exercise the right of appeal. *It is a period prescribed by Parliament within which an aggrieved party may exercise their right to appeal.* There was no directive for an act to be done by the Registrar under the statute. The Appellant did not disregard the Statute but applied for extension of time limited to file its appeal. The Registrar merely purported to exercise jurisdiction to extend time within which the aggrieved party could appeal. He did not disregard the statute as such but purported to exercise powers of extension of time. It is therefore purely a question of jurisdiction and not whether the statutory provision should be considered mandatory or directory. The issue is whether the Registrar had jurisdiction to extend a limitation period prescribed by statute. None of the actors purported to act outside the limitation period. The application for extension of time recognises that the limitation period has to be complied with otherwise anything done outside it is a nullity. Once the period of limitation runs out, the question of jurisdiction is whether the court can extend the period. Under the Limitation Act Cap 80 section

21 thereof there is provision for pleading disability where a party is prevented by disability from filing an action within the prescribed period and the principle is that the period of limitation does not run during the existence and continuance of the disability. The period prescribed by section 62 (1) of the Advocates Act is a limitation period prescribed by Parliament.

In the previous cases namely that of **Besweri Lubuye Kibuuka vs. Electoral Commission and Another Constitutional Appeal No 8 of 1998,** the question considered was power to extend time where it is provided that something "shall" be done within the specified time under the Parent Act. The Constitutional court found that rule 19 of the Parliamentary Elections (Election Petition) Rules gave the court powers to extend time. In other words the court had discretional powers to extend time.

First of all the case of **Makula International versus Cardinal Nsubuga [1982] HCB 11** has not been overturned and it is still good law. It is good law because it confirms the principle of separation of powers. It is legislature which prescribed 30 days within which to appeal. Parliament did not deem it fit under the Advocates Act to prescribe an enabling provision for the extension of time by the courts of law. It is of constitutional importance that the inherent jurisdiction of the High Court is to be exercised in conformity with the written law. There are two major legal provisions to be considered in that regard. The first legal provision is article 139 (1) of the Constitution of the Republic of Uganda which provides as follows:

> *"The High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or any other law."*

The unlimited original jurisdiction is qualified by any other law prescribed by Parliament as envisaged by article 139 (1) of the Constitution. Consequently the unlimited jurisdiction is also qualified by section 14 of the Judicature Act. Section 14 (2) of the Judicature Act provides as follows:

> *"Subject to the Constitution and this Act, the jurisdiction of the High Court shall be exercised*

(a) in conformity with the written law, including any law in force immediately before the commencement of this Act;

(b) subject to any written law and in so far as the written law does not extend or apply, in conformity with –"

Any powers of the High Court for the application of the common law and doctrines of equity or any established custom or usage by which an extension of time may hide under unlimited powers are subject to the written law. Written law is enacted by Parliament. To enlarge the time prescribed by Parliament without an enabling provision permitting the court to do so would be judicial legislation. In the case of **Sitenda Sebalu vs. Sam K Njuba and another** (supra) the court concluded that Parliament had under section 93 of the Parliamentary Elections Act enabled the Chief Justice to make such rules inclusive of rule 19 of the Parliamentary Elections (Election Petitions) Rules which conferred jurisdiction and discretion on a trial judge to enlarge the time prescribed by the rules. The Supreme Court said as follows:

"Rule 6 of the Parliamentary Elections (Election Petition) Rules, therefore, is neither ultra vires nor superfluous. It is in conformity with the said statutory mandate. Consequently, the discretion under rule 19 for enlarging the time "appointed" for service of the notice, is applicable to rule 6. Accordingly, in respectful disagreement with the learned trial judge and Justice of Appeal, we found that the trial court had jurisdiction to hear and determine the Appellant's application for extension of time."

The court clearly considered whether the rule was in conformity with what Parliament had enacted. This is the same principle that flows from section 14 of the Judicature Act. Any unwritten powers of the High Court are subject to the written law.

I have further considered section 96 of the Civil Procedure Act provides as follows:

"*96. Enlargement of time*

Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge that period, even though the period originally fixed or granted may have expired."

The first part of this section deals with the period of time fixed or granted by the court for the doing of any act prescribed or allowed by the Civil Procedure Act. It is important to note that legislature is clear that where the court has fixed a period of time as enabled by the Civil Procedure Act, it may at its own discretion from time to time enlarge that period even though the period originally fixed or granted may have expired. Section 96 of the Civil Procedure Act does not enable the court to enlarge time prescribed by statute. It only enables the court to enlarge any period of time fixed by the court itself as enabled by the Civil Procedure Act.

In the premises, the decision of **Makula International versus Cardinal Nsubuga digested in [1982] HCB at page 11** is binding on me and is good law. In that case it has been held and I agree that the court has no residual or inherent jurisdiction to enlarge a period of time laid down by statute. In the same judgement it was held that an illegality once brought to the attention of the court overrides all questions of pleadings, including any admissions made thereon. Whether the matter was not raised before does not matter. What matters is that it has been raised in a completely different appeal and can be considered on its merits as to whether the appeal is competent. It is a substantive defence to the appeal.

The honourable Registrar had no jurisdiction in accordance with the binding authority of **Makula International versus Cardinal Nsubuga digested in [1982] HCB at page 11** referred to above, to extend the time under section 62 (1) of the Advocates Act within which the Appellant could appeal. The act of the Registrar extending the time is a nullity and of no legal effect and is contrary to judicial precedents from the highest court of the land namely the law on the point as laid down by **Makula International versus Cardinal Nsubuga digested in [1982] HCB at page 11**.

In the premises, the Appellant's appeal is time barred and is dismissed with costs.

Ruling delivered in open court this 18th of October 2013

Christopher Madrama Izama

Judge

Ruling delivered in the presence of:

Paul Rutisya for the Appellant

Albert Byamugisha for the Respondent

No parties in attendance

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

18th October 2013