THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

CIVIL APPEAL NO 14 OF 2014

(ARISING FROM MENGO CIVIL SUIT NO 895 OF 2011)

TIGHT SECURITY LTD}.....APPELLANT

VERSUS

1. **CHARTIS UGANDA INSURANCE COMPANY LTD}**
2. **BRAZAFRIC ENTERPRISES LTD}.....RESPONDENTS**

BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA

JUDGMENT

The Appellant appealed against the judgment and decree of the Chief Magistrates Court Mengo dated 1st of March 2013 giving judgment for the Respondent/plaintiff in the lower court for Uganda shillings 5,796,190/= and US$7061 as special damages and general damages of Uganda shillings 4,500,000/= with interest at 20% per annum from the date of filing the suit and from the date of judgment respectively till payment in full plus costs of the suit. A decree was subsequently issued on 3 April 2013.

The first ground of appeal is that the learned Chief Magistrate erred in not finding that the breach (if any) upon which the Respondents based their claim against the Appellant was expressly covered by an exemption clause in the security/guarding contract and clause 9 thereof. The second ground is that the trial magistrate erred in fact and in law in holding that there was a fundamental breach of the Security Guard/Services Contract between the second Respondent and the Appellant which entitles the second Respondent to exercise its rights to repudiate the contract. The third ground is that the trial Chief Magistrate erred when he failed to properly evaluate the evidence on the court record and thereby came to a wrong decision in entering judgment for the Respondents. Fourthly the Appellant avers that the trial magistrate erred in law and fact in granting the first Respondent damages in excess of the sum of Uganda shillings 2.5 million set out in the Security/Guarding Services Contract already settled by the Appellant at the time of the judgment. Lastly it is averred in the memorandum of appeal that the learned trial magistrate erred in fact and law in granting the Respondents the reliefs set out in the judgment. The Appellant seeks for orders that the appeal is allowed and the judgment and orders of the lower court is set aside and substituted with an order dismissing the Respondent's suit with costs.

The appeal is jointly handled by Messieurs Kibeedi and Company Advocates and Messieurs Ambrose Tibyasa and Company Advocates. The Respondents on the other hand were represented Messieurs Barugahare and company advocates. Both the Appellant and the Respondent's Counsels addressed the court in written submissions.

In the written submissions of the Respondents, there is a preliminary objection on the competence of the appeal which has to be handled the first. As far as the preliminary point of law is concerned the issue is whether the Appellant's appeal is competent. The Respondents Counsel submitted that the Appellant's appeal is incompetent as it contravenes provisions of law. Namely under section 79 (1) (a) of the Civil Procedure Act, every appeal shall be entered within 30 days of the date of the decree or order of the court. The decree was issued on 1 March 2013 which is also the date of the judgment. Under Order 21 rules 7 of the Civil Procedure Rules a decree shall bear the date on which the judgment was delivered. The appeal ought to have been lodged by 31 March 2013 which is within 30 days. The Respondents Counsel contends that the appeal was lodged on 20 June 2013 long after the 30 days had elapsed. The memorandum of appeal is dated 20th of June 2013. In those circumstances the appeal is incompetent except if it had been lodged with the leave of court. The Appellant did not seek such leave. In the case of **Maria Onyango Ochola and others versus J Hannington Wasswa [1996] HCB 43** it was held that an appeal filed out of time without the leave of court is incompetent. This is also the case in **Hajj Mohammed Nyanzi versus Ali Segne [1992 – 1993] HCB 218** that an appeal filed out of the prescribed time would be struck out as incompetent. Counsel invited the court to follow the above to decisions and strike out the appeal with costs in this court and in the court below.

In reply the Appellant's Counsel submitted that the appeal is not incompetent or filed out of time. The Appellants Counsel maintained that the Respondents Counsel deliberately avoided the provisions of section 79 (2) of the Civil Procedure Act which provides that in computing time for the filing of an appeal, the time taken by the registrar in making a copy of the decree or order appealed against or the proceedings upon which it is founded shall be excluded. As far as facts are concerned the judgment of the lower court was delivered on 1 March 2013 and the decree extracted and sealed by the court on 3 April 2013. Section 79 (2) of the Civil Procedure Act enjoins the court which passed the decree to extract it and that the time in extracting the decree shall be excluded in computing the period of limitation for filing an appeal. The decree was extracted on 3 April 2013 and the time taken to extract it shall not be reckoned in computing the limitation period.

On 1 March 2013 when judgment was passed, the applicant immediately requested in writing for the court to avail it with certified copies of the proceedings and judgment and a copy of the request was served on the Respondents Counsel. The letter requesting for judgment and a copy of the record of proceedings is part of the record. It is apparent from the court record that certified copies of the proceedings as requested for by the Appellant have never been availed and indeed the record upon which this honourable court is proceeding is not certified. However the

authenticity of the record has not been disputed by the Respondents. Counsel therefore submitted that even if the Appellant had not filed the memorandum of appeal to date, she would still be within the time allowed to file the same as time had not yet started running. Owing to the vigilance of the Appellant and a desire for expeditious hearing and disposal of the appeal, the Appellant filed the memorandum and record of appeal before certification by the court. The case of **Onyango Ochola and others versus Hannington Wasswa (1996) HCB 43** supports the Appellant's case because it was held that the Appellant needed to formally and specifically request for a certified copy of the proceedings in order to benefit from the exemption under section 79 (2) of the Civil Procedure Act.

There is no evidence on the record of appeal that the Chief Magistrates Court of Mengo completed and availed certified copies of proceedings to the Appellant. The time for lodging the memorandum of appeal can only be reckoned after the Chief Magistrate has availed certified copies of the proceedings and judgment to the Appellant as requested for. Counsel further invited the court to adopt the holding of justice Egonda-Ntende in **James Motoigo t/a Juris Office versus Shell (U) Ltd Miscellaneous Application Number 0068 of 2007** where he held that the computation of the 30 days prescribed by section 62 of the Advocates Act within which to file an appeal should be reckoned from the date the registrar of the court notifies the litigant and the court record is ready for collection. In interpreting the law prescribing the time, the court takes into account the dictates of the Constitution which guarantees and entrenches the right to a fair hearing under article 28 (1) of the Constitution. In that case it was held that the Appellant can only have a fair hearing in the necessary records were availed by the registrar to the litigant.

In the premises the Appellants Counsel submitted that section 79 (2) of the Civil Procedure Act and article 28 (1) of the Constitution of the Republic of Uganda gives the Respondent burden to discharge to prove that the appeal was incompetent. They have to show that after the Appellant applied for a certified true copy of the proceedings and judgment by letter dated 1st of March 2013, the court did prepare and certified the proceedings requested for. Secondly the court thereafter either availed certified proceedings and judgment of the Appellant or notified the Appellant in writing that the proceedings and judgment requested for had indeed been prepared by the court and was ready for collection. Thirdly in the case where the Appellant is notified in writing, that the proceedings and judgment requested for had indeed been prepared by the court and are ready for collection and that the Appellant was in fact served with the letter of the Chief Magistrate notifying it that the proceedings were ready for collection. Finally that the appeal was filed after the lapse of 30 days from the date the Appellant received proceedings after a notification letter from the Chief Magistrate to collect the proceedings.

Resolution of the issue on the competence of the Appeal

Section 79 (1) of the Civil Procedure Act provides that except as specifically stipulated in the Act or any other law, every appeal shall be entered within 30 days from the date of the decree or order of the court or within seven days from the date of the order of the registrar as the case may

be appealed against and the appellate court may for good cause admit an appeal though the period of limitation prescribed by the section has elapsed. Specifically section 79 (2) provides as follows:

> "In computing the period of limitation prescribed by this section, the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded."

The Appellant's case is that there is evidence in the record of appeal availed to the court that the Appellant applied for a copy of the record of proceedings and the letter was served upon the Respondent. Consequently the time taken for preparation of the record ought to be excluded in accordance with section 79 (2) of the Civil Procedure Act. The letter referred to by the Appellants Counsel applying for a copy of the proceedings can be found at page 275 of the record of proceedings. The letter is dated 22 April 2013 and the stamp shows that it was received on 22 April 2013 by the court. The Appellants Counsel writes that the defendant was dissatisfied with the judgment of the court and wishes to appeal. Part of the letter reads as follows:

> "In that respect, we hereby apply for a certified copy of the judgment and typed proceedings in the above matter".

At page 272 there is a decree indicating that judgment had been delivered on 1 March 2013 in the presence of Counsels for the plaintiff and the defendant. The decree was issued on 3 April 2013. At page 274 there is a letter dated 1st of March 2013 requesting for a copy of the record of proceedings.

The Respondents Counsel relied on Order 21 rules 7 (1) of the Civil Procedure Rules which provides that:

> "A decree shall bear the date of the day on which the judgment was delivered."

As a question of fact the decree extracted has the date on which the judgment was passed. It shows that judgment was passed on 1 March 2013. However it is endorsed by the Chief Magistrate on 3 April 2013. A reading of section 79 (2) of the Civil Procedure Act shows that the time taken for the preparation of the decree shall be excluded in computing the period of limitation prescribed by section 79 (1) (a) of the Civil Procedure Act of 30 days. The subsection is problematic in that under section 79 (2) of the CPA uses the conjunctive "and" between the decree appealed against and the proceedings upon which it is founded. Specifically the provision provides in part as follows: "*the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded"* in other words both the time taken for making a copy of the decree and of the proceedings upon which it is founded shall be excluded. Obviously the decree had been issued on 3 April 2013 about a month later. The decree ought to have been issued together with a copy of the proceedings. However, the Appellants Counsel applied for a record of proceedings again on 22 April 2013 roughly 19 days after the issuance of the decree. The decree was issued after

the Appellant applied for it on the 1st of March 2013. Instead the Appellants Counsel on 22 April 2013 again applied for a certified copy of the judgment and typed proceedings upon which it was founded.

It is further Appellants Counsel's submission that the certified record of proceedings is not available but a typed record was availed without objection from the Respondent. There is no indication as to when the record was availed even though it is not certified. It is my humble opinion that in light of the limitation period of 30 days under section 79 (1) (a) of the Civil Procedure Act, the Appellant ought to have applied for the record of proceedings before the limitation period expired which application it made on the 1st of March 2013. The question is whether the date of the decree is the date envisaged under section 79 (2) of the Civil Procedure Act. In other words should time be reckoned from 3 April 2013 which is the time when the decree was prepared and endorsed by the Chief Magistrate? The Appellants Counsel would like the court to rely on the letter applying for a certified copy of the judgment and proceedings after the decree has been issued for purposes of excluding the time to be taken or already taken in preparation of the certified copy of the judgment and proceedings.

There are two problems with this approach. The first problem is that the Chief Magistrate issued the decree from a judgment. The judgment is part of the record of the court but is undated. The decree shows that judgment was delivered on 1 March 2013. There is no specific document indicating when the record was availed to the Appellant. The memorandum of appeal however shows that the appeal was lodged on 20 June 2013. This is more than 30 days after the decree dated 3rd of April 2013. Strangely the Appellants Counsel submits that there has to be both evidence of an application for record of proceedings as well as evidence of the time of supply of the record. In the Court of Appeal Rules, the record of proceedings has to be applied for within a prescribed period. There is no similar provision under the Civil Procedure Act. It is only logical that the application for the record of the proceedings has to be made before the expiry of the limitation period. The limitation period can be reckoned from 1 March 2013 for purposes of the application for a record of proceedings. This is because judgment according to the decree at page 272 of the record was delivered in the presence of the Appellant's Counsel as well as the Respondents Counsel on 1 March 2013. Counsel does not have to wait for the decree to issue more than a month later on 3 April 2013 to start reckoning the time for applying for a record of proceedings. Indeed the applicants Counsel applied for the record of proceedings on the 1st of March 2013 but later on purported to apply again on the 22 April 2013 after the decree was availed.

I have duly considered the authorities relied upon on the question of computation of time. The first authority reviewed is that of **Godfrey Tuwangye Kazzora vs. Georgina Katarikwenda [1992 – 1993] HCB 145** in which honourable Justice Karokora J (judge of the High Court as he then was) considered the issue of whether an appeal to the High Court from the Magistrate Grade 1 was time barred. He held that the time for lodgement of appeal does not begin to run against

the intended Appellant until the party receives a copy of the proceedings against which he intends to appeal. An application for leave to appeal out of time was filed in the court before proceedings of the lower court had been typed and secured by the Appellant. The application for leave to appeal out of time was subsequently struck out. The court held that the time does not run against the Appellant until after the supply of a copy of the record of the lower court. The court did not consider whether it was necessary to apply for a copy of the record of proceedings for an intending Appellant to rely on the provisions of section 79 (2) of the Civil Procedure Act which provides that the time required to prepare a copy of the decree or order and record of proceedings in which it is founded shall not be taken into account in reckoning the limitation period for lodging appeals. The case on the face of it gives a blanket right of appeal from the time the record is availed even if it is availed without request for a copy of proceedings.

Subsequent judgments however considered the issue of whether it is necessary to apply for a record of proceedings in order to secure the benefit of section 79 (2) of the Civil Procedure Act which excludes the period taken for preparation of the record in computing the limitation period under section 79 (1) and (a) of the Civil Procedure Act.

In the case of **Evaristo Mugabi vs. Attorney General [1992 – 1993] HCB 169** honourable Justice Mukanza J, dealt with an application for extension of time to appeal to the Supreme Court. The court however considered the powers of extension of time of the court under section 79 (2) of the CPA which provides as follows:

> "(2) In computing the period of limitation prescribed by this section, the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded."

However an application for the record of proceedings of the High Court is specifically provided for under the Judicature (Court of Appeal) Directions. Rule 83 (2) of the Judicature (Court of Appeal) Directions specifically provides that an application for the record of proceedings shall be made within 30 days from the date of judgment/decree for a party to exclude the period of time necessary for preparation of the record of appeal in the computation of the limitation period of 60 days within which an appeal is to be lodged. There is however no similar provision under the Civil Procedure Act and the Civil Procedure Rules governing appeals from the Chief Magistrates Court to the High Court. Two decisions suggest that the application for a record of proceedings may be necessary. The first one is the judgment of honourable Justice Tinyinondi in **Hajji Mohammed Nyanzi versus Ali Segne [1992 – 1993] HCB 218**. In that case the honourable judge held that an appeal is to be instituted within 30 days under section 80 (1) of the Civil Procedure Act (which is now section 79 (1) of the revised Civil Procedure Act). Secondly, he held that the Appellant failed to prove that at any time he applied for a copy of the decree (not even the judgment and proceedings). He had no proof of date of receipt of the decree and ought to have filed his appeal latest on 29th of November 1986 which is 30 days after the date of judgment. Instead he filed the appeal on 3 December 1986 out of time. He had not applied for or

obtained the leave of court file the appeal out of time. In the judgment which is the summary of the ruling of the court, it is not apparent whether the court deemed it necessary for the Appellant to apply for the record of proceedings and the judgment. It had been argued by the Appellants Counsel that the time for filing an appeal does not begin to run until the intending Appellant has been supplied with the record of proceedings and a copy of the judgment and decree. It is not apparent from the ruling whether it is up to the court to avail the intending Appellant of the record of proceedings without an application therefore. It is however illogical for the court to hurry and prepare a record of proceedings if there is no intention to appeal against the judgment and decree. It is therefore implied and logical to infer that the record of proceedings will be prepared upon the application of the intending Appellant.

Lastly I have considered the judgment of the High Court in **Civil Appeal Number 37 of 1985 between Maria Onyango Ochola and Others vs. J Hannington Wasswa** and another also reported in **[1996] HCB 43**. I have had the opportunity of reading the detailed judgment of honourable Justice JWN Tsekooko, Judge of the High Court as he then was. In that case the Respondents Counsel submitted that the appeal was incompetent because there was no evidence justifying belated filing of the memorandum of appeal on the ground that the periods of delay between the filing of the notice of appeal and the filing of the memorandum of appeal was necessary to obtain a typed copy of proceedings. The court held that a notice of appeal does not commence an appeal in the High Court from the judgment of the Magistrate's Court. An appeal is commenced by a memorandum of appeal lodged in the High Court. Specifically on the matter under consideration the honourable judge held that the notice of appeal filed did not specifically say that the Appellants desired to get a copy of proceedings before instituting an appeal or filing a memorandum of appeal. Secondly the memorandum of appeal did not state that the delayed filing was caused by the non-availability of a copy of the proceedings of the Chief Magistrate. The court observed that there ought to be an application for proceedings. The court found that the appeal was incompetent.

In conclusion on the issue of whether the appeal is incompetent, for an Appellant to rely on the provisions of section 79 (2) of the Civil Procedure Act to exclude the period for the preparation of the record of proceedings, it must be shown that the applicant/Appellant had applied after the date of the judgment for a copy of the proceedings. The application would also serve as notice to the Magistrate's Court of the intending Appellant's intention to lodge an appeal against the judgment and decree. Indeed the applicant in this appeal applied for a copy of proceedings of the lower court. However the related issue is whether the application can be made after the periods of limitation has expired. A further issue is whether the time for making the application should be reckoned from the date of the judgment or the time of issuance of the decree. The first observation in this is that the decree arises from the judgment. Section 79 (2) of the Civil Procedure Act excludes the possibility of time for applying for a copy of record of proceedings running from the making of a copy of the decree or order appealed against. This is because it assumes that the copy of the decree or order appeal against and the proceedings upon which it is

founded shall be availed to the intending Appellant and the time taken for preparation of the decree or order appeal against and of proceedings against in which it is founded shall be excluded.

In other words the application for a record of proceedings ought to be made before the decree is availed. The 30 days limitation period is reckoned from the time of availing the decree or order and proceedings upon which it is founded. Of course the decree could have been prepared by the successful party immediately after the judgment. That cannot detract from seeking for a copy from the court together with the proceedings upon which the decree/order is founded.

It is my further conclusion that it is necessary to give notice to the court that there would be an intended appeal to enable the lower court to commence the process of preparing and certifying the decree or order and the proceedings upon which it is founded. Consequently the time to apply for a copy of the record of proceedings has to be within 30 days from the date of judgment to avoid the time of 30 days limitation period from expiring before the application for a record of proceedings is made. This is precisely the problem of the Appellant. An application for a copy of the proceedings was made immediately on the 1st of March 2013 in compliance with the law and good practice. However another application was made more than 30 days from the date of judgment which was delivered on 1 March 2013. The Appellant instead applied within 30 days from the date the decree was issued which was on 4 April 2013 more than a month after the judgment. This second application for a record of proceedings was made on 22 April which is about 50 days from the date of the judgment. In the most logical case scenario based on the application made for the record on the 1st of March 2013, time for lodging the memorandum of appeal ought to be reckoned from the date of the decree in terms of section 79 (2) of the Civil Procedure Act.

I am persuaded that an application for a record of proceedings cannot be made after the expiry of the limitation period. It would be absurd and doing damage to the intention of legislature for the limitation period of 30 days prescribed under section 79 (1) (a) of the Civil Procedure Act to expire before applying for a copy of the record of proceedings. Last but not least section 79 (1) (a) of the Civil Procedure Act provides that every appeal shall be entered within 30 days of the date of the decree or order of the court. The use of the word "decree" or "order" may suggest that the date of the decree or order of the court is different from the date of the judgment. In the most absurd and extreme interpretation, the date of the decree or order appealed against may be the date when the record of proceedings was availed to the intending Appellant under section 79 (2) of the Civil Procedure Act. However the above is an absurd interpretation in light of the provisions of Order 21 rules 7 (1) of the Civil Procedure Rules which provides that the decree shall bear the date of the day on which the judgment was delivered. When this is read together with section 79 (1) (a) of the Civil Procedure Act, it becomes very clear that the date of the decree or order is the date of the judgment. This may be distinguishable as a matter of fact and

not law from the date when the decree and record of proceedings is availed to an intending Appellant under section 79 (2) of the Civil Procedure Act.

In the premises, the applicant's application for the record of proceedings which was made in about 50 days from the date of judgment cannot be relied upon as evidence of an application for the record of proceedings. The only application which the applicant made for record of proceedings is the one dated 1st of March 2013. In that letter found at page 274 of the record of appeal the appellant's lawyers wrote that their client was dissatisfied with the decision of the court delivered on 1 March 2013. Consequently the appellant applied through counsel to be availed a certified true copy of the record of proceedings and judgement to enable them take appropriate action. More than one month later a decree was extracted by the Respondents lawyers and is signed by the Chief Magistrate on 3 April 2013. The copy of the decree on the court record shows that the Appellant's lawyers received the decree on 5 April 2013. Thereafter the Appellant again applied on 22 April 2013 for a copy of the record of proceedings. In the premises there is no evidence whatsoever as to when the record of proceedings was supplied. The Appellants Counsel has argued that the record requested for has not yet been supplied. Secondly the appellant's counsel argues that time can only begin to run or be reckoned after a supply of a certified record of proceedings which has not yet occurred. Yet the Appellant's Counsels filed a memorandum of appeal and lodged it on the court record on 20 June 2013. Section 79 (2) of the Civil Procedure Act provides that the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded. The record of proceedings has been availed to the Appellant's without evidence of when it was supplied. For the Appellant to rely on section 79 (2) of the CPA it is absolutely necessary to specify when the record was supplied. Without such evidence, the provision is incapable of application for purposes of excluding the time taken for preparation of the record.

I have additionally perused the record. The record comprises of four pages and a few lines in each page. The record shows that they were three appearances before judgement was delivered. The first appearance is dated 21st of September 2011 when the suit was fixed for scheduling on 15 November 2011. On 15 November 2011, the defendants counsel did not appear and the court fixed the matter for 12 January 2012 for hearing. Finally the record shows that the next appearance was on 6 March 2012. On that day counsels informed court that the only issue for trial was whether the second plaintiff is entitled to compensation in excess of the sum of Uganda shillings 2,500,000/= set out in the limitation clause contained in the security guard services agreement. They proposed to file written submissions on that issue only. The parties indeed filed written submissions. The plaintiffs written submissions indicated that they relied on the documents attached to the plaint and the written statement of defence which were all admitted. No witnesses were called to testify. Finally the judgement of the court can be found at page 265 of the record of proceedings and is a six-page typed judgement.

For the appellant to rely on the time to be taken for preparation of the record of proceedings, it is incumbent upon it to supply the court with the time when the record was availed. It is not sufficient to state that the record has not yet been availed. In the absence of evidence, the court will rely on the record of proceedings availed by the appellant as the court record. At page 272 the record shows that the appellant's lawyers received the decree of the court on 5 April 2013. The decree had been endorsed by the Chief Magistrate on 3 April 2013. Due to the scanty nature of the proceedings and the fact that the parties filed a joint scheduling memorandum agreeing on the facts and documents and informing the court that they would not adduce any witness testimonies, there is no record to talk about which the appellant is still waiting for since applying for a record of proceedings on 1 March 2013. The only record is the record filed with the memorandum of appeal. I must note furthermore that the record complies with the requirements of section 79 (2) of the Civil Procedure Act in that it is a copy of the proceedings upon which the decree or order appealed against is founded. I should further note that section 79 (2) of the Civil Procedure Act does not require the production of a copy of the judgement but only a copy of the decree or order and the proceedings upon which it is founded. Secondly it does not provide for a certified copy of the decree and certificate. Certification is merely good practice since the original file can be sent for by the High Court.

I am emboldened in this approach by Order 43 rule 1 (1) of the Civil Procedure Rules which provides that every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant. Secondly Order 43 rule 1 (2) of the Civil Procedure Rules provides that the memorandum shall set forth concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative. It strongly suggests that an appeal lies from a decree. This is consistent with the wording of section 79 (2) of the Civil Procedure Act which specifies that time shall be excluded for the preparation of the decree or order appealed from and the proceedings upon which it is founded. The conclusion that an appeal is preferred from a decree or order is further strengthened by the provisions of Order 43 rule 10 of the Civil Procedure Rules. Order 43 rule 10 (1) provides that where a memorandum of appeal has been lodged, the High Court shall send a notice of the appeal to the court from whose decree the appeal is preferred. Thirdly Order 43 rule 10 (2) provides that the court receiving the notice shall send with all practical dispatch all material papers in the suit, or such papers as may be specifically called for by the High Court. Furthermore Order 43 rule 10 (3) of the Civil Procedure Rules provide that:

> "Either party may apply in writing to the court from whose decree the appeal is preferred, specifying any of the papers of the court of which he or she requires copies to be made; and copies shall be made at the expense of and given to the applicant on payment of the requisite fees."

Copies of papers may be made after lodgement of a memorandum of appeal which commences an appeal in the High Court. Consequently upon receipt of the decree, the appellant ought to

have lodged an appeal by filing a memorandum of appeal and subsequently apply for the record of proceedings or apply for such copies of documents as may be necessary. This is further in view of the fact that there were no oral testimonies and submissions were made on the basis of documents supplied by the parties. This comprised of the scheduling memorandum executed by both counsels and admitted documents. Because it is not the requirement to wait for a copy of the judgement in terms of section 79 (2) of the Civil Procedure Act, it was sufficient for the decree to be availed. In the premises time shall be reckoned for purposes of lodging a memorandum of appeal from the date of the decree under section 79 (2) of the Civil Procedure Act.

The conclusion is that an application for the record of proceedings upon which the decree or order is founded cannot be made after the period of limitation of 30 days has expired. Secondly an application for the record of proceedings has to be made within 30 days or at least before expiry of the limitation period. Thirdly the period of limitation for purposes of an application for a record of proceedings has to be reckoned from the date of judgment to avoid a situation where an application is made by the intending Appellant after expiry of the limitation period. It is clearly the intention of Parliament that time of limitation begins to run from the date of judgment until and unless it is necessary for the record to be availed. The record cannot be availed in every case but in cases where there is an intention to appeal against the order or decree of the Chief Magistrate or Magistrate Grade 1. The only way the lower court can be aware of an intention to appeal against the decree or order is through an application for the record of proceedings made before the expiry of the limitation period. Secondly the court can be made aware after lodging the memorandum of appeal under Order 43 rule 1 and 10 of the Civil Procedure Rules when the High Court sends a notice of lodgement of the appeal. Where the limitation period has expired before an application for a record of proceedings has been made, it is necessary to apply for extension of time within which to lodge the appeal. Lastly where an application has been made for the record of proceedings, time does not begin to run for purposes of the limitation periods under section 79 (1) (a) of the Civil Procedure Act and under the provisions of section 79 (2) of the Civil Procedure Act until after a copy of the decree or order appeal against and of the proceedings upon which it is founded has been prepared and availed to the intending Appellant.

In this case the decree was availed to the Appellant who ought to have lodged an appeal within 30 days from 5 April 2013. Thereafter the Appellant was at liberty to apply for copies of necessary documents at their own cost. The memorandum of appeal was lodged on 20 June 2013 about 45 days out of time reckoned from the date of the decree or availing of the decree to the intending appellant.

In the premises I agree with the Respondent’s Counsel that the Appellant's appeal is incompetent for the reasons set out above the appeal is accordingly struck out with costs.

Judgment delivered in open court this 24th day of January 2014

Christopher Madrama Izama

Judge

Judgment delivered in the presence of:

Patrick Alunga for the respondent

Waisswa Salim appears for the Appellant

Godfrey Mbigiti Appellants Legal Assistant in court

Charles Okuni: Court Clerk

Christopher Madrama Izama

Judge

24th January 2014