

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA
(COMMERCIAL DIVISION)**

**MISCELLANEOUS APPEAL NO 97 OF 2014
(ARISING FROM MISC. APPLICATION NO. 477 OF 2013)
(ARISING FROM CIVIL SUIT NO 222 OF 2013)**

**UGANDA GINNERS & COTTON EXPORTERS
ASSOCIATION LTD & 11 OTHERS APPLICANTS**

VERSUS

MUDDU AWULIRA ENTERPRISES LIMITEDRESPONDENTS

BEFORE: LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

By this appeal made under S.98 C.P.A., 0.50 rule 8 C.P.R the Applicant sought orders of this court allowing the appeal with costs, the Respondent to be ordered to pay the deficient filing fees and security for costs and that the judge hears and determines other issues of law raised in Misc. App. 477/13, as if the same were referred under 0.50 rule 7 C.P.R and dismisses HCCS 222/13.

The grounds of the application are set out in the motion and I do not find it necessary to repeat them for purposes of this ruling. Suffice it to state that the application was supported by the affidavit of Dr. John Jean Barya.

The application was filed on 28.02.14. It was opposed by the Respondents through an affidavit sworn by Peter Allan Musoke; one of the Counsel for the Respondents, filed on 08.04.14.

When the application was called for hearing on 07.05.14, Counsel for the Respondent raised a preliminary objection that the appeal was time barred as it was filed on 20.02.14, yet the ruling sought to be appealed from was delivered on 12.02.14.

He argued that under S.79 (1) (b) Civil Procedure Act, an appeal must be filed within 7 days from the date of the order of the Registrar. That in this case, the 7 days elapsed and yet there was no formal application to extend time within which to appeal.

He prayed for dismissal of the appeal with costs.

Opposing the objection, Counsel for the Applicant contended that when raising the objection, rule 8 of 0.51 C.P.R. was not taken into account. He pointed out that; the rule is to the effect that, when computing time, the first and last day should be included. That in this case, the appeal was filed on the last day and was therefore within time.

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However, Counsel for Respondent referred to S.34 (1) (a) of the Interpretation Act – which is to the effect that in computing time for purposes of any Act – **“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 happened or the act or thing is done”**.

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He argued that the appeal was still out of time. The order was delivered on 12.02.14 and time began to run on 13.02.14 and elapsed on the 19.02.14. He reiterated earlier prayers.

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At this point, second Counsel for the Applicant who swore the supporting affidavit sought to participate in making submissions. But Counsel for the Respondent vehemently objected on the ground that the same Counsel had adduced evidence in the matter by way of affidavit. And that, it is trite law that an Advocate will not represent party at the bar; where he himself has adduced evidence.

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Court stopped the impugned Counsel from participating in the proceedings whereupon the other Counsel insisted that S.34 Interpretation Act conveys the same meaning as the rule relied upon and is therefore in their favor.

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The issue for court to determine is: **whether the appeal from the ruling of the Registrar was filed out of time without leave.**

Any appeal from the order of a Registrar must be filed within 7 days from the date of the order of the Registrar appealed against- S.7 A (1) C.P.A.

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In the present case, the ruling of the Registrar was delivered on 12th day of February, 2014 and the appeal was filed on 20.04.12.

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From 12.02.14 to 20.02.14 there was a period of 9 days. However, 0.52 rule 2 C.P.R clearly excludes Sundays and other public holidays in the computation of the limited time within which certain acts should be done. With the exclusion of Saturday 15.02.14 and Sunday 16.02.14 from the computation – the appeal of the Applicant was filed within 6 days from 12.02.14. Since S.34 (1) of the interpretation Act excludes the day the ruling was delivered.

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For those reasons, I find that the appeal was filed within time and would accordingly overrule the objection of Counsel for the Respondent. I agree with Counsel for the Applicant that S.34 (1) (a) of the Interpretation Act is in their favor.

The Applicants complied within the requirements of the law.

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Before I take leave of this ruling, I wish to comment about second Counsel for the Applicants' wish to represent his client at the bar despite that he swore an affidavit in support of the appeal.

As pointed out during the hearing, this was unacceptable as looking at the supporting affidavit, it is clear that the matter is contentious and the possibility of Counsel being cross examined could not be ruled out. It was therefore only appropriate that he did not involve himself in the hearing.

5 – See R. 9 Advocates (Professional) Conduct Regulations, S1 267 – 2.

As stated earlier and for the reasons given, the preliminary objection is overruled. The appeal should be fixed for hearing.

10 Costs will abide the outcome of the Appeal.

Flavia Senoga Anglin

JUDGE

15 **16.05.14**