

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

**MISCELLANEOUS APPEAL NO 6 OF 2016**

**(Arising from Misc Application No. 8 of 2016)**

**(Arising from HCCS No. 50 of 2013)**

**NATIONAL RESISTANCE MOVEMENT}.....APPELLANT**

**VS**

**KAMPALA MODERNITY & PRINTERS LTD}.....RESPONDENT**

**BEFORE HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA**

**RULING**

This ruling arises from a preliminary objection on the competence of an appeal filed by the Appellant from the judgment and decree of the registrar under Order 13 rules 6 of the Civil Procedure Rules. An appeal lies to the High Court from the orders of the registrar under Order 50 rule 8 of the Civil Procedure Rules. When the appeal came for hearing Counsels Geoffrey Ntambirweki Kandebe and Oscar Kihika Counsels represented the Appellant while Counsels Fred Muwema appearing together with Counsels Charles Nsubuga, and Anne Karungi represented the Respondent.

Counsel Fred Muwema objected to the appeal on the ground that the matter was brought to the High Court by way of an appeal when it ought to have come by way of an application to set aside an ex parte judgment and on that basis the appeal ought to be dismissed with costs.

Submissions of the Respondents Counsel in objection:

Counsel Fred Muwema, the Respondents Counsel submitted that the appeal is incompetent. He contended that the notice of motion seeks to set aside the orders of the learned registrar dated *Decision of Hon. Mr. Justice Christopher Madrama Izama* \*~\*~?+: maXimum728securityx 2016 style

29th of January 2016 where judgment on admission was entered against the Appellant. The law is that a party who is aggrieved by a judgment entered by a registrar should move court under order 9 rule 12 of the Civil Procedure Rules. Order 9 rules 12 of the Civil Procedure Rules provides that where judgment has been entered by the registrar in cases under Order 50 of the Civil Procedure Rules, the court may set aside or vary the judgment upon such terms as may be just. The rule is specific to judgments entered by the registrar under order 50. Judgment was entered by the registrar under order 50 rules 10 of the Civil Procedure Rules which gives registrar additional powers to enter judgment on admission under Order 13 rules 6 of the Civil Procedure Rules. The other window available to a party aggrieved by a judgment of the registrar is Order 9 rule 27 of the Civil Procedure Rules. Any decree passed *ex parte* against a party may be set aside on the grounds stated therein.

The Respondent's Counsel contended that there is a dedicated procedure which the Appellant would have followed to obtain redress. The orders under which an appeal can lie are found in order 50 rules 10 of the Civil Procedure Rules. They exclude the order in respect of judgment on admission because in that situation the rules have provided a remedy. Order 50 rules 8 provides that a person aggrieved by any order of the registrar may appeal to the High Court and the appeal shall be by motion on notice. Order 50 rules 8 must be read together with the other provisions of the rule in particular Order 50 rule 10 of the Civil Procedure Rules which gives registrar power to enter judgment on admission, Order 9 rule 12 of the Civil Procedure Rules, which provides for setting aside judgment by registrar and order 9 rules 7. Order 50 rules 9 cannot be read in isolation. To do so would be to render an improper and inchoate interpretation of the rules. Rules of Statutory Interpretation require that the provisions of the statute should be read together to enable the rule of harmony, completeness and exhaustiveness in interpreting the statute. The same rules of interpretation require that where there are several provisions of statute having a bearing on the same subject they should be read and considered together to give it full meaning and intent. We emphasise that the intention of the framers of the rules was that in specific situations where judgment was obtained before the registrar a party must apply to set aside the judgment. The Respondents Counsel relied on the case of **Nicholas Roussos vs. Gulam Hussein Habib Virani & Nazmudin Habib Virani** in SCCA No 9 of 1993. The Supreme Court considered the rules before revision namely Order 9 rules 11 and 24 of the Civil Procedure Rules

which are currently Order 9 rules 12 and 27 of the Civil Procedure Rules respectively. The Supreme Court observed that there are specific provisions in the law to set aside ex parte judgments (See also Speaker of National Assembly vs. Karume Court of Appeal of Nairobi (Volume 1 Kenya Law Reports 2008 and 425)). They found that where there is a clear procedure or any particular procedure prescribed by law that procedure should be strictly followed. An appeal was dismissed because the Appellant had not followed the procedure prescribed by law. He prayed that the court finds the appeal and proceedings there under incompetent and dismisses it with costs. The Respondents Counsel further submitted that the Appellant should exhaust the procedure in the manner prescribed by law.

### **Submissions of the Appellants Counsels in reply:**

In reply Counsel Oscar Kihika submitted that the objection has no merit and ought to be overruled with costs. As a matter of law Order 50 of the Civil Procedure Rules which provides for powers of registrars and rule 8 thereof specifically provides that any person aggrieved by any order of a registrar may appeal from the order to the High court. He argued that the rule canvasses all orders issued by the registrar under his powers in that order. The orders the registrar has jurisdiction to make are particularised in order 50 rules 10 of the Civil Procedure Rules This includes entering judgment on admission as was done in the matter the subject matter of the appeal. Judgment on admission is covered by Order 13 rules 6 of the Civil Procedure Rules. This is contrasted with orders entered by a registrar under Order 9 rule 10. Under Order 9 rule 10 of the Civil Procedure Rules, orders are entered ex parte. There is a difference between an ex parte order and judgment on admission. Where an ex parte order is entered the party can set aside the ex parte order or judgment under order 9 rule 12 of the Civil Procedure Rules.

The Appellant's Counsel submitted that a judgment on admission has an effect of finality and the only route open to a person aggrieved is to appeal it. That procedure is provided for by the law under Order 50 rules 8 of the Civil Procedure Rules. He further contended that the submission of the Respondents Counsel is incorrect because the procedure used is provided for. For those the above reasons he prayed that the objection is overruled with costs.

In further opposition to the preliminary objection Counsel Kandebe Ntambirweki submitted that the objection on the submission that the Appellant could not appeal but had to move under Order 9 rules 12 or 27 of the Civil Procedure Rules is misconceived. The principles applicable under rule 12 are different from those under rule 27 of the Civil Procedure Rules and this was held in **Attorney General vs. James Mark Kamoga and another** (supra). Order 9 of the Civil Procedure Rules is specific to particular situations. The registrar enters judgments after complaints have been served and defences have not been filed. In this case there is no summons or specific number of days for the defence to be filed. Counsel wishes to compare notice of motion to proceedings upon a complaint. While in a complaint a Defendant is obliged to put in pleadings on defence, in motions there is no requirement to file a defence. One only files an affidavit in reply which is not a pleading but evidence. The motion may not be taken as pleadings until such a time when the court moves the court. Motion and application is made only when the court is moved. He further submitted that Order 9 rule 27 of the Civil Procedure Rules is applicable where a defence has been filed and a party is served with hearing notice and the matter proceeds ex parte. In this case there was none of the judgments under Order 9 of the Civil Procedure Rules. As to the rule of harmony of statutes the Respondent's Counsel is taking the court to the usual principles of constitutional interpretation which is unnecessary in these kinds of cases. Order 50 rule 8 of the Civil Procedure Rules is clear. The registrar is not the High Court. The decisions of registrar can be reversed under Order 9 rules 12 of the Civil Procedure Rules by being set aside. There is a specific rule outside order 50 which says that once orders are made they are challenged under that order.

Order 13 of the Civil Procedure Rules does not have a specific rule to set aside judgment entered by registrar on admissions. Once Counsel is faced with that it is open to him to proceed by way of appeal under Order 50 rules 8 of the Civil Procedure Rules. Counsel Kandebe further submitted that the Respondent wants the court to believe that there is an ex parte decree. The rule under which the Order was made characterises it as a judgment on admission. Ex parte judgments are provided for only under Order 9 rules 6 – 10 of the Civil Procedure Rules. He contended that there was no ex parte proceeding. The Appellant was summoned and appeared through Counsel. The proceedings were therefore not ex parte proceedings. Furthermore when a

party is determining whether to appeal or not, during proceedings there are several orders made by court and the party is at liberty to appeal immediately or wait to appeal at the end.

Kandebe further argued that Order 50 the Civil Procedure Rules has not been revised or amended. The Practice Direction conferring more powers on a registrar mentions the Orders and rules of the Civil Procedure Rules which the registrar can entertain. For instance if one proceeded under Order 22 rule 11 of the Civil Procedure Rules how would one challenge it? Or if objector proceedings are brought one proceeds under Order 22 rules 55 of the Civil Procedure Rules. The powers of registrar under order 50 are not necessarily intertwined under order 9 of the Civil Procedure Rules. The decision concerns Order 13 of the Civil Procedure Rules where there is not procedure. It was open to the Appellant to appeal to this court. In the premises the objection is misconceived and should be overruled with costs.

In rejoinder Counsel Fred Muwema submitted that the reply to the preliminary objection should be found wanting in merit. He wondered under what circumstances Order 50 rules 8 would apply. He submitted that the wondering stops right at rule 10 of Order 9 of the Civil Procedure Rules. There are so many other instances where one can appeal under i.e. appeal from adjustment and withdrawal of suits, arrest before judgment and security and costs. The objection does not intend to render Order 50 rule 8 of the Civil Procedure Rules redundant. The order was applicable in appropriate situations. There is ample jurisprudence from this court on setting aside judgments. That jurisprudence indicates that the correct procedure is to apply to set aside in the court which made the order. Since there is jurisprudence on setting aside judgments it would render Order 9 rule 27 of the Civil Procedure Rules inapplicable and confine that jurisprudence to redundancy if the matter proceeded as an appeal. The Respondent's Counsel observed that nothing has been said to offer a formidable challenge to the mandatory provisions of order 9 rules 12 which are not waived or varied by the powers given to the registrar. Rules of statutory interpretation apply to constitutions and other statutes as well. On the other hand the Appellants Counsel never cited any rules of interpretation. In the end the court should find that to promote harmony, the rules of interpretation submitted on should be followed. Because the Appellant preferred an appeal which is fundamentally different from an application it should be dismissed.

The Respondent's Counsel further submitted that his learned friend dwelt into submissions that affidavits are not pleadings. In *Stop and See vs. Tropical Africa Bank*. We do not agree that rule 12 of Order 9 of the Civil Procedure Rules applies only to the precedent rules of Order 9. It also applies to judgments entered under Order 50 of the Civil Procedure Rules. Rule 12 envisages judgments made by the registrar under rule 50 and Order 9 rule 12 became applicable to a judgment as soon as it was entered by the registrar under order 50 of the Civil Procedure Rules. The only way a registrar could invoke powers under order 13 rules 6 was because of the Practice Direction 2002 expanding his powers.

On the submission that because a judgment espouses finality the proper remedy is to appeal, there is also finality envisaged under Order 9 rules 6 – 10 of the Civil Procedure Rules. The question is why an appeal was not provided for? The proper procedure is to apply to set it aside and not to appeal.

The law should be maintained. Even if an appeal is dismissed the Applicant can come back through filing the appropriate application and the objection should be upheld.

## **Ruling**

I have carefully considered the objections to the appeal by the Respondent's Counsel as well as the submissions in reply of the Appellant's Counsel. The crux of the objection is that the appeal is incompetent because the Appellant ought to have filed an application to set aside the judgment of the registrar rather than appeal against the judgment.

The submissions of Counsel are sufficiently set out above and I do not need to repeat it here in detail. The real question is whether the appeal is incompetent and ought to be struck out (not dismissed as submitted by the Respondent's Counsel). The crux of the objection is that there ought to have been an application to set aside the judgment under Order 9 rule 12 of the Civil Procedure Rules rather than an appeal. Rule 12 of Order 9 provides as follows:

*"Where judgment has been passed pursuant to any of the preceding rules of this Order, or where judgment has been entered by the registrar in cases under Order 50 of these Rules, the court may set aside or vary the judgment upon such terms as may be just."*

The contention of the Respondent is that a judgment on admission under Order 13 rule 6 of the Civil Procedure Rules is a judgment entered by the registrar under Order 50 of the rules and therefore the correct procedure is to apply under Order 9 rule 12 of the Civil Procedure Rules to have it set aside. The objection proceeds from the premises that by the **Judicial Powers of Registrars Practice Direction Number 1 of 2003** Order 50 of the Civil Procedure Rules was amended to expand the jurisdiction of registrars to deal with matters under several other Orders of the Civil Procedure Rules other than those which were prior to the Practice Direction of 2003 specified under order 50. Specifically the Practice Direction allows registrars to handle judgment on admissions. The revised rule is Order 13 rules 6 of the Civil Procedure Rules. The submission rests on the proposition that the Practice Direction expanding the powers of registrar's amended Order 50 of the Civil Procedure Rules to include powers of registrars to handle applications for judgments on admissions under Order 13 rule 6 of the Civil Procedure Rules.

On the other hand the Appellant's position is that the judgment on admission is a judgment on the merits under Order 13 rule 6 of the Civil Procedure Rules and the correct procedure to be used by the aggrieved party if to appeal it.

I have carefully considered the law. The Respondents Counsel submitted that there was a wealth of jurisprudence on the matter. I have however not found a single case he referred to and cases referred to in that authority dealing with a matter where judgment is entered under Order 13 rule 6, namely a judgment on admission applied for by one of the parties to the suit whereon there was an application to set it aside or to appeal it. In the premises the objection raises novel questions of law which may be determined for the first time though similar case scenarios may be referred to in this ruling. With reference to the judicial authorities cited the case of **Nicholas Roussos versus Ghulam Hussein Habib Virani and another SCCA Number 9 of 1993**, the matter concerned an ex parte judgment entered against the Respondents under Order 9 of the Civil Procedure Rules. There was an application to set aside the ex parte judgment. The trial judge held that the application was properly made and thereafter the Appellant appealed. The Defendant had been served through substituted service through advertisement in the local newspapers and the Respondent did not respond to the process and the suit was set down for

hearing ex parte. The facts of that case are clearly very different from the facts before this court and upon which a preliminary objection has been raised.

In this case there is a judgment on admission after pleadings had been completed and there is a written statement of defence. The judgment proceeded upon an application for judgment on admission under Order 13 rule 6 of the Civil Procedure Rules. The issue before the court was whether the application to set aside should have been made under Order 9 rule 24 (revised rule 27) of the Civil Procedure Rules or rule 9 (revised rule 12) of the Civil Procedure Rules.

The trial judge had referred to numerous authorities dealing with applications for setting aside ex parte judgments or decrees. I have carefully gone through these authorities. They include **Kimani versus McConnell (1966) EA 547; Mbogo versus Shah (1968) EA 93; Kafeero versus Standard Bank (1970) EA 465; Patel versus EA Cargo Handling Services (1974) EA 75**. In all the authorities applications were brought either under Order 9 Rule 24 or rule 9 or under both rules before revisions of the rules.

For my part I have carefully reviewed the so-called wealth of authorities and I have found no comfort in them. In **Kimani versus McConnell (1966) EA 547**, the Defendant applied to set aside an ex parte judgment entered in default of the defence. That is not the situation before this court. In the case of **Mbogo versus Shah (1968) EA 93**, no appearance had been entered and no defence had been filed and judgment was entered ex parte against the Defendant. The Defendant Company applied to set aside the ex parte judgment and the judge exercising his discretion refused to set it aside whereupon it was appealed to the Court of Appeal. The Court of Appeal held that it would not interfere with the discretionary power of the High Court judge unless there was a clear misdirection on his part. In the case of **Kafero v Standard Bank Ltd [1970] 1 EA 465**, the Defendant entered appearance and applied for extension of time to file a defence. The Plaintiff however set the suit down for hearing ex parte and the application to set aside the ex parte order was refused. However the appeal against the refusal was allowed. Finally in the case of **Patel versus EA Cargo Handling Services (1974) EA 75** the Appellant had obtained a default judgment against the Defendant and the same was subsequently set aside upon application by the Defendant. The Plaintiff appealed against the order and the appeal was dismissed.



In all the above cases there were default judgments or ex parte judgment where upon an application was filed to set it aside. None of the applications or appeal was against a judgment on admission either entered by a judge or a registrar. In the premises the above authorities do not consider the novel situation before the court. I will subsequently set out what the real controversy is as I see it. Before taking leave of the authorities reviewed, the Respondents Counsel also referred to the case of **Attorney General and Uganda Land Commission versus James Mark Kamoga and James Kamala SCCA No 8 of 2004**. In that appeal the Supreme Court was considering an application seeking the review of a consent judgment entered by the deputy registrar. The consent judgment was entered pursuant to negotiations for settlement of the suit. The case is strongly distinguishable because the Civil Procedure Act and particularly section 67 (2) bars an appeal from a consent judgment. In any case a consent judgment can only be set aside upon application for setting it aside on any grounds that would vitiate a contract between the parties or in a separate suit filed to set it aside. It does not deal with the cases of judgment on admission upon application by one of the parties.

The Respondent's Counsel also referred to the Kenyan decision in **Speaker of the National Assembly versus Karume Court of Appeal Civil Appeal Number NAI 92 of 1992**. This case concerns an appeal from the ruling of the High Court of Kenya sitting at Nairobi. It was an appeal from the order granting the Respondent leave to appeal from an order of certiorari to quash a declaration published in the Kenyan gazette declaring a certain parliamentary seat vacant. The only principle for which the case was cited is that where there was a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, the procedure should be strictly followed. Specifically the court held that Order 53 of the Kenyan Civil Procedure Rules could not oust the clear constitutional and statutory provisions. The case dealt with a clear provision in the Constitution or an Act of Parliament and held that procedure should be strictly followed in preference to the Civil Procedure Rules. That case is inapplicable where the issue is which rule of the Civil Procedure Rules is applicable to the Applicants appeal or whether the appeal is incompetent for failure to follow another prescribed procedure in the same rules. The Kenyan Court of Appeal precedent of **Speaker of the National Assembly versus Karume** is important on the statutory interpretation principle that the Constitution and an Act of Parliament takes precedence over subsidiary law such as rules of procedure made under

the Judicature Act. The principle is enacted in the Interpretation Act cap 3 Laws of Uganda and section 18 (4) thereof. A provision of a statutory instrument is void to the extent of any inconsistency with the Parent Act.

While the High Court has unlimited original jurisdiction under article 139 of the Constitution the Republic of Uganda as well as section 14 of the Judicature Act cap 13 laws of Uganda, an appeal lies to the High Court from the decree of a Magistrate's Court. There is no specific provision providing that an appeal shall lie from the decrees of a registrar. This is because any act done by a registrar is done on behalf of the High Court. What is the case when a decree results from the judgment of a registrar of the High Court? That is exactly the situation in this case scenario. Judgment was entered by the registrar pursuant to the provisions of Order 13 rule 6 of the Civil Procedure Rules. For purposes of clarity, I will first consider the statutory provisions dealing with the jurisdiction of the High Court and possibly that of the registrar.

Article 139 of the Constitution of the Republic of Uganda 1995 provides as follows:

“139. Jurisdiction of the High Court

(1) 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 other law.

(2) Subject to the provisions of this Constitution and any other law, the decisions of any court lower than the High Court shall be appealable to the High Court.”

As noted above the High Court has subject of the Constitution unlimited original jurisdiction in all matters and such appellate and other jurisdiction as is conferred by the Constitution or other law. Specifically article 139 (2) provides that subject to any other law, the decisions of any court lower than the High Court shall be appealable to the High Court. Order 50 rule 8 of the Civil Procedure Rules envisages an appeal to the High Court from the order of the registrar. What is the situation where the person aggrieved is aggrieved by a judgment on the merits? Secondly in such a case, can it be said that the judgment is a judgment of a lower court which is appealable to the High Court? The answer is no.

The appellate jurisdiction of the High Court is further provided for by section 16 of the Judicature Act cap 13, laws of Uganda which provides as follows:

“16. Appellate jurisdiction of the High Court.

(1) Subject to the Constitution, this Act and any other law, the High Court shall have jurisdiction to hear and determine appeals which lie to it by virtue of any enactment from decisions of magistrate's courts and other subordinate courts in the exercise of their original or appellate jurisdiction.

(2) The High Court shall determine any questions of law referred to it by way of case stated by a magistrate in accordance with any enactment.

The High Court has jurisdiction to hear and determine appeals which lie to it by virtue of any enactment from decisions of magistrates and any other subordinate court. Is the registrar any other subordinate court? For purposes of proceedings under Order 50 rules 1, 2, 3 and 4 of the Civil Procedure Rules, the registrar is deemed to be a civil court. Rule 1 of Order 50 provides that where in the Civil Procedure Act or in the rules made there under it is provided that any act of thing may be done by such officer as the court may appoint, the act of thing may be done by the registrar. Secondly under order 50 rule 2 of the Civil Procedure Rules, in uncontested cases and in cases in which the parties consent to judgment being entered in agreed terms, judgment may be entered by the registrar. Thirdly order 50 rule 3 provides that all formal steps preliminary to the trial and all interlocutory applications may be made and taken before the registrar. Order 50 rule 4 provides that formal orders for attachment and sale of property and for the issue of notices to show cause on application for arrest and imprisonment in execution of a decree of the High Court may be made by the registrar. Finally order 50 rule 5 provides that whenever by or under any Act of Parliament or law for the time being in force any act, undertaking, inspection, proceeding or thing to be carried out to the satisfaction of or in accordance with the directions of a judge or the High Court or a Commissioner appointed to examine and adjust accounts, then in such case the act, undertaking, inspection, proceeding or thing may be carried out or done before or by the registrar with such other officer as the judge or the High Court, as the case may be, shall generally or specially direct. In all those actions the registrar acts as the High Court and not

a subordinate court. As I note hereunder the Registrar is a special officer of the Court to which he or she is attached.

The Chief Justice by Practice Direction Number 1 of 2003 issued on the 31st day of December 2002 increased the powers of registrars. I must add that previously judgments resulting in a decree of the High Court were entered under order 50 rule 2 of the Civil Procedure Rules. I agree with the submissions of Counsel for the Respondent that these rules giving powers to the registrar have to be read together and in harmony with Order 9 rule 12 of the Civil Procedure Rules. Of particular importance is the wording of Order 9 Rule 12 of the Civil Procedure Rules which is again quoted for ease of reference and provides that:

*"Where judgment has been passed pursuant to any of the preceding rules of this Order, or where judgment has been entered by the registrar in cases under Order 50 of these Rules, the court may set aside or vary the judgment upon such terms as may be just."*

Prior to the increase in the jurisdiction of registrars, judgment entered by the registrar were default judgments under Order 9 or judgment in uncontested cases and cases in which the parties consent to judgment being entered in agreed terms pursuant to the provisions of Order 50 rule 2 of the Civil Procedure Rules. Judgment under Order 9 of the Civil Procedure Rules included judgment on a liquidated demand under Order 9 rules 6 and 7 upon default of the Defendant to file a written statement of defence within the period prescribed in the summons. Secondly interlocutory judgment under Order 9 rules 8 and 9 of the Civil Procedure Rules where there is failure of the Defendant to file a defence and there is a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the Defendant fails or all the Defendants fail to file a defence within the period prescribed in the summons. The matter shall then be fixed for formal proof before a judge of the High Court. The registrar has no jurisdiction to entertain or hear the suit for formal proof. Finally the registrar can enter interlocutory judgment under Order 9 rule 10 of the Civil Procedure Rules in any other case and issued shall be fixed for hearing as if the Defendant had filed a written statement of defence. The only order the registrar can enter is a default judgment either upon a liquidated demand or where there is a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, the registrar enters a default interlocutory judgment and fixes it for formal

proof. Of course under Order 9 rules 6 and 7 of the Civil Procedure Rules a judgment in default results into a decree. In all the preceding rules to Order 9 rule 12 of the Civil Procedure Rules, the registrar does not hear the application on the merits but enters default judgment only.

I have carefully considered the nomenclature used in the proceedings dealt with. Order 9 rule 12 and the head note thereof clearly stipulates that it is a rule dealing with "setting aside ex parte judgment". What is an "ex parte" judgment? In the context of Order 9 rules 6, 7, 8, 9, 10 and 11 of the Civil Procedure Rules, it means a judgment in default of a defence whether for a liquidated demand entered by the registrar or pursuant to an interlocutory judgment entered by the registrar with a formal proof heard by a judge of the High Court. An ex parte proceeding also has a dictionary definition. According to the **Oxford Dictionary of Law, 5th Edition edited by Elizabeth A. Martin**, the word "ex parte" is a Latin term which means: "on the part of one side only". In the context of the above quoted rules of the Civil Procedure Rules, it means in default of a written statement of defence.

The next part of Order 9 rule 12 of the Civil Procedure Rules deals with judgments issued by the registrar under order 50 of the Civil Procedure Rules. As noted earlier judgments are entered in uncontested cases and in cases where the parties agree for judgment to be entered on agreed terms. Order 50 generally deals with the powers of registrars and in fact uncontested cases include judgment in default with regard to liquidated damages under Order 9 rules 6 and 7 of the Civil Procedure Rules. The word 'judgment' used under these rules does not include a judgment upon formal proof pursuant to Order 9 rules 8, 9, 10 and 11 of the Civil Procedure Rules since under those rules the registrar only enters interlocutory judgment and fixes the suit for formal proof before a judge. Finally the matter is made clearer by the judgment of Ntabgoba PJ as he then was in the case of **Magem Enterprises Ltd vs. Uganda Breweries Ltd HCCS No. 462 of 1991 also reported in [1992] V KALR page 109**. The matter came before Hon. Justice H Ntabgoba P.J. In an application to set aside an interlocutory judgment entered by the Assistant Registrar. The Registrar proceeded to make a decision on quantum for the un-liquidated demand. Ntabgoba P.J. held that an Assistant registrar had no jurisdiction to make a decision as to pecuniary un-liquidated demand. The Assistant Registrar should have set the suit down for

formal proof and not entertained the claim for un-liquidated demand. The expression ‘judgment’ was therefore used in uncontested cases prior to the Practice Direction No. 1 of 2003.

Before taking leave of the issue of jurisdiction of a registrar under the rules to enter judgment before Practice Direction Number 1 of 2003 I have further considered the definition of a subordinate court under section 16 of the Judicature Act. However the definition section of the Judicature Act does not define what a subordinate court is. Courts of judicature are defined by article 129 of the Constitution of the Republic of Uganda and in article 129 (1) (d) of the Constitution provides that subordinate courts include such subordinate courts as Parliament may by law establish including qadhis courts for marriage, divorce, inheritance of property and guardianship, as may be prescribed by Parliament. It cannot be said that the office of the registrar is a subordinate court. That is the difficulty faced in this analysis. In fact the office of the registrar is created under the Constitution and by article 145 thereof. It provides that that there shall be in the judiciary the office of Chief Registrar and such number of Registrars as Parliament may by law prescribe. Secondly the Chief Registrar and the Registrars are appointed by the President on the advice of the Judicial Service Commission.

For purposes of article 129 (1) (d) a subordinate court is defined by article 257 of the Constitution in paragraph (cc) thereof to mean a court subordinate to the High Court. Because appeals lie to the High Court from a decision of a registrar, it may be erroneously assumed that the registrar is a subordinate civil court for purposes of exercise of powers under the Civil Procedure Rules. In my analysis this supposition is erroneous because the registrar is an officer of the High Court and derives his or her powers not only from the Constitution which creates the office but also from the Judicature Act cap 13 laws of Uganda. For purposes of this matter the registrar of the High Court is an officer of the High Court and performs duties assigned to him or her in terms of section 43 of the Judicature Act which provides as follows:

#### 43. Officers of courts.

(1) There shall be such officers of the courts of judicature as may be necessary for the performance of any special duties in connection with the business of the courts of

judicature, and such officers shall include the chief registrar, registrars, deputy registrars and assistant registrars.

(2) Subject to article 133 of the Constitution, the officers of the courts of judicature shall perform such duties as may be assigned to them under the rules of court and shall be subject to the general direction and supervision of the Chief Justice.”

The fact is that a Registrar does not have to be appointed from the Magistracy. It is my holding the special duties envisaged by section 43 (1) of the Judicature Act include entering default judgment and passing judgment in uncontested cases and on terms agreed by the parties on behalf of the High Court. For emphasis and in such cases the registrar acts as the High Court and not a subordinate court. The decision of the registrar is a decision of the High Court. Just like the Court of Appeal or the Supreme Court, a person aggrieved by the judgment of a single judge of the Court of Appeal or the Supreme Court appeals to the full bench of the same court. Nonetheless Order 50 rule 8 of the Civil Procedure Rules envisages appeals from orders and not decrees or judgments. Furthermore section 79 of the Civil Procedure Act envisages a limitation period of seven days from the order of the registrar for purposes of an appeal to a judge of the High Court. It does not envisage an appeal from a decree or a judgment. It provides as follows:

79. Limitation for appeals.

(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; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.”

On the other hand appeals lie to the Court of Appeal from the decrees of the High Court. Starting with the Civil Procedure Act section 66 thereof appeals lie to the Court of Appeal from the decrees of the High Court. It provides as follows:

“66. Appeals from decrees of High Court.

*Decision of Hon. Mr. Justice Christopher Madrama Izama* \*~\*~?+: *maXimum728securityx 2016 style*

Unless otherwise expressly provided in this Act, an appeal shall lie from the decrees or any part of the decrees and from the orders of the High Court to the Court of Appeal.”

In other words unless and until provided for in the Civil Procedure Act, all decrees of the High Court or any part of the decree is only appealable to the Court of Appeal. Furthermore an appeal may lie from an ex parte decree under section 67 of the Civil Procedure Act. The said section provides in section 67 (1) thereof as follows:

“67. Appeal from ex parte decree, etc.

(1) An appeal may lie from an original decree passed ex parte.

Furthermore there is a special procedure for appeals to the High Court under Order 43 of the Civil Procedure Rules. In fact every appeal to the High Court is preferred in the form of a memorandum of appeal under Order 43 rule 1 of the Civil Procedure Rules.

In the premises on an appeal does not lie from a decree of the High Court to the High Court. The High Court has no jurisdiction to entertain an appeal from its own decrees. An appeal can only lie to the Court of Appeal from the decrees of the High Court. The only other remedy is to apply to set aside the judgment and decree. For that reason only I agree with the Respondent’s Counsel that the procedure for setting aside a judgment is found under Order 9 rule 12 of the Civil Procedure Rules. Specifically the registrar’s decrees can be set aside under Order 9 rule 12 of the Civil Procedure Rules.

In fact the Appellant’s Counsel submitted that a judgment on admission under Order 13 rule 6 of the Civil Procedure Rules is a judgment on the merits. I agree that it is a judgment on the merits. It involves the exercise of judicial discretion at two levels which I can consider in this ruling. This is not to exclude any other level of analysis. On the first level of analysis of Order 13 rules 6 gives the court discretionary power whether to enter judgment on admission upon the application of any party to the suit. In considering the application the court establishes whether the admission relied upon by the Applicant is equivocal or unequivocal. The court has to establish that the admission admits the claim made in the plaint or counterclaim.



The application for judgment on admission can be distinguished from application for judgment in uncontested cases under Order 50 rule 2 of the Civil Procedure Rules. In uncontested cases it is envisaged that the parties consent to judgment being entered on agreed terms. Consent judgments are not appealable under section 67 (2) of the Civil Procedure Act because it is a judgment by agreement of the parties. A judgment on admission on the other hand is a judgment on the merits after consideration by the judge. At another level section 57 of the Evidence Act permits the judge at his or her discretion to order that the fact in issue or anything may be proved otherwise than by such an admission upon which the Applicant for judgment relies. Upon the exercise of such discretionary powers, the judicial officer exercises the jurisdiction of a High Court judge under Practice Direction Number 1 of 2003.

In the case of **Magem Enterprises Ltd versus Uganda Breweries Ltd HCCS 462 of 1991** the Principal Judge JH Ntabgoba noted that though the assistant registrar had acted without jurisdiction to proceed to hear formal proof proceedings after entering interlocutory judgment, the aggrieved party had an option to move under rule 8 of Order 50 by way of an appeal or Order 9 rule 24 to set aside the judgment. In that case an objection was made to the effect that it was wrong to apply to set aside the decree instead of appealing to the High Court against the decree of the assistant registrar.

I have respectfully found the decision persuasive on the question of the jurisdiction of the registrar but with the above analysis on the fact that an appeal lies from an order and not a decree to the High Court, there is judicial precedence that one may either appeal or proceed by way of an application to set aside. As far as ex parte orders and judgment in default as well as a judgment in uncontested cases by the registrar are concerned, I agree. In any case that ruling came before Practice Direction No. 1 of 2003 which increased the jurisdiction of registrars.

Finally the question here is whether the Appellants Notice of Motion preferred as an appeal is incompetent. It is my holding that the appeal would not be incompetent per se contrary to the submission of the Respondent's Counsel and unless I depart from the above precedent. However from the narrower view that where the matter proceeded on the discretionary powers after hearing the evidence on admission under Order 13 rule 6 of the Civil Procedure Rules, judgment resulting is a judgment of the High Court issued by a Special Officer of the High Court. How can

that judgment be challenged? I do agree that such a judgment may be set aside rather than appealed. It is however a matter of procedure and not jurisdiction since the order on appeal or application to set aside would be the same.

No appeal lies from the registrar to the Court of Appeal even though the decision of the registrar is a decision of the High Court. Unless the powers of the registrar to enter judgment for the High Court on admission are challenged on constitutional grounds, I do not see what remedy the Appellant would have other than to apply to set aside the decree. What is evident is that this objection is not on substantive law but on procedural irregularity.

The Applicant's Counsel submitted that the appeal currently preferred seeks an order to set aside the judgment. Secondly an application to set aside the judgment would also seek for an order to set aside the judgment. I agree.

Following this submission, I noted that an appeal in this matter was commenced by Notice of Motion under Order 52 rule 1 of the Civil Procedure Rules. Applications to set aside judgment under Order 9 rule 12 of the Civil Procedure Rules are made under Order 52 of the Civil Procedure Rules and proceeds by way of the Notice of Motion just like an appeal under Order 50 rule 8 which prescribes the procedure as that by Notice of Motion. This is because there is no specific procedure prescribed under Order 9 of the Civil Procedure Rules for applications to set aside judgment under rule 9 thereof. In either case scenario Order 52 rule 3 gives the contents of the notice of motion. It provides that the notice of motion shall state in general terms the grounds of the application and whether notice of motion is grounded on evidence by affidavit, a copy of the affidavit intended to be used shall be served with the notice of motion. In this appeal the Appellant has sought for an order to set aside the judgment and decree dated 29<sup>th</sup> of February 2016. Secondly the grounds of the appeal are contained in the Notice of Motion. The application is entitled "Notice of Motion".

Had the Applicant applied under Order 9 Rule 12 of the Civil Procedure Rules the application would have been entitled "Notice of Motion". The grounds of the application would have been included in the Notice of Motion. Finally both applications would have been supported by an affidavit just like the current application. In other words the only difference would be in the

citation of the provisions of law under the title "Notice of Motion". The Applicant's appeal cites section 35 of the Judicature Act, section 98 of the Civil Procedure Act and Order 50 rule 8 of the Civil Procedure Rules. What is lacking is the citation of Order 9 rule 12 of the Civil Procedure Rules.

Finally procedural rules are handmaidens of justice. The form of an appeal to a judge of the High Court is the same as a form for an application to set aside a judgment of the registrar. Secondly the order sought by the appeal is to set aside the judgment of the registrar. On the other hand the order envisaged under Order 9 rule 12 of the Civil Procedure Rules is an order setting aside the judgment of the registrar. Can this court exercise its inherent powers under section 98 of the Civil Procedure Act to ensure that the ends of justice are met? What prejudice has the Respondent suffered by not citing Order 9 rule 12 of the Civil Procedure Rules or calling the Notice of Motion an application? Secondly the High Court or a judge of the High Court still enjoys jurisdiction from judgments and orders of a registrar either by way of an appeal or an application to set aside the judgment.

In **Saggu v Roadmaster Cycles (U) Ltd [2002] 1 EA 258** the Court of Appeal of Uganda considered an objection on the ground that the impugned notice of motion did not cite the law under which it was brought. Honourable Lady Justice Mpagi Bahigine held that where the court has jurisdiction and no prejudice has been occasioned to the other side, the substance of the dispute should be decided upon in terms of article 126 (2) (e) of the Constitution of the Republic of Uganda on the basis of the authorities cited there under and as quoted below when she said:

“Regarding the second point in objection that the notice of motion did not cite the law under which it was being brought. The general rule is that where an application omits to cite any law at all or cites the wrong law, but the jurisdiction to grant the order sought exists, then the irregularity or omission can be ignored and the correct law inserted. In **Nanjibhi Prabhudas and Company Limited v Standard Bank Limited [1968] EA** it was held:

*“The court should not treat any incorrect act as a nullity with the consequence that everything founded thereon is itself a nullity unless the incorrect act is of a*

*most fundamental nature. Matters of procedure are not normally of a fundamental nature”.*

The Supreme Court also emphasized in *Re Christine Namatovu Tebajjukira* [1992-93] HCB 85 thus:

*“The administration of justice should normally require that the substance of disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from the pursuit of his rights”.*

The fact that a specific procedure is provided for cannot restrict the inherent jurisdiction of the High Court and this was the holding of the East African Court of Appeal in **Adonia vs. Mutekanga** [1970] EA 429. Spry JA held at page 432 that:

*“the position, as I understand it, is that the courts will not normally exercise their inherent powers where a specific remedy is available and will rarely if ever do so where a specific remedy existed but, for some reason, such as limitation, it is no longer available. The matter is, however not one of jurisdiction. The high court is a court of unlimited jurisdiction, except so far as is limited by statute, and the fact that a specific procedure is provided by rule cannot operate to restrict the court’s jurisdiction , Rawal v. Mombasa Hardware Ltd., [1968] E.A. 392.”*

There is a similar holding in the Kenyan case of **Boyes v Gathure** [1969] 1 EA 385 when the same Court sitting in Nairobi had held per Spry JA at 387:

*“As I see it, procedure by way of summons may be originating or interlocutory and when s. 57 of the Registration of Titles Act speaks of applying “by summons”, it means by originating summons, if there is no suit in existence, or by interlocutory summons, if there is.*

The more difficult question, I think, is whether the adoption of the wrong procedure invalidates the proceedings, but in my opinion it does not. I would make it clear that I think the learned judge was entitled to reject the application and, indeed, should have done so. In many cases where an incorrect procedure has been adopted it is possible to

remedy the error by permitting amendment, but the procedure on an originating summons is so different from that on an interlocutory summons that I doubt if amendment would have been proper. There is, however, no need to decide that, since no application for amendment has been made at any stage.

So far as this appeal is concerned, however, the position is that the learned judge made an order which he certainly had jurisdiction to make on a proper application, and I do not think that the fact that the application was in an incorrect form meant that he lacked jurisdiction. If, as I think, he had jurisdiction, the error of procedure is not a ground for interfering with his decision, since no prejudice whatever was caused to the Appellant.”

In the premises I agree with the above authorities. The issue of calling the application an appeal can be rectified since it has been pointed out at the earliest opportunity. Secondly I do not see any prejudice that the Respondent has suffered in the matter since the grounds relied on are stated and the matter proceeded by notice of motion as it should under Order 9 rule 12 and moreover the High Court has jurisdiction. It would be a highly technical approach to ask the Appellant to file another notice of motion where the only difference would be the citation of Order 9 rule 12 of the Civil Procedure Rules when the said application would be seeking the same remedy of setting aside the judgment on admission and the Court has jurisdiction in either application.

This is an appropriate case in which the provisions of article 126 (2) (e) of the Constitution of the Republic of Uganda should be applied to administer substantive justice without undue regard to technicalities. Finally after considering at length all the submissions and authorities and coming to my own conclusion, the Respondent’s objection lacks merit and is dismissed with costs.

Ruling delivered in open court on the 6<sup>th</sup> of May 2016.

**Christopher Madrama Izama**

**Judge**

Ruling delivered in the presence of:

*Decision of Hon. Mr. Justice Christopher Madrama Izama \*~\*~?+: maXimum728securityx 2016 style*

Oscar Kihika appearing for the Appellant

Charles Nsubuga Appearing jointly with Karungi Anne for the Respondent

Charles Okuni: Court Clerk

**Christopher Madrama Izama**

**Judge**

**6<sup>th</sup> May 2016**