

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
COMMERCIAL DIVISION  
MISC. APPLICATION NO. 1507 OF 2021  
(Arising from Civil Appeal No. 45 of 2019)**

**KAC CHEMICALS & Paints (U) LTD..... APPLICANT**

**VERSUS**

**20 CUBE LOGISTICS (U) LTD ..... RESPONDENT**

**BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO**

**RULING**

Introduction

This application was brought by Notice of Motion under Section 33 of the Judicature Act, Cap 13, Section 79(1) of the Civil Procedure Act, Cap 71, Order 43 Rules 1 & 31, Order 52 Rules 1 & 2 of the Civil Procedure Rules, SI 71-1 for:

- a. An order dismissing Civil Appeal No. 45 of 2019
- b. Costs of the application

Background

The history of this file is that the Applicant sued the Respondent in the Chief Magistrates Court at Nakawa vide Civil Suit No. 417 of 2017 seeking an order to direct the Respondent to receive £ 6,000 as consideration for transport charges of the suit motor vehicles, and release the bill of lading for the suit motor vehicles. The trial court passed judgment partly in favour of the Applicant.

Subsequently, the Respondent filed a notice of appeal on 21<sup>st</sup> June, 2019. A memorandum of appeal in Civil Appeal No. 45 of 2019 was filed by the Respondent in this court on 7<sup>th</sup> October, 2019. The Applicant claims that since then, the Respondent has since filing the memorandum of appeal taken no steps to prosecute the appeal. Also that the memorandum of appeal was filed out of time, and without this court's leave. For these reasons, the Applicant prays that the appeal is struck out/dismissed.

The Respondent's case is that it has not received a typed copy of the record of proceedings to base its appeal on. That even without the typed record of proceedings, the Respondent went on to file a memorandum of appeal, and waited for the typed record so as to file a record of appeal. The Respondent claims that time within which to file a memorandum of appeal starts running from the date of receipt of a typed and certified record of proceedings and judgment.



Therefore, the appeal was lodged in time. Further that prosecution of the appeal has been frustrated by the lower court's refusal to avail the Respondent with a typed record of appeal. Lastly, that the appeal has a high likelihood of success.

### Representation

At the hearing, the Applicant was represented by Agnes Tugume holding brief for Njogu James Wangai, while Kisiki Ben appeared for the Respondent.

Both parties were given timelines within which to file written submissions. This court shall make reference to those submissions and pleadings on file in arriving at its decision.

### Resolution

**Issue: Whether Civil Appeal No. 45 of 2019 should be struck out.**

The Applicant's counsel submitted that the Respondent has for two years from the date of the judgment failed to take steps to prosecute the appeal. He prayed that the appeal should therefore be dismissed under Order 43 Rule 31 of the Civil Procedure Rules. That the Respondent only seeks to shift its dilatory conduct to the trial Magistrate without any evidence. Counsel alleges that ever since the Respondent wrote its letter to the trial court requesting for the typed record of proceedings, it has not made any other effort to prosecute the appeal. That in any case, the letter requesting for the typed record of proceedings was authored a year and four months from the date of the judgment.

Counsel submitted that this further proves that the Respondent never had an intention to prosecute their appeal in a timely matter. Counsel also pointed out that the Respondent's lawyers addressed their letter to the Registrar, High Court requesting for a certified typed record of proceedings. That this letter should have been addressed to the trial court. Lastly, counsel for the Applicant submitted that the appeal was filed out of time, and that it was sham intended to frustrate the Applicant realizing the fruits of the lower court judgment.

Counsel for the Respondent argued that the Respondent has taken every necessary step to prosecute the appeal but to date it has not received a copy of the typed record of proceedings. These steps are the letters the Respondent's lawyers wrote to the court requesting for a certified copy of the typed record of proceedings. Additionally, counsel submitted that the 30-day period has not yet started running, and will only start once the Respondent is served with a copy of the certified typed record of the lower court. He relied on Section 79(2) of the Civil Procedure Act, and **Buso Foundation Ltd -v- Bob Mate Philips, Civil Appeal No. 40 of 2009**. Counsel also relied on **Migadde & Others -v- Nakibuule & Others, Civil Appeal No. 53 of 2019** for the position that a letter requesting for a typed record of proceedings amounts to good cause under Section 79 of the Civil Procedure Act.

Section 79 of the Civil Procedure Act provides:

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,

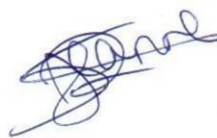
as the case may be, appealed against; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.

(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. (Underlined for emphasis.)

From reading the file, it is clear that the Respondent took some efforts to prosecute the appeal. By a letter dated 21<sup>st</sup> June, 2019 marked Annexure R1 to the Affidavit in Reply, the Respondent requested for a certified copy of the record of proceedings from the trial court, and the letter was filed in the trial court that same date. It is after the Respondent didn't get a response from the lower court that he wrote to the Registrar of this court on 20<sup>th</sup> November, 2020 (see Annexure R2 attached to the Affidavit in Reply) explaining that they had written to the trial court requesting for a certified copy of the record of proceedings. During their following up with their request, the Respondent's lawyers discovered that the lower court file had been transferred to the High Court but were not served with the certified copy of the record of proceedings. They thus requested for a certified copy of the record of proceedings of the lower court, which file is now in the High Court, Commercial Division's custody.

Indeed, the lower court file was forwarded to this court on 30<sup>th</sup> October, 2019 as seen in the Chief Magistrate's letter Ref NAK/CM/10/19. On the file is a certified record of proceedings certified on 11<sup>th</sup> October, 2019. This court will not go into why the lower court did not avail the Respondent with a copy of the certified record of proceedings. However, I agree that this was not owing to the Respondent's inaction. The Respondent took all the necessary steps it could take to prosecute its appeal but through no fault of his failed to secure the record of proceedings. This chain of events shows that the Appellant/Respondent took diligent steps to prosecute its appeal.

Therefore, for all intents and purposes, and on the authority of Section 79(2) of the Civil Procedure Act, the Respondent did not file its memorandum of appeal out of time. I acknowledge that the Respondent filed a memorandum of appeal



on 7<sup>th</sup> October, 2019. The judgment of the lower court was delivered on 11th June, 2019. The appeal was therefore lodged after the thirty days in Section 79(1)(a) of the Civil Procedure Act had lapsed. Ordinarily, this fact would mean that the appeal was lodged out of time.

However, the circumstances of this case warrant exercise of discretion in order to keep with the rationale and spirit of Section 79(2) of the Civil Procedure Act. I find that the delay in filing the memorandum of appeal was due to the trial court's delay in issuing a certified copy of the record of proceedings to the Respondent. Therefore, even if the Respondent went on to file its memorandum of appeal without the lower court record of proceedings, to keep with the spirit of Section 79(2) of the Civil Procedure Act the Respondent is still excused for the delay in filing the appeal. After all, the time thirty days had not yet started running since he had not received a copy of the record of proceedings. The memorandum shall therefore be deemed rightly filed.

In the premises, this application fails. This court shall immediately avail the Appellant/Respondent with a certified copy of the lower court proceedings.

This application is therefore dismissed with no order for costs.

I so order.



**Jeanne Rwakakooko**

**JUDGE**

**22/06/2022**

This Ruling was Delivered on the 29<sup>th</sup> day of June, 2022.

*Received by  
Katie Anne S on behalf of the applicant  
of 25/6/2022*