

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL SUIT NO 407 OF 1989**

**ROBERT BYARUHANGA:.....:PLAINTIFF**

**VERSUS**

**RUKUNGIRI DISTRICT ADM:.....:DEFENDANT**

**BEFORE:- HONOURABLE JUSTICE MUKANZA .I.**

**RULING**

When this appeal was called for hearing the learned counsel who appeared for the respondent raised a preliminary point of Law. He submitted that the appeal was brought under section 61(1) of the Advocates Act 1970 (Act 22 of 1970) That section provides that any person affected by an order or decision of the taxing master made under the provisions of this Act or any regulations made there under may appeal within 30 days to the Judge of the High Court who on such appeal may make an order the taxing officer might have made. In the present appeal against the decision of the taxing officer dated 10th November 1992 and where the appeal was filed in the Honourable Court on 23/12/92 it was clear that thirty days within which to lodge the appeal had expired. No leave of this Honourable Court was sought to appeal out of time and in the premises the appeal was bad in law.

On the other hand Mr. Muhimbura the learned counsel representing respondent submitted that it was true the order against which the appeal is appealed was made on 23rd December 1992 and the law states 30 days within which to appeal but calculation of days does not include Sundays, so far four days Sundays had to be excluded in which case one finds that on 23rd December 1992. One was still in time notwithstanding from the memo of appeal. It was signed on 11th December 1992 within the statutory time required by the law. He continued that when matters are brought in the civil Registry they are not sometime immediately registered and typed. One

had to wait for a day or two and even if you were to hold that the appeal was filed out of time it was in the interest of justice that the Contentious order by the taxing master/officer be determined by this Court so that the interest of justice is served. To dismiss on time limit would not serve the interest of justice. He prayed that the matter be heard and determined on its merits rather than be dismissed on technical grounds.

In reply Mr. Rezida disagreed with his learned friend on the ground that computation of time excluded Sundays. The only Sunday that could be excluded in computing time would be if the last day allowed by the law fell on Sunday then that day could be excluded and then the following day is taken and countable. He did not agree with his learned friend that one had to take off the four Sundays. On the question of memo being signed by counsel for the appellant on 11/12/92, he submitted that was totally irrelevant. What is important is the day it was filed in Court. It is clear that 23/12/92 was outside the statutory period. His learned friend's contention that the civil registry delaying in stamping the document was erroneous and misleading. The civil registry receives document being handed in on that day and no evidence was adduced that the particular document was delayed, received a day or two. The provision of the law for the time limit is mandatory and it will be unjust or the respondent to submit that the delayed memorandum of appeal should be heard in the interest of justice. To rule that it was contentious will be prejudice the matter. He repeated his earlier prayer that the appeal be struck out with Court.

The brief background of this case was that the plaintiff filed a civil suit against the defendant Rukungiri District Administration and the Attorney General. The latter was sued as government representative pursuant to the provisions of Section 11 Government proceedings Act Cap 69sued for special and general damages for trespass on the plaintiffs land and also sought a permanent injunction from the trial Court to restrain the defendant's servants/agents from trespassing on the plaintiffs land. The case was presided over by soluede J who found for the plaintiff and then the matter came before the Deputy Registrar civil with a view to taxing the bill of costs. It was because of her judgment decision which culminated into the instant appeal and the preliminary objection to the same.

With that background I now proceed to consider the objection. Order 47 rule 3 of the civil procedure rules provides

*“where the time for doing any act or taxing any proceedings expires on a Sunday or other day on which the offices are closed and by reason thereof such act or proceeding can not be done or taken on that day, such act or proceedings shall so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day which the offices next to be done.”*

What I understood by the above provision of the law is that where the time for doing an act fell on a Sunday or any other day when the offices are closed that Sunday or such date is not Countable (excluded) the act is then taken to have been done on the next day when the offices are open. In the instant Case the judgment of the taxing officer which is being appealed against was to be made within 30 days. S. 61 (1) of the Advocates 1970 (ACT 22) 1970. The thirty days ran from 19th November 1992 (When judgment of the taxing officer was delivered) to 18th December instant. The thirtieth day fell on 18th November 1992 which was Friday. The Court record shows that the appeal was lodged on 23rd November 1992 which was a Wednesday. It was submitted by the learned counsel for the respondent that in computing time within which to appeal the four Sundays is 22/11, 29/11, 6/12 and 13/12/92 should have been excluded. With due respect the provision of order 47 rule 3 is very clear about this. It is only if the date on which the appeal was lodged fell on a Sunday that is when that date could be excluded. The four Sundays mentioned by the learned counsel appearing for the appellant are quite irrelevant in the sense that they are not excluded when computing the time within which the appeal could have been lodged. I am of the view that once the appellant in the instant case chose to appeal against the decision of the taxing officer he had to lodge the appeal within the stipulated statutory period of thirty days which in my considered opinion is mandatory. I have not been able to come across authorities or order 47 rule CPR nor were the Counsels of any assistance over the same matter.

Mr. Muhimbira however further submitted that though the court might hold that the appeal was filed out of time, it would be in the interest of Justice that the contentious order by the taxing officer be determined by the Court. The learned counsel did not back up his assertion with any

authority. Equally Mr. Muhimbira failed to show say by affidavit that the civil Registry delayed in filing the appeal.

From what has transpired above the preliminary objection that the appeal was filed out of time and therefore bad and incompetent is upheld and the appeal is struck out with costs.

**I.MUKANZA**

**JUDGE**

**1/4/1993**