

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MBARARA

**HCT-05-CR-CN-0059-2002**

(Original CRB 134/2001)

UGANDA .....APPELLANT

-VS-

MAGEZI SAM .....RESPONDENT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

**RULING**

On 12th December 2002 the Resident State Attorney, Mbarara for the appellant filed a Notice of Appeal against the judgment of the Grade 1 Magistrate, Mbarara which had been delivered the same day acquitting the respondent herein. The notice of appeal was filed in accordance with S. 326 (3) of the Criminal Procedure Code Act. A memorandum containing grounds of appeal was not filed until the 24th February 2003. When the State was about to argue the grounds of appeal counsel for the respondent raised an objection saying the appeal was incompetent as it offended the provisions of S. 326 (3) of the Criminal Procedure Code Act which is mandatory and requires the grounds of appeal to be lodged with the Registrar within 14 days of receipt of the judgment. He argued further that in the memorandum of appeal filed by the appellant reference was made to the date of judgment and to no other date and that as such time for filing of the memorandum began to run on 12th December 2002 which renders 24th February 2003 a period outside the time allowed for filing of a competent memorandum of appeal. He prayed the appeal be struck out.

In reply Mr. Ndamurani, Senior State Attorney stated that the appellant had duly filed a notice of appeal soon after judgment and had gone on to apply for the copy of proceedings and judgment to be made available to it, in compliance with S. 326 (3) of the Criminal Procedure Code Act. He stated that the memorandum of appeal was filed as soon as the record of proceedings and judgment were available. In the alternative but without prejudice to the foregoing he invoked

provisions of Article 126 (2) (e) of the Constitution. He prayed the objection be rejected.

Section 326 (3) of the Criminal Procedure Code Act which both parties rely on provides:

“If the appellant or an advocate on his behalf indicates at the time of filing a notice of appeal that he wishes to peruse the judgment or order appealed against before formulating the grounds of appeal, he shall be provided with a copy of such judgment or order, free of charge, and the grounds of appeal shall be lodged with the Registrar within fourteen days of the date of the service on him of the copy of such judgment or order.”

The emphasis above is added but clearly the requirement is mandatory that the grounds be lodged within fourteen days of receipt of copy of the judgment or order. The appellant has given no indication regarding when service of the judgment or order on it was made to make possible an informed calculation of whether or not the grounds were lodged on time. As it is the span between 12th December 2002 and 24th February 2003 is beyond the statutory period of 14 days and I hold no grounds were filed on time. All there is on record is an appeal lacking the necessary grounds. Since the appellant did not invoke S.326 (6) of the Criminal Procedure Code Act I find the appeal as it is incompetent and strike it out.

The appellant also related to Article 126 (2) (e) of the Constitution. Respectfully, the provision was not intended to do away with rules of procedure but in a reflection of the saying that rules of procedure are handmaidens of justice. They should be applied with due regard to the circumstances of each case.

See. Athanasius Kivumbi Lule - vs- Hon. Emmanuel Pinto [1996] HCB 9 by the Court of Appeal and

Utex Industries Ltd - vs- Attorney General Supreme Court Civil Application No. 52 of 1995 (unreported)

All in all the objection is upheld and the appeal is struck out.

P. K. Mugamba

Judge

19th August 2003