

TI-IF RE1UBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HIGH COURT CIVIL APPEAL NO. 13 OF 1999

(Arising from Civil Suit No. 27/1992)

GABDIEL BUCANA..... APPELLANT

- VS -

BERNARD KAFUREKA..... RESPONDENT

BEFORE: HON. JUSTICE P. K. MUGAMBA

RULING

Mr. Bazaare counsel for the respondent raised a preliminary objection stating that this appeal should be struck out because it was filed out of the prescribed time for filing of appeals to this court. On the other hand Mr. Kwizera, counsel for the appellant, argues that the appeal was filed within time given that it was filed within one month of the appellant's receipt of the typed record and judgment. He invoked S. 80 (2) of the Civil Procedure Act which provides:

'In computing the period of limitation prescribed by this section the time taken by the court or registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.'

Lest it be lost on anybody, section 80 (1) (a) of the Act provides that except as otherwise specifically provided in any other law, every appeal shall be entered within thirty days of the date of the decree or order of the court.... provided that the appellate court may for good cause admit an appeal though the period of limitation prescribed by the section has elapsed.

What is clear on the record is that on 11th February 1999 judgment was delivered in the Grade I Magistrate's Court at Mbarara. The next day 12th February 1999 counsel for the appellant applied to the Magistrates Court for typed copies of the proceedings and judgment. The letter is Ref. DK/CS/154/92 of even date which the magistrate received on 15th February 1999 and

proceeded to give instructions for typing of the proceedings on 17th February 1999. According to counsel for the appellant the proceedings requested for were not made available until 9th September 1999. This was followed by filing of the appeal on 7th October 1999.

It is the argument of counsel for the appellant that going by S. 80 (2) of the Civil Procedure Act the period between 9th September 1999 and 7th October 1999 is within the 30 days in which an appeal ought to be instituted vide S. 80 (1) (a) of the Civil Procedure Act. From my search of the pleadings and the file I have come across no iota of evidence to show that it was truly on the 9th September 1999, and no earlier date, the judgment and record were availed the appellant. It behoved the applicant to furnish evidence of how it was he was not able to file the appeal in time. Lacking such evidence he had the option to apply for extension of time.

See Essanji & Others - vs- Solanki [19698] EA 218

Consequently the objection is upheld and the appeal is struck out with costs.

P. K. Mugamba

Judge

26th August 2003

Mr. Kwizera for appellant

Mr. Bazaare for respondent

Ms Tushemereirwe court clerk

Court:

Ruling read in court.

P. K. Mugamba

Judge