

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

HCT-05-CV-MA-0002-2003

(Arising From HCT-05-CV-CA-16/1996)
(Orig. 43”A”/95 of the C/Ms Court Bushenyi)

DAN MIBAZIAPPLICANT

-VS-

ENOT KATENTERARESPONENT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

RULING

This is an application by notice of motion brought essentially under 0.39 rule 16 of the Civil Procedure Rules. The applicant seeks for the re-admission of a dismissed appeal. An affidavit sworn by the applicant accompanies the application which contains the following seven grounds.

1. That there is sufficient cause for re admitting the appeal.
2. The applicant who is chronically sick was never informed by his counsel of the hearing date of the appeal.
3. That counsel for the applicant also negligently failed to appear when the appeal was called for hearing.
4. The applicant had no control over the professional conduct and competence of his counsel.
5. That the appeal has high chances of success.
6. That the applicant will suffer serious mischief and grave injustice if this application is not allowed.
7. It is fair reasonable and in the interest of justice that the orders sought herein be granted.

Ground 5 above is apt. It states that the appeal has high chances of success. In paragraph 10 of his affidavit the applicant deponed;

‘That the appeal dismissed involves substantial questions of law and I am very aggrieved and the appeal had good chances of success.’

In his submissions counsel for the applicant did not relate to the chances of success of the dismissed appeal in the event of it being re-admitted. Be that as it may, chances of success of the party applying are a cardinal consideration before an appeal is granted. In Busiro Farmers Dealers Ltd - vs- Tom Kayongo & 2 others, Civil Application No. 3 of 1998 (unreported) Kanyeihamba JSC made this observation and went on to quote with approval Karokora JSC in Y. M Hyabene - vs- Attorney General, Civil Application No. 4 of 1996 (unreported also) where at page 4 of the ruling the learned Justice of the Supreme Court noted:

‘In my view even if time was granted for extension he would not succeed on reference’. Foods and Beverages Ltd - vs- Joy Mugisha, Civil Application No. 23 of 1995 (unreported) bear’s similar observation by Tsekooko J.S.C. In the instant application it is instructive to look at Civil Appeal No. 16/96 which was dismissed on 26th August 2002. Civil Appeal No. 16/96 was filed in the High Court registry at Mbarara on 20th December 1996. It was an appeal against the judgment of the Grade 1 Magistrate delivered at Bushenyi on 28th November 1996. A memorandum of appeal was filed on 20th December 1996. Nothing else was filed and fees of Shs. 4800/- was paid. In effect there was no decree filed with the memorandum of appeal as ought to have been the case. Consequently such an appeal would be incompetent.

See: Yoana Yakuze - vs- Victoria Nakabembe [1988-1990] HCB. 138

I find however that somehow the memorandum of appeal on record came to be attached to a document entitled ‘Decree in Original Case’. It is signed by a magistrate Grade 1 Bushenyi and is dated 19th December 1996. Even assuming that such a document was intended to pass off as an extract of the decree it would not be since Order 18 rule 7 (1) of the Civil Procedure Rules provides:

‘A decree should bear the date of the day on which the judgment was delivered.’

As the judgment in the suit being appealed against was delivered on 28th November 1996 the document dated 19th December 1996 is irrelevant. All in all I find that there was no competent appeal in place and as such there were no chances of success for it.

Given this state of affairs I find that even if the dismissed appeal was re-admitted it would be an incompetent appeal; other grounds raised in this application are moot in the circumstances.

This application is dismissed with costs.

P. K. Mugamba

Judge

11th February 2004

11th February 2004

Mr. Ngaruye for applicant

Mr. Tumwesigye for respondent

Ms Tushemereirwe court clerk

Court:

Ruling read in court.

P. K. Mugamba

Judge