

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA

HCT-00-CV-MA-2005

ELARANO ETUADE:..... APPLICANT

VERSUS

1. MOSES ANGUYO
2. SIMON ADEBO :.....RESPONDENTS

BEFORE HON. JUSTICE AUGUSTUS KANIA

RULING

This is an application brought under Section 98 C.P.A Order 47r 6 of the Civil Procedure rules for extension of the time to appeal to the High Court. The, application is by notice of motion supported by an affidavit in support sworn by applicant Elariano Etaude.

When the application came up for hearing, Mr. Oyarmoi, learned counsel for the respondent raises a preliminary objection to the effect that the application is incompetent for having been brought under the wrong enabling law. He submitted that Section 98 of the C.P.R invoking the inherent power of the court is not applicable because there is a definite relieve provided under some other law and that as for Order 47 rule 6 of the C.P.R it refers only to extension of time that has been set by the court or the civil procedure rules. He argued that in the instant case the time within which a party has to prefer an appeal is not set by court or the Civil Procedure Rules but rather by section 79(1) (b) of the Civil Procedure Act.

Mr. Oyarmoi submitted that the application has been wrongly brought under section 98 of the C.P.A and Order 47 rule (6) of the C.P.R and it should be struck out with costs.

Mr. Jogo Tabu, learned counsel for the applicant, submitted that the application is properly brought under Order 47 rule 6 of the Civil Procedure Rules in that that order enables a party who has not acted within a given time to involve that provision to enlarge the time within which to take the desired step. He argued that by limiting that order to times set by Court and by the provisions of the Civil Procedure Rules, learned counsel for respondent is giving it a

restricted meaning. While conceding to the position that where a specific remedy has been provided under a law recourse should not be has to Section 98 of the C.P.A, Mr. Jogo Tabu nonetheless argued that the application is properly before this court.

It is now trite that where a law provides for a specific relief the provisions of Section 98 of the C.P.A should not be involved. Since Mr., Jogo Tabu conceded this position we will not labour on it.

Order 47 rule 6 provides as follows;-

“6 where a limited time has been fixed for doing any act or taking any proceedings under these Rules or by Order of Court, the Court shall have power to enlarge such time upon such terms if any as the justice of the case may require, and such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed”

From the wording of the above rule the powers of the Court to extend time are limited to types set by either the Court or the Civil Procedure Rules as correctly interpreted by Mr. Oyarmoi where the time to do anything or to take any step is set by some other law. The Court has no power to extend it under Order 47 rule 6 of the C.P.R.

The law which sets the time within which a party has to appeal and gives the court the power to extend this time is section 79 of the Civil Procedure Act.

It provides as follows;-

“79(1) except as otherwise specifically provided in any other law, every appeal shall be entered;-

(a) Within thirty days if 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 causes admit any appeal though the period of limitation prescribed by this Section has elapsed.”

This is the situation the applicant finds himself in, Judgment was passed against him on 15/1/2004 and he should have appealed within thirty days from the above date but he did not. He now seeks to have the period within which to appeal extended. The enabling law to achieve this Section 79(1) of the Civil Procedure Act. He should have brought his application under it but instead brought it wrongly under Order 47 rule 6 of the C.P.R.

Mr. Oyarmoi submitted that the Civil Procedure Rules must be strictly followed because they are intended to govern the steps to be taken for the prosecution of the suit.

While the rules of procedure should be followed for the orderly disposal of cases failure to strictly follow them should not be reason to deny a party access to justice this more so in the light of constitutional urging of doing substantive justice without undue regard to technicalities. It is a trite that where the court has jurisdiction to make an order the fact is a mere irregularity. In the instant case the applicant having set out all the grounds of why the time within which to appeal the fact that he cited the wrong law is an irregularity which can after all be amended on the spot. I will hear the application on its merits. The objection is dismissed costs in the cause.

Signed

**JUSTICE AUGUSTUS KANIA**

**15/11/2005**

In the presence of

Mr. Oyarmoi - for the respondents Mr. Jogo Tabu - for the applicant The respondent

The applicant

Ms. Joyce Andezu - Court clerk