

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HC CV CA NO. 0011 OF 2010

SABIITI PAULO:.....APPELLANT

VERSUS

BYOMA T. BULASIO:.....RESPONDENT

BEFORE HON. MR. JUSTICE MIKE J. CHIBITA

JUDGMENT

This is an appeal against the judgment and orders of the Magistrate Grade 1, Fort Portal, His Worship Alex Mushabe, delivered on 26th January, 2010.

At the hearing both parties were represented. The Appellant was represented by M/s Ajungule & Co. Advocates while the Respondent was represented by learned Counsel Bernard Musinguzi.

At the hearing learned Counsel Musinguzi raised a preliminary objection. The Appellant amended the Memorandum of Appeal by substituting the original Appellant, Paulo Sabiiti, who passed away, with the Administrator of the estate, Joseph Ksembo.

The amended Memorandum of Appeal also contained more grounds than the original Memorandum of Appeal. He therefore contended that there was no application for leave to amend the Memorandum, therefore there was no leave of court to amend neither did the Respondent consent to the amendment.

He therefore asked court to strike off the appeal with costs for offending the rules of procedure.

Learned Counsel for the Appellant averred that there is no express provision requiring formal leave to amend a Memorandum of Appeal. He added that since it was not in dispute that Paulo Sabiiti died and that Joseph Ksembo obtained Letters of Administration no issue should be raised about it.

He referred court to article 126 (2) (e) of the Constitution which enjoins courts to administer justice without undue regard to technicalities.

He therefore prayed that the preliminary point be overruled in the interest of justice so that the appeal can be heard on its merits.

In rejoinder, learned Counsel for the Respondent referred court to order 43 rule 2 (i) which provides that the Appellant shall not argue or be heard on any ground not set out in the Memorandum of Appeal, without leave of court.

He contended further that learned Counsel for the Appellant did not respond to this particular point of objection. Instead Counsel only dwelt on the point of substituting a party to the appeal.

He referred court to order 24 rules 3 (i) and 12 as containing the procedure for substituting a deceased party with a legal representative. The procedure is by application by Notice of Motion, he averred.

I find that the Appellant offended the rules of procedure by substituting a party without leave of court contrary to the provisions of order 24 rules 3 and 12 of the Civil Procedure Rules.

He further offended the provisions of order 43 rule 2 of the Rules by amending the Memorandum of Appeal without leave of court. Learned Counsel's reference to article 126 (2) (e) of the Constitution is not surprising.

It has become fashionable for advocates who have failed to comply with provisions of the law to resort to that article. As has been stated before article 126 (2) (e) is not a magic wand that will extricate non compliant advocates from the web of non compliance with substantive provisions of the law that they will have trekked into.

In agreement with learned Counsel for the Respondent's submissions, I strike off the amended Memorandum of Appeal. Thankfully, the Appellant can still take remedial measures to rectify the appeal.

The appeal is therefore struck off with costs to the Respondent.

Dated at Fort Portal this 7th day of December, 2012

JUSTICE MIKE J. CHIBITA

JUDGMENT IS TO BE READ AND DELIVERED BY THE ASSISTANT REGISTRAR.

MIKE J. CHIBITA

JUDGE

