

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
HCT-00-CV-CA-0027 OF 2006**

**PAUL A. KARAMAGI:.....APPELLANT**

**VERSUS**

**PETER OLUKA:.....RESPONDENT**

**BEFORE: HON. LADY JUSTICE ELIZABETH MUSOKE**

**JUDGMENT**

This is an appeal to this court against the whole of the decision of the Magistrate Grade I, His Worship Bekeshana Sanyu in Civil Suit No. 402 of 1997, dated 26/6/1997.

The brief background of the facts giving rise to the suit in the lower court were that on 6/5/1996, the appellant/defendant demised his house at Kirombe Luzira to the respondent/plaintiff for 6 months at Shs. 900,000=, for which the plaintiff duly paid. In breach of the above contract, the defendant failed to hand over vacant possession of the house and terminated the agreement by refunding only Shs. 500,000= of the Shs. 900,000=, while agreeing to pay an interest of Shs. 135,000= on the balance. The respondent sued the appellant. The appellant/defendant and

his Counsel did not appear when the matter was called for hearing. The matter was allowed to proceed ex parte. The trial Magistrate decided the case in favour of the respondent/plaintiff and made awards as follows:

- “a) Defendant to pay Shs. 535,000= with interest from the date of filing the suit till payment in full.***
- a) General damages for breach of contract assessed at Shs. 300,000= with interest at court rate from the date of judgment till payment in full.***
- b) Costs of the suit.”***

The bill of costs was taxed and the appellant/defendant made some payments, but failed to complete the payments due. The defendant/appellant further filed 2 miscellaneous applications, MA 132/1999, and MA 162/1999, which were all dismissed.

On 26/2/2010, a Memorandum of Appeal dated 27/10/2006, was lodged by the appellant at the High Court challenging the whole of the said trial Magistrate’s decision on the following grounds:

1. The learned Trial Grade I Magistrate erred in law and fact by failing to take Judicial Notice of the Magistrate’s Court (Magisterial Areas) Instrument 16-1 (then S.I No. 28 of 1997).
2. The learned Trial Grade I Magistrate erred in law and fact by assuming jurisdiction in the Civil Suit No. 402 of 1997.

3. That costs cannot be pursued at this stage.

The appellant prayed that:

- a) The Appeal be allowed.
- b) The Judgment of the Mengo Court in Civil Suit No. 402/1997 be set aside for want of jurisdiction.
- c) The Court declares costs cannot be recovered at this stage.
- d) The appellant be awarded costs of this appeal and the court below.

The court notes that the judgment, the subject of this appeal, was delivered in Mengo Chief Magistrate's court on 26/9/1997 with orders as indicated earlier. However, it is also noted that the appeal challenging the said judgment was lodged at the High Court Registry first on 26/2/2010, and then, according to the Record of Appeal, on 21/1/2011. Both dates are almost 14 years after the date of the judgment appealed against. Taxation of the Bill of Costs arising from the said judgment was made on 15/1/1999.

Section 79 (1) (a) and (b) of the Civil Procedure Act states:

***“79; Limitation for appeals.***

***(1) Except as otherwise specifically provided in any other law, every appeal shall be entered,***

***(a) Within thirty days of the date of decree or order of the court; ..... but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.”***

In the present case, the time of lodging the appeal in issue lapsed over 14 years ago and no application for extension has been made. At least none has been drawn to my attention. Hence the court cannot even make any order for extension of time within which to appeal since no good cause has been shown.

Section 79 (2) state that when computing the period of limitation prescribed by the section the time taken by the court to make the decree or order appealed from, and the proceedings upon which the appeal is founded shall be excluded. However, in this case, it is not the appellant’s case that the appeal was delayed because of any delay in procuring the above. In any case, a copy of the letter to the Registrar requesting for the same would have to be produced in order for court to determine whether the appellant may avail himself of the exemption under Section 79 (2). There is no such letter on record. This appeal was filed out of time and cannot stand.

On the above ground alone the appeal stands dismissed. This appeal appears to be an abuse of court process as none of the grounds advanced appear meritorious at this point in time, being raised after 14 years down the road. The appeal is therefore dismissed with costs to the respondent.

It is ordered.

**Elizabeth Musoke**

**JUDGE**

**30/04/2012**