THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT SOROTI

CIVIL APPEAL NO. 14 OF 1993

(From Mbale DR. H.C.C.S. No. 228/93).

THOMAS H. ROBINSON .....APPELLANT

VERSUS:

JAMES KHULOSYA KANGALA .....RESPONDENT

BEFORE: THE HON. MR. JUSTICE S.G. ENGWAU.

R U L I N G

In the District Registry at Mbale, Thomas H. Robinson filed a Civil Suit No. 228 of 1993 against James Khulosya Kangala for breach of contract amounting to £ 4572 (pounds sterling) or its equivalent in local currency. Before that suit was heard and disposed of, a Miscellaneous Application No. MM 120 of 1993 was filed in Chamber Summons (Ex-parte) under O.36 r5 C.P.R. for motor vehicle Reg. No. UPR 713 - Pick-Up to be produced and be placed before court for disposal on the ground that the defendant was threatening to sell the said vehicle in order to obstruct a decree which might be passed against him.

On 30.11.93 the District Registrar made an order that the said Pick-Up be seized and parked at Mbale Central Police Station and was not to be removed without orders of the court unless the respondent/ defendant deposited 5m/- in court pending the determination of the suit.

It is from that order that this appeal springs up under O.44 r 7 C.P.R in which the District Registrar is to make an endorsement upon the record at the request of the appellant within fourteen days from the making of such order or decision. The record bearing such endorsement shall be sent to the Registrar of the High Court, who shall give such directions for the hearing of the appeal as he may consider reasonable. Following that procedure the appeal is made by motion on notice under O.46 r 8 C.P.R.

Before the appeal took off the ground, the learned Counsel for the respondent raised a preliminary objection in law in which the Counsel argued the following points:-

Firstly, the learned Counsel argued that the appeal is premature and bad in law as it does not comply with the procedure clearly laid under O.44 r.7 C.P.R. He submitted that an appeal from a decision of District Registrar in interlocutory matters shall be by way of endorsement upon the records within fourteen days from the day when the order was made. Records bearing such endorsement shall be sent to the Registrar of the High Court who shall give directions for the hearing of the appeal.

In his contention, the learned Counsel emphasises that such procedure is mandatory in law which the appellant has not complied with and that court has no discretion over it. In the instant appeal there is no endorsement on the file except a request by the appellant for such endorsement. There is also no minute on the record transmitting the file to the Registrar of the High Court and that the Registrar also has not given directions for the hearing of the appeal all of which are mandatory. In the premises, it is argued that the appeal is not properly brought before court and should be struck off.

The learned Counsel for the appellant, however, argues that endorsementwhich is an omission by the court does not render this appeal incompetent as this is a court of record: Boyes Vs: Gathure (1969) EA 385.

After hearing both sides on that preliminary objection in law, records reveal that a request for endorsement by the District Registrar was made by the appellant but endorsement itself was not done. Apparent on the records, the District Registry, Mbale received the request for endorsement on 6.12.93 but the District Registrar was on leave. The Magistrate Grade 1 in-charge of only administration did not endorse the record. Despite all that the learned Counsel for appellant who drew the attention of the Magistrate Grade 1, prayed for the file to be despatched to Soroti to be heard by the Resident Judge as a matter of urgency.

The procedure laid down in O.44 r.7 C.P.R. when construed as a whole is mandatory regarding appeals from orders or decisions of the District Registrar in any interlocutory matters such as this one.

However, in Boyes's case (supra) use of the wrong procedure does not invalidate the proceedings, especially as it did not go to jurisdiction and if no prejudice was caused to the appellant. In the instant appeal, the appellant is actually the respondent and in his affidavit in reply, he clearly stated that he is not the appellant in any matter as he has not filed any appeal. This assertion has not been refuted in any way by Fr. James Khulosya Kangala or his advocate. In thatcontext, the appeal has prejudiced the respondent because he is not the appellant on this matter.

Secondly, it is submitted that this appeal brought by Notice of Motion under O.46 r.8 C.P.R is incurably defective because it is not signed and sealed by the court: Kaur & others Vs: City Auction Mart Ltd., (1967) EA 108.

In reply, the learned Counsel for appellant submitted that Notice of Motion is a process by which a party to the proceedings moves court to hear a matter. It is to be signed by a party or its advocate and sealed by court: Joy Kaingala per John Kaingala Vs: Dabo Boubou (1986) HCB 59.

Notice of Motion is not a document emanating from court to be signed and sealed by court. It is a document in which a party moves court to hear a matter. It is to be signed by a party or its advocate and sealed by the court.

Last ground of objection which was later abandoned regards payment of court fees. It was submitted that without paying proper court fee, this appeal was not properly brought before court to be heard and determined: Unta Export Ltd., Vs: Customs (1970) E.A. 648.

On checking the record after the Counsel for the appellant produced a receipt/endorsement of acknowledgment, the Counsel for the respondent was properly silenced and conceded that court fees for the appeal was duly paid and abandoned that ground of objection.

All in all, the appeal should have proceeded had it not been for the fact that Thomas H. Robinson is not the appellant, he is the respondent.

Fr. James Khulosya Kangala is not the respondent and is therefore a wrong party to the appeal for that reason alone, the appeal is struck off with no order as to costs.

STEVEN GEORGE ENGWAU

J U D G E

21.12.93.

23.12.93: Appellant absent.

Respondent present.

Mr. Ariu for appellant present.

Mr. Natsomi for respondent present.

Ruling delivered in open court.

STEVEN GEORGE ENGWAU

J U D G E

23.12.93.

SGE/eg