

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL APPEAL NO.073 OF 2013

(Arising from Mengo Civil suit No. 694 of 2008)

RTD. LT. TOM AKOL ::: APPELLANT

VERSUS

ATTORNEY GENERAL ::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT:

It is an appeal from the Ruling of an undisclosed Grade of Magistrate sitting at the Chief Magistrates' Court of Mengo. The appellant is represented by M/S Omongole & Co. Advocates while the respondent is the Attorney General.

The facts constituting the appeal are that the appellant filed Civil Suit 694 of 2008 against the respondent praying for special damages of UGX 14,648,556=, interest, general damages and costs of the suit. On the 25th day of August when the matter came up for hearing, the suit was dismissed as both counsel and the plaintiff were not in court. As a result of the dismissal, the appellant filed Misc. Application 694 of 2008

but the same was disallowed with costs to the respondent. The appellant was dissatisfied with the dismissal hence this appeal.

The grounds of appeal are that:

1. The trial magistrate erred in law and fact in refusing to reinstate Civil Suit No. 694 of 2008 even after the applicant showed sufficient cause for his absence.
2. The trial magistrate erred in law and fact by visiting the error and/or mistake of counsel on the appellant consequently disallowing Misc. Application 993 of 2011 thereby occasioning injustice to the appellant.
3. The trial magistrate erred in law and fact in failing to properly evaluate the evidence on record, thereby arriving at a wrong decision.

In refusing to allow Misc. Application No. 993 of 2011, the learned trial magistrate held that:

“the Advocate should have perused the cause list after seeing that His Worship Kavuma was not around and since it was not the first appearance the applicant must know where Kavuma sits which is different from where Her Worship Nkore sits. Both the advocate and the applicant could not have waited in a wrong court for over an hour. In the premises, the fault does not lay solely with the advocate but also with the applicant.”

In his submission learned counsel for the appellant faults the learned trial magistrate for penalizing the litigant for an error of the advocate because the appellant and his advocate went to a wrong court in error because they were two similar cases i.e Civil Suit 694 of 2008 and Civil Suit 102 of 2008 between the same parties at the same court in Mengo. That the two cases brought confusion.

As an appellate court I have considered the submissions by learned counsel for the appellant in relation to the contents of the lower court's record. I have made use of the authorities cited for my assistance.

When I perused the record of appeal, I failed to trace the order appealed from. The record of appeal starts with the memorandum of appeal. It is trite law that appeals from Magistrate's Courts Grade 1 and Chief Magistrates lie to the high court from decrees/orders made by those courts.

Under S. 220 (1)(a) of the Magistrates Act it is enacted as follows:

1. Subject to any written law and except as provided in this section, an appeal shall lie -

(a) from the decree or any part of the decrees or from the orders of a Magistrate's Court presided over by a Chief Magistrate or Magistrate Grade

1 in exercise of its original civil jurisdiction to the High Court; -----."

Therefore without the order or decree appealed from being part of the record of appeal implying that it was not extracted, this is appeal in my view incompetent and as such shall be struck out but with no order as to costs since the respondent did not respond to the appeal. I so order.

Stephen Musota

J U D G E

25.08.2014