

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-MA-231-2013
(ARISING FROM HCT-04-CV-CA-0027-2013)
(ARISING FROM PALLISA CIVIL SUIT NO. 0018-2010)**

**ARIONG BARNABAS.....APPLICANT
VERSUS
OBAl JOSEPH.....RESPONDENT**

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

The application was for orders that the Notice of appeal had not been served and the memorandum of appeal had not been filed and served.

Applicant relied on the case of *Rurangaranga v. Horizon Coach Ltd SC.21/2008* to hold that service of a notice of appeal on all parties is an essential step to constitute an appeal. In this case no step to serve was done.

Applicant argued that no memorandum of appeal was filed as required with 60 days of lodging the notice of appeal. The case of *Joseph Isielu & 2 Ors vs. Engwawu & Or CA. 2/2006* in which the Court of Appeal guided that the memorandum must be filed within 60 days after filing the notice of appeal. The appellant must make a request for the record within 30 days of filing the notice of appeal.

Applicant averred that inspite himself processing the record, appellant didn't bother, but instead swore a false affidavit in which he tells lies in paragraph 5 that he was under a disability having been injured.

Applicant in his affidavit in reply showed court the various areas alluded to as false. Sighting the case of **Mugume v. Akankwasa MSC. 4/2008**, where **J. Stella Arach** held that;

“inconsistencies in affidavits cannot be taken lightly, and an affidavit containing falsehoods is suspect and is bound to fail.”

Applicant prayed that Respondent’s affidavit be found false, and notice of appeal be struck out for lack of service. There being no memorandum of appeal on record, court should hold that there is no appeal and dismiss the appeal and award costs to respondents.

In their response, Respondents referred to the affidavit in reply to show why the Respondent failed to comply to the set time standards. Referring to **Christine Namatovu Tebajjukila (1992-93) HCB 85** they pleaded that Administration of justice requires that the substance of disputes should be investigated and decided on their merits and errors and lapses should not necessarily debar a litigant from pursuit of these rights. The respondent distinguished the **Eceru** case arguing that they delayed for only 6 months, a period justified by respondent’s explanations.

On the falsehoods in the affidavit they relied on the case of **Col Kiiza Besigye v. Y.K. Museveni in Presidential Pet. 1/2001**, are argued that offensive parts of the affidavit should be expunged; and the good parts be saved and be found reliable. They prayed that the application be disallowed and they be granted an extension of time within which to file a memorandum of appeal and appeal be set down for hearing.

I have gone through the above submissions and also examined the record carefully.

The issues raised by the applicant are mainly three and all go to the root of the matters before court. These are that the respondent committed the following omissions:

1. Filing a notice of appeal and failing to notify the opposite party that you have done so.
2. Failing to follow up the filed Notice of appeal by having a memorandum of appeal filed, and served in accordance with the law.
3. Failing to show genuine cause why the above was not done, and going ahead to swear a false affidavit in the process.

The above three issues have been clearly pointed out by the applicants and without the need to repeat myself on the requirements of the law. I agree with arguments as raised by applicant on each one of them. The requirement to file a notice of appeal is aimed at letting opposite party know that within the next 60 days you are going to serve them with a detailed memorandum which enables them to prepare for their defence. I have however noted from the record that the respondent did not take any steps to do so. Applicant's affidavit in support of the applicant shows he personally discovered that there was such a notice and took steps to move the process forward. The applicant's affidavit shows that the respondent did not follow the provisions of the Judicature Court of appeal directions for filing appeals.

The affidavit filed in reply on 24th May 2014 was greatly discredited by **Ariong Barnabas**, by showing that what was deposed to by Respondent were full of falsehoods.

I have gone through the attachments and do find that the affidavit raises issues that were not borne out by the record.

It is clear that the time that the respondent spent handling his personal issues as per the matters alluded to in his affidavit, appear more to have been related to a criminal trial in Pallisa Court, and hence can't be relied on to show that they sufficiently deterred him from filing the notice and memorandum. Even if the alleged falsehoods are ignored therein, I still fail to see the relevant explanations therein to explain why respondent

failed to carry out the mandatory requirements of having his appeal progress within time as required.

In all there is no sufficient cause shown from the above pleadings why time should be extended as prayed.

I am therefore not convinced that the application be allowed for the extension of time. I will agree with applicant's counsel that for reasons as argued above, the notice of appeal shall and is hereby struck off. No memorandum is on record. The appeal is accordingly dismissed with costs to respondents.

Henry I. Kawesa

JUDGE

11.09.2014