

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT Jinja**

**CIVIL APPEAL NO. 54 OF 2011  
(ARISING FROM MUKONO CIVIL SUIT NO. 544 OF 2007)**

**DEO MWASA :..... APPELLANT**

**VERSUS**

- 1. DON MUSOKE**
- 2. VINCENT MUKASA**
- 3. KAJUNGE PADDY :..... RESPONDENTS**

**BEFORE: THE HON. MR. JUSTICE GODFREY NAMUNDI**

**RULING**

During the hearing of the substantive suit before the trial magistrate, a preliminary objection was raised by Counsel for the Defendants (current Respondents).

It was to the effect that the Plaintiff did not disclose a cause of action against the 1<sup>st</sup> and 3<sup>rd</sup> Defendants.

The record shows that an Order was extracted and signed by the trial magistrate.

The Appellant filed an Appeal in this Court challenging the said Ruling.

Two grounds of Appeal were raised as follows:

- (1) That the magistrate erred in law and fact when she held that the Plaintiff does not disclose a cause of action against Respondents 1 and 3.

- (2) That the magistrate erred in law and fact when she held that the Plaintiff/Appellant should pay costs to Respondents 1 and 3.

When this appeal came up for hearing, Counsel for the Respondents raised a preliminary point of law. This was to the effect that under Order 44 r.2 CPR, the Appellant should have sought leave of Court before filing this Appeal.

In reply, it was submitted for the Appellant that section 2 CPA defines a Decree to mean a formal result of adjudication and determines the rights of the parties in regard to the matters in Court.

That the order that the Respondents complain of was termed as an Order and conclusively determined the matter between the parties.

In rejoinder, Counsel for the Respondents reiterated that this was a Ruling and not a Decree and that the proceedings of the lower Court were not terminated as a result. That the appeal is therefore incompetent.

I have considered the submissions by Counsel.

The decision of the trial magistrate was based on a preliminary point of law. It did not determine the rights of the parties neither did it deal with the merits of the case. In any case the trial Court was required to make a **Ruling** based on the preliminary point of law. The said Ruling was therefore not a Judgment so as to give rise to a Decree. It was an Order.

Order 44 (1) CPR provides for appeals from orders and sets out orders that are appealable as of right.

Rule (2) thereof requires that all orders of Court not listed under rule (1) require leave from the Court that made the order or the Court to which an appeal would lie.

Rule (3) is mandatory, requiring that leave to appeal be first made to the Court making the order sought to be appealed from.

In the instant case, the order sought to be appealed from does not fall under the provisions of Order 44 r.1 CPR. Where leave is not obtained where it is required before an appeal is filed, the appeal is incompetent, and the appellate Court has no jurisdiction to hear it.  
Ref: **Bilimoria & Another Vrs. T.D. Bilimoria (1962) EA 198.**

I find that this appeal is incompetent and premature for failure by the Appellant to first seek leave before filing the appeal.

It is struck out with costs to the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.

**Godfrey Namundi**  
**Judge**  
**30/04/2014**

30/4/2014:  
Ssekide on brief for Nassiwa for Respondents  
Appellant present

Court: Ruling delivered.

**Godfrey Namundi**  
**Judge**

**30/04/2014**