

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

CIVIL APPEAL NO. 001 OF 2013

KALOKOLA KALOLI ::: APPELLANT

VERSUS

NDUGA ROBERT ::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT

The appellant, Kalokola Kaloli represented by M/s Abaine-Buregeya & Co. Advocates filed this appeal against the judgment and decision of the Magistrate Grade I at Nakasongola which was delivered on 19th December 2012.

The respondent Nduga Robert is represented by M/s Mpeirwe & Co. Advocates.

The brief background to this appeal is that the appellant was a complainant in Criminal case No. 162 of 2012 Uganda Vs Nduga Robert (now respondent). The latter was convicted of receiving stolen property (two cows) belonging to the appellant. He was sentenced to a fine of UGX 600,000= and in default thereof to serve a nine months imprisonment. Following the said conviction the appellant instituted Civil Suit No. 16 of 2012 against the respondent seeking recovery of the two cows, general damages and costs of the suit.

The learned trial Magistrate dismissed the suit on grounds that it did not disclose a cause of action against the respondent hence this appeal.

In the memorandum of appeal, the appellant complained in two grounds that:

1. The learned trial Magistrate Grade I erred in law and fact when she held that the appellant disclosed no cause of action against the respondent.
2. The learned trial Magistrate failed to properly evaluate the appellant's evidence on record thereby coming to a wrong decision by holding that the appellant failed to prove his case on a balance of probabilities.

During the hearing of this appeal, both learned counsel were allowed to file written submissions in support of their respective cases.

Before delving into the merits of the main appeal, learned counsel for the respondent raised a preliminary objection to the appeal challenging its validity since the record and memorandum of appeal does not contain the Decree from which the appellant is appealing. Learned counsel for the respondent asked court to strike out the appeal with costs.

Learned counsel for the appellant did not submit in response to the preliminary objection.

I will start by making decision on the preliminary objection before I venture into the merits of this appeal if it will be necessary.

As rightly submitted by learned counsel for the respondent, it is enacted under S. 220(1)(a) of the Magistrates' Courts Act (MCA) Cap 16 as amended that an appeal from the Magistrate's Court to the High Court of Uganda shall lie;

***“from the decrees or any part of decrees or orders of a Magistrate presided over by a Chief Magistrate or a Magistrate Grade I in the exercise of its original jurisdiction
.....”***

Upon perusal of the record of appeal in the instant appeal, the decree from which the appellant would be appealing from was not extracted nor is it filed in court together with the record of appeal.

It has been held by this court over again that an appeal to the High Court must be against a decree which must be extracted and filed. Failure to extract a formal decree before filing an appeal is a defect going to the jurisdiction of court and could not be waived **Robert Biiso Vs May Tibamwenda [1991] HCB 91** per Mukanza J (as he then was) RIP.

A similar position was echoed in the Court of Appeal in **Civil Appeal No. 5 of 1987 in Barclays Bank (U) Ltd Vs Rodrigues [1987] HCB 36 at 37, 38.**

In that case their Lordships unanimously opined that no appeal lies to the Court of Appeal until the decree or order appealed from has been extracted. The appeal under consideration was adjudged incompetent.

In the instant case, since the law was not followed by the appellant, and the appeal was filed without a decree, it follows that the appeal is a nullity and misconceived to warrant a hearing by this court. This requirement of the law is not a technicality. The effect of a nullity was well stated by **Lord Denning in Macfory Vs United Africa Co. Ltd [1962]3 ALL ER 1169 at 1172.** He held *inter alia* that:

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of court to set it aside. It is automatically null and avoid without more ado, though it is sometimes convenient to have the court to declare it be so. So every proceeding which is founded on it is also bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

Since the essential elements of a memorandum of appeal are missing in this appeal then the appeal is null and void.

For the reasons outlined above, I will uphold the preliminary objection and find that it is not necessary to consider the merits of an appeal which is null and void. The appeal will be struck out with costs.

Stephen Musota

J U D G E

19.05.2014