

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

CIVIL APPEAL NO. 056 OF 2012
(ARISING FROM MUKONO CIVIL SUIT NO. 010 OF 2009)

MUKASA GERALD SENTONGO

(Administrator of the Estate of the

Late Pantaleo Ssekajja Kisigula) ::::::::::: **APPELLANT**

VERSUS

APAS FINANCIAL SERVICES LIMITED ::::::::::: RESPONDENT

BEFORE: THE HON. MR. JUSTICE GODFREY NAMUNDI

RULING

This Appeal was filed contesting the decision of the trial magistrate Ms. Ruth Nabaasa wherein she dismissed the Appellant's suit under the provisions of Order 17 r. 4 of the Civil Procedure Rules.

The suit was dismissed due to the absence of the Appellant/Plaintiff and that no sufficient reason was advanced by the Appellant or his Counsel for non-appearance.

Both Counsel filed written submissions and at the outset, a preliminary objection was raised by Counsel for the Respondent that the Appeal was filed out of time and hence is bad in law.

I have decided to deal with the Preliminary objection for reasons which will become clear shortly.

Reference was made to Section 79 of the CPA which provides that every Appeal shall be entered within 30 days of the date of the Decree or Order of the Court as the case may be appealed against. It was submitted that this appeal was filed in Court on 26/4/2012 – seven (7) months after the event on 26/9/2011.

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That the Appellant never filed an application for leave of Court to file the Memorandum of Appeal out of time.

10 In reply, Counsel for the Respondent replied that the Respondent never informed the Appellant that the suit had been dismissed and have never served the Appellant with the Decree.

That when the Appellant learnt of the dismissal, they applied for a record of the proceedings which was forwarded to them in April 2012.

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That it is not the Appellant's fault that the lower Court took long to prepare the proceedings and that **Section 79 (3) of the Civil Procedure Act** exempts the period taken to produce the record.

20 The Appellant then enumerates the Respondent's own transgressions as follows:

- That the Respondent was served with the Memorandum of Appeal on 30/4/2012 and acknowledged receipt.

- Was served with Hearing notice for 22/5/2014 on 28/4/2014 and did not protest.

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- On 22/5/2014 he claimed he had never been served with any document but court rejected the claim.

That therefore raising the objection at this time is done in bad faith and should be rejected.

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The record of proceedings reveals that the Appellant first wrote to the Chief Magistrate on 15/12/2011 for the record of proceedings to enable them file an appeal.

Section 79 of the Civil Procedure Act provides that every appeal shall be entered;

5 (a) Within 30 days of the date of the Decree or Order of Court.

(b) In computing the period of limitation prescribed by this section, the time taken by the Court or the Registrar in making a copy of the Decree or Order appealed from and of the proceedings upon which it is founded shall be
10 excluded.

It is to be noted that the letter asking for proceedings was addressed to the trial Court and was never copied to the appellate Court. The memorandum of Appeal was filed in the High Court on 26/4/2012 with no indication as to why it had not been filed within the 30
15 days limitation period and for all intents and purposes was filed out of time.

Under **Order 44 r.1 of the Civil Procedure Rules**, when a Memorandum of Appeal is lodged, the High Court shall send Notice of the Appeal to the Court from which Decree the appeal is preferred.

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Under Rule (2) thereof, the Court receiving the notice shall send with all practical dispatch all material papers in the suit.

Rule (3) allows either party to apply in writing to the Court from whose Decree the appeal is preferred, specifying any of the papers of the Court which he or she requires copies to be made.
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The above presupposes that there is an appeal subsisting on record of the appellate Court.

30 Finally, I am alive to the provisions of **Order 21 of the Civil Procedure Rules**.

Rule 7 thereof deals with preparations of Decrees and Orders.

Firstly, the Decree shall bear the date of the day on which the Judgment was delivered.

- 5 Secondly, it is the duty of the successful party to prepare a draft Decree and submit it for approval of the other parties and where they disagree, the Court shall settle the same.

In the instant case, this was not done but it must also be taken into account that the matter was decided/dismissed in the absence of the Appellant/Counsel.

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It is my finding that the moment the Appellant came to know of the dismissal of the suit in December some 2 months plus after the event, then the 30 days period of limitation had already caught up with him.

- This would automatically set into motion the requirement to apply for leave to file the
15 appeal out of time either in the trial Court or in the appellate Court within the provisions of **Section 96 of the Civil Procedure Act.**

- The submission that the dismissal of the suit came to the attention of the Appellant much later cannot stand as the Decree clearly indicated the date it had been signed (The date
20 itself is an issue in the Appeal).

- It therefore follows that Section 79 (3) of CPA could only apply if the Appellant became aware of the decision within the 30 days limit and thereupon instituted actions that would enable him to file the appeal.

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In **Albert Kifusa Vrs. Suzan Kifusa (1982)1 LSD**, it was held that where an Appellant is unable to frame his grounds of Appeal for want of a certified copy of the Decree or Order and **has been prompt** in making application thereof and through delay on the part of Court from which appeal is sought to be made has not been able to obtain such certified

copy, the Applicant has furnished sufficient cause for not filing the appeal in time and the Application for extension of time to appeal must be allowed.

The above case presupposes two things:

- 5 1. That the application for the certified copies was made promptly.
2. That the Appellant has filed an application for extension of time.

10 In the instant case none of the above is apparent on record even if the Applicant came to know of the dismissal later.

This is a matter that had been in Court and it was incumbent upon the Appellant to follow up his case especially as he had been attending earlier sittings in the same case.

15 Clearly the appeal was filed out of time and therefore it was incumbent that an appropriate application for extension of time be made. This was not done.

This appeal is accordingly incompetent and misplaced for having been filed out of time. It must be struck out and is so struck out with costs.

20 Having so struck out the memorandum of Appeal, it is not necessary to go into the merits of the appeal as this will only be done when the appeal is properly in this Court. It is so ordered.

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Godfrey Namundi

Judge

03/07/2014

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