

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

CIVIL APPEAL NO. 19/2013 & 102/2013
(Arising from Misc. Application No. 001/2014)

KUNYA STEPHEN ::
APPELLANT

VERSUS

1. MIRABU BWOTE
2. TUGALAGE KAMU ::
RESPONDENTS

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

This Application is brought under order 43 r. 4(1) of the Civil procedure Rules and section 98 of the Civil Procedure Act.

It seeks orders to set aside the striking out of Civil Appeal No. 19/2013 and also orders to stay execution of the Decree in Civil Suit No. 40/2010, pending the determination of Civil Appeal No. 102/2013.

Order 43 rule 4 (1) CPR provides:

(1) An Appeal to the High Court shall not operate as a stay of proceedings under a Decree or Order

5 **appealed from except so far as the High Court may order, nor shall execution of a Decree be stayed by reason only of an appeal having been preferred from the Decree, but the High Court may for sufficient cause order stay of the Decree. This presupposes that there is an existing Appeal.**

10 However, the facts giving rise to this Application are that the **'appeal'** giving rise to this Application was struck out under Order 43 r. 1 CPR for being incompetent on 12/12/2013.

15 It is the Applicant's submission that he instructed his lawyers to file an appeal against the Judgment in the lower Court and on 23/4/2013, Counsel duly filed a Notice of Appeal in this Court which was given No. 19/2013.

20 Later in October of the same year, a memorandum of Appeal was filed and it was given No. 102/2013. That this memorandum of Appeal was supposed to have been filed in Civil Appeal No. 19/2013 instead of being given a different number. Reference was made to the case of **Rose Nabirye Vrs. Rosa Muwangala - Misc. Application No. 50/89.**

25 The case cited however is distinguishable from the instant application. That application was for extension of time within

which to appeal. The instant application is not an application for extension of time within which to appeal. The law is very clear.

- 5 Under Order 43 (1) CPR, Appeals in the High Court are commenced by way of filing a Memorandum of Appeal.

This was not done, instead the Applicant filed a Notice of Appeal.

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The filing of a Memorandum of Appeal No. 102/2013 - six months later was clearly out of time and therefore is not allowed.

- 15 Trying to connect Appeal No. 19/2013 and Appeal No. 102/2013 as one does not make sense. Civil Appeal No. 19/2013 was no appeal and was clearly struck out for that reason. It could not be cured by bringing the memorandum of Appeal (102/2013) which the Applicant wants Court to believe
20 was part and parcel of Civil Appeal No. 19/2013. The said memorandum of Appeal was accordingly filed out of time without leave of Court.

- Counsel for the Applicant, realising these mistakes and their
25 own lack of diligence should have instead withdrawn the

purported Appeal No. 102/2013 and instead applied for extension of time to appeal.

The instant Application also seeks to stay execution of the
5 Orders of the lower Court.

This can only arise if there is a competent appeal in this Court.

It is my finding that this Application is incompetent and lacks
10 merit. It is dismissed accordingly with costs.

Godfrey Namundi

15 **JUDGE**

19/2/2015