

1 THE REPUBLIC OF UGANDA
2 IN THE HIGHCOURT OF UGANDA HOLDEN AT MUKONO
3 HCT – 14 – LD – CA – 0098/2018.
4 ARISING FROM CIVIL SUIT NO. OO14/2014
5 YOKOSOFATI MUWONGE::: APPELLANT
6
7 GODFREY MATOVU SALONGO: RESPONDENT
8 BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT
9 JUDGMENT

10 **1. Introduction:**

11 This is an appeal against the judgment and orders of her worship Akello Irene Magistrate
12 Grade one Kayunga dated 7/6/2018.

13 The appellant listed 4 grounds of appeal and later added the 5th ground. The appellant’s
14 counsel and the respondent’s counsel filed written submissions on all the 5 grounds.

15 Godfrey Matovu Salongo, the respondent was the successful party in the lower court.

16 **2. Background:**

17 Yokosofati Muwonge and Godfrey Matovu Salongo are biological brothers, the latter
18 suing the former for trespass on his land measuring 40 acres.

19 The learned Grade One Magistrate of Kayunga H/W Akello Irene decided the case in
20 favor of the respondent Godfrey Matovu Salongo. The Appellant filed a Notice of Appeal
21 with this court on 21st June 2018, and a memorandum of appeal on 19th March 2019.

22 **3. Illegalities discovered during perusal of the Appeal file.**

23 Before proceeding with the appeal case, it is important for the appellate court to satisfy
24 itself about the pleadings because appeals are governed by the laws and procedure that
25 must be complied with.

26 The Appellate court must therefore check the propriety of the appeal pleadings to ensure
27 that the appeal before it is competent and filed within the ambit of the law.

28 At the time of perusing the lower record, Appeal record and all the submissions, court
29 observed that there is a serious irregularity and illegality committed by the appellant
30 which cannot be condoned by this Court.

31 The record of Appeal indicates that the Appellant filed a Notice of Appeal on 21st June
32 2018. The notice was dated 11th June 2018, duly signed by the Appellant and lodged in
33 the Registry of Court on 21st June 2018. It was endorsed and sealed by the Deputy
34 Registrar H/W Flavia Nabakooza on 25th June 2018.

35 **Order 43 rules 1 and 2 of the Civil Procedure Rules** provide for the form the
36 memorandum of appeal takes in the following mandatory wording;

37 *“Every Appeal to the high court shall be preferred in the form of a Memorandum*
38 *signed by the Appellant or his or her Advocate and presented to the Court or such*
39 *offices as it shall appoint for the purpose.”*

40 *The Memorandum shall set forth concisely and under distinct heads the grounds of*
41 *objection to the decree appealed from without any argument or narrative and the*
42 *grounds shall be numbered consecutively.*

43 The Notice of Appeal merely puts the Appellate Court, the Trial Court and
44 Respondent on notice. It should never be the basis of opening up an Appeal case and
45 assigning it a case number in the Court system. That is the reason why no court fees
46 are prescribed for notices of Appeal.

47 In his notice of appeal Muwonge Yokosofati stated;

48 *“Take notice that the above-named Appellant having been aggrieved and dissatisfied*
49 *with the Judgment of Her Worship Akello Irene Magistrate Grade one of Kayunga*
50 *Magistrates court passed on 7th June 2018 so desired to Appeal to the High Court of*
51 *Uganda at Mukono against the said Judgment.*

52 *Take further notice that the appellant shall formulate his grounds of appeal as soon*
53 *as the typed and certified copies of the Judgment and proceedings are availed to*
54 *him.”*

55 The content of the notice of appeal are self-explanatory. It is a mere notice and does
56 not set out the grounds of appeal at all.

57 It is apparent that in his notice he clearly expressed his desire to appeal against the
58 Judgment and Orders of her Worship Akello Irene.

59 **Section 79(1) (g) of the CPA provides that,**

60 ***“Except as otherwise specifically provided in any other law, every appeal shall be***
61 ***entered, (a) within 30 days of the date of the decree or order of the court or (b)***
62 ***within seven days of the date of the order of a registrar as the case may be, appealed***
63 ***against; but the appellate court may for good cause admit an appeal though the***
64 ***period of limitation prescribed by the section has elapsed:***
65 ***(2) In computing the period of limitation prescribed by this section, the time taken***
66 ***by the court or the registrar in making a copy of the decree or the order appealed***
67 ***against and of the proceedings upon which it is founded shall be excluded.”***

68 The import of the above section is to;

69 (1) Enable the aggrieved party get the record of the Trial Court, digest the decision,
70 extract the order and make an informed decision as to whether he or she has grounds
71 of Appeal or not.

72 (2) It is also intended to guide both the court and the parties in computing the period
73 of limitation because the Appellate Court has the discretion to extend the time within
74 which to Appeal.

75 (3) To curtail delays in the Appeal process which should commence within 30 days
76 after the decision of the Court.

77 This implies that a party that has not complied with the statutory period to perform a
78 specific act must seek leave of Court to have the time extended.

79 The Court being a court of justice would determine whether there was a just cause for
80 delay. In this case it’s the Appellate Court to extend the time.

81 In this type of scenario, Court would consider the time within which the lower record
82 of proceedings was certified and procured and the fact that the Appellant was vigilant
83 in procuring them but was delayed by circumstances beyond his control, such as delay
84 in typing and Certification of Proceedings by the Trial Court.

85 This is proved by way of a written letter requesting for the typed proceedings and
86 service thereof on the court against which an intended Appeal is preferred and upon
87 the Respondent.

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90 In the case under consideration, the certified copy of its Proceedings and Judgment
91 has the dates of 14th June 2018 and 14th September 2018 and some papers are stamped
92 with a certified copy of the original signed but not dated.

93 *The decree appealed against was actually sealed by the magistrate court of Kayunga*
94 *on 7th June 2018, the same date the Judgment was delivered and certified on 14th*
95 *June 2018.*

96 As the Appellate Court I would consider 14th September 2018 as the date of certifying
97 the proceedings in the interest of justice.

98 However, no Memorandum of Appeal was filed around that time and no application
99 was made to the Court for leave to appeal out of time. Instead the learned Deputy
100 Registrar received a letter from Alliance for Public Legal Education in Uganda signed
101 by Counsel for the appellant requesting for endorsement of the hearing notice.
102 Attached to this letter were copies of a hearing notice and a Memorandum of Appeal
103 signed by counsel for the appellant dated 19th March 2019 and endorsed by the
104 Deputy Registrar on 20th March 2019 with evidence of payment of court filing fees of
105 5,300 paid and deposited on 19th March 2019 under payment registration number
106 2190003149393 paid in by Sserugo Francis.

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109 This clearly shows and proves that the appeal was filed outside the statutory period as
110 the memorandum of Appeal was filed 8 months and 12 days after the decision
111 appealed against was passed.

112 This Appeal therefore raises two pertinent issues;

- 113 1. What is the role of the Registrar of Court and 2 what is the role of Counsel as an
114 Officer of Court.

115 The Registrar in our court system is a Judicial Officer in charge of the High Court
116 Registry or other superior courts of record. Besides hearing certain civil matters of
117 interlocutory nature, the Registrar is responsible for ensuring that proper pleadings
118 are filed before Court.

119 In the case of appeals, the Registrar who authorizes the opening of an Appeal file,
120 should ensure that an appeal case is opened upon filing of proper documents one
121 of which is the memorandum of appeal in accordance **with O.43 r 1 and 2** of the
122 **CPRs**. The Registrar as a Sub Accounting Officer, should also ensure that
123 relevant fees are paid before the file is opened unless he or she allows the litigant
124 time to pay fees later.

125 It's the duty of the Registrar of Court to help the Judge by ensuring all pleadings
126 are on file and the file is ready for hearing before cause listing for trial.

127 In case there is a serious legal error like in the instant case, the Registrar of Court should be
128 the first person to raise the issue of filing the Memorandum of Appeal outside time to the
129 parties and or the Judge. The Registrar of Court then H/W Flavia Nabakooza wrote a letter to
130 the Trial Magistrate of Kayunga on 17/9/2018 calling for the lower record, stating that the
131 appellant filed an appeal vide Civil Appeal No.96/2018 when actually there was no
132 Memorandum of Appeal on record.

133 She opened an appeal file on a mere notice of appeal. Had the Registrar of court known her
134 duties, she wouldn't have opened an appeal file on a mere notice of appeal.

135 What is the role of an advocate? An advocate is an officer of court and is expected to know
136 the law and apply the law to the facts of his client's case. The advocate must ensure that all
137 legal proceedings have been followed to the dot and all necessary laws have been complied to
138 while filing pleadings because he or she knows the consequences of acting in breach of the
139 laws and laid down legal procedures.

140 I am alive to the well-established principle of the law that mistakes/fault/lapses or dilatory
141 conduct of counsel should not be visited on the litigant.

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143 It is also trite that the administration of justice requires that the substance of the dispute
144 should be heard and decided on merit as was held in the case of *Andrew Bamanya Vs*
145 *Shamsherali Zatel Supreme Court Civil Application No.20 of 2001*.

146 Whereas there are situations where the negligence of Counsel may not be visited on the
147 client, deliberate breach of the law like in the instant case where Counsel smuggles in
148 documents outside the statutory period prescribed by law, does not fall within the ambit of
149 court's discretionary power.

150 The Advocate who is time barred must move court seeking for its discretion. In the instant
151 case, this was not done.

152 **Final Finding:**

153 I find that non-compliance with the statutory provisions under **section 79(1)(a)** of the **CPA**
154 and **O.43 r 1 and 2** of the CPRs at the time of filing the Appeal makes the Appeal
155 incompetent as it was filed on 21st June 2018 using a Notice of Appeal. The Memorandum of

156 **Appeal** was filed on 19/3/2019 long after the lapse of the statutory period within which to file
157 the appeal.

158 The Memorandum of Appeal ought to have been lodged on or before the 7th of July 2018.
159 The Memorandum of Appeal was smuggled on the court record secretly and illegally with the
160 help of Deputy Registrar who endorsed it erroneously since no leave of court had been sought
161 to extend time. Endorsement and sealing of a document or pleading illegally filed in court
162 does not cure the illegality or irregularity. Likewise, the agreement by both Counsel to file
163 written submissions in respect of an incompetent appeal does not render it competent for
164 adjudication by the Judge.

165 It is trite that where illegalities are discovered by Court, it surpasses all pleadings including
166 consents. REF Makula International limited versus H.E. Cardinal Nsubuga and Another CA
167 NO 4/1981.

168 In the result, the appeal is dismissed for being incompetent.

169 No order is made as to costs because the Respondent and the Counsel allowed to proceed on
170 an incompetent Appeal. The aggrieved party is free to appeal to the court of Appeal within
171 30 days from the date of this Judgment.

172 *Dated this 20th day of **September 2019***

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175 **Margaret Mutonyi**
176 **RESIDENT JUDGE**
177 **MUKONO HIGH COURT**