

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

CIVIL APPEAL NO. 123 OF 2019

DOREEN ADENGO APPELLANT

VERSUS

PRISCILLA NAMWANJE RESPONDENT

BEFORE: HON. JUSTICE ESTA NAMBAYO

JUDGMENT

Ms. Doreen Adengo, (hereinafter referred to as the Appellant) being aggrieved by the decision of the Architect Disciplinary Committee(DC) directing her to pay compensation to Ms. Priscilla Namwanje (hereinafter referred to as the respondent) and a fine of one million shillings only for professional misconduct, brings this appeal under S.20 of the Architects Registration Act, Cap 269, against the entire decision of the Disciplinary Committee seeking for orders that:

1. This Court sets aside the orders of the Disciplinary Committee
2. Makes orders discharging her of all allegations of professional misconduct
3. Costs of this Appeal/petition be provided by the respondent

The grounds of this appeal/petition are that:

1. The Disciplinary Committee(DC) erred in fact when they held that the Appellant submitted the Respondent's thesis for funding
2. The DC erred in fact when they held that the Appellant had not shown the difference between the Kibugambata – Jinja (KMB- JJA) and Namuwongo Housing Kampala project
3. The DC erred in fact when they held that there had been several site visits and meetings with the Respondent relating to the Respondent's project, dubbed "High priority" between 24th April – 2nd May, 2018
4. The DC erred in fact when they held that the Respondent's thesis had evolved into a final project submitted for funding by the Appellant
5. The DC erred in fact and law when they found that the Appellant had behaved dishonestly to her colleague
6. The DC erred in fact and law when they found that the Appellant had breached the Architects code of professional ethics
7. The DC erred when they ordered the Appellant to pay a fine of Ushs. 1,000,000/- for professional misconduct.

The brief background of this case is that the Appellant employed the respondent as an Architectural Assistant at her firm M/S Adengo Architecture on the 3/1/2018. The Respondent who holds a Bachelor's Degree in Architecture was working on her thesis under the supervision of Dr. Lilian Namuganyi and Dr. Stephen Mukiibi both professors at

Makerere University at the time of her recruitment. The Respondent's area of study was at Kibugambata community village in Jinja. Upon joining Adengo Architecture, a project area at Namuwongo informal settlement was identified. Adengo Architecture applied for funding of this project. However, before the funding came through, the Appellant got issues with the work methods of the Respondent and terminated her services. The Respondent filed a complaint against the Appellant before the Architects' Disciplinary Committee where the Appellant was faulted and ordered to pay compensation to the Respondent and a fine of one million shillings to the Disciplinary Committee, hence this petition/appeal.

Learned Counsel Moses Adriko appeared for the Appellant while Learned Counsel Damalie Tibugwisa appeared for the Respondent.

When the matter came up for hearing, Counsel Tibugwisa raised three preliminary points of law that:

1. The petition contravenes the provisions of S.20 of the Architects Registration Act
2. The record of proceedings is not duly certified
3. The record of appeal is incomplete and inaccurate.

Preliminary objection No.1

Counsel submitted that this petition falls short of the requirements of S. 20 of the Architects Act which is to the effect that an appeal made under this section shall be in writing under the hand writing of the

Architect or complainant. Counsel explained that in essence, that provision which grants the petitioner the right to appeal against the decision of the architect's registration Board requires the Petitioner to personally sign the petition of appeal.

In the instant case, the petition is signed by counsel for the petitioner.

Counsel submitted that much as Order 3. Rule 1 CPR provides for an Advocate to file an application on behalf of the petitioner the said Order is generic as it provides for circumstances where there is no specific legal provision. In this case Counsel submitted that S.20 is coached in mandatory terms and since it is specific it should be complied with.

She further explained that an appeal is a creature of statute and if the statute provides for a requirement then those requirements must be adhered to.

In reply counsel Adriko relied on Art. 28 of the constitution. He submitted that this article has a non-derogable right. He explained that sub clause (2) of art. 28 gives flesh to art. 28(1). Counsel Adriko specifically referred this court to art. 28(3) d and explained that the mischief of S.20 of the Architects' Act is aimed at preventing frivolous and vexatious appeals from being filed against the decision of the committee but not to preclude, void or abrogate art. 28 which gives an absolute right to a person to appear before any court by self-representation or through counsel of his/her choice.

If there is doubt whether the applicant intended to proceed with the appeal such doubt can be dispelled by a simple question since, in this case the applicant is before court. Counsel explained that the exclusion of the right of the applicant to appeal would deny the applicant the right conferred to the applicant under Art. 42 of the Constitution. For this court to find that the petition is not properly filed by the Applicant simply because it is signed by counsel, it would be derogation of Art.28 and Art. 126(2) of the constitution which provide that Courts should not be hampered by technicalities. Counsel explained that Order.3 CPR gives parties a right to appear in person or by a recognized agency.

In re-joinder, Counsel for the Respondent submitted that the requirements under S.20 of the ARA does not take away Art.28. All that is required is that the appeal is under the hand of the petitioner. It does not bar legal representation.

In regard to Order 3 r.1CPR, counsel submitted that the order provides that "except as otherwise provided for by any other law". So, that the fact that S.20 of ARA requires the petitioner to personally sign, Order 3 rule1CPR would not apply in this case.

In response to Art.126, counsel submitted that the requirement under the ARA is not a mere technicality as it is a statutory provision couched in mandatory terms and therefore it must be literally applied and construed. She went on to explain that the attached petition would not cure the defects as submitted by counsel. The petitioner had the

opportunity to file an affidavit in re- joinder to verify the petition but she did not and yet in paragraph 3 of the affidavit in reply, the respondent pointed out that the petition is not duly verified. By failing to verify her petition, the Petitioner waived her right to conform to S.20 which makes the petition incompetent without the hand of the petitioner.

Resolution

I have looked at the submissions of counsel for both parties, the law and the Court record.

S.20(1) of the Architects Registration Act provides that:

" An architect or complainant aggrieved by the decision or order of the committee may appeal against the decision or order to the High Court within three months from the date on which the report of the committee is delivered to that architect or complainant.

(2) An appeal made under this section shall be—

(a) made by petition in writing under the hand of the architect or complainant"

Order 3 rule 1 CPR provides that:

" Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his or her recognized agent, or by an advocate duly appointed to act

on his or her behalf; except that any such appearance shall, if the court so directs, be made by the party in Person.” Emphasis is mine.

In the case of *Cavendish versus Strutt [1904]1Ch 524*, it was held that:

“Where one rule of Court is expressed in general terms and another on the same subject is specific, the specific rule will prevail.”

In this case the Architects Registration Act provides for a specific procedure to be followed in case a party is dissatisfied with the decision of the disciplinary committee and would like to appeal to the High Court.

The specifically provided procedure is to make a petition in writing under *the hand of the architect or complainant*.

Art. 126(2) of the Constitution provides that in adjudicating cases of both a civil and criminal nature, the courts shall, *subject to the law*, apply the following principles—

(e) *Substantive justice shall be administered without undue regard to technicalities*

In the case of *Kasirye, Byaruhanga and Co Advocates v Uganda Development Bank SCCA No. 2 of 1997*, the Supreme Court reinforced its decision in *Utex Industries* after quoting Article 126(2)(e) of the constitution of Uganda, underlining the words *“subject to the law”* by stating that:

“We have underlined the words subject to the law. This means that clause (2) is no license for ignoring the existing law.”

After quoting their interpretation of Article 126(2) (e) made in Utex, the Supreme Court further held that:

“We adopt the same reasoning here and say that a litigant who relies on the provisions of Article 126(2)(e) must satisfy the court that in the circumstances of a particular case before the court, it was not desirable to pay undue regard to a relevant technicality. Article 126 (2)(e) is not a magic wand in the hands of defaulting litigants”.

The above holding is still good law.

I therefore agree with Counsel for the Respondent’s preliminary objection. The Appellant should have signed the appeal in her hand, short of which, this appeal/petition is incompetent and ought to be dismissed.

Accordingly, I uphold this preliminary objection. The appeal is dismissed. I also find that there is no reason to address my mind to the rest of the preliminary objections raised since the entire appeal is now disposed of.

The Appellant will pay costs to the respondent.

I so order.

Dated, signed and delivered by email at Kampala this 13th day of May, 2020.

Esta Nambayo

JUDGE

13/5/2020