

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI**

**MISC. APPEAL NO. 006 OF 2022**

(Arising from Misc. Application No.10 of 2022)

(Arising from Misc. Application No.9 of 2022)

(All arising from C.S No.001 of 2019)

**TUMURAMYE JULIUS :::::::::::::::::::::::::::::::::::::: APPELLANT/APPLICANT**

**VERSUS**

**SHENGLI ENG. CONSTUCTION CO. LTD :::::::::::::::::::::::::::::: RESPONDENT**

**RULING**

**Before: Hon. Justice Byaruhanga Jesse Rugyema**

- [1] The Appellant **Tumuramye Julius** filed this appeal under **S.98 CPA** and **Orders 50 r.8 & 52 rr.1&3 CPR** against the Respondent **Shengli Eng. Construction Co. Ltd** for orders:
- a) The ruling and orders of the Assistant Registrar in **M.A No.11 of 2022** dismissing **M.A No.10 of 2022** and **M.A No.9 of 2022** with costs be vacated and/or set aside.
  - b) This court issues an order directing **M.A No.10/2022** and **M.A No.9 of 2022** to be heard on merit.
  - c) Provision be made for the costs of this application.
- [2] The grounds in support of the application are outlined in the affidavit of the Applicant and briefly they are:
- a) That the Applicant sued the Respondent for breach of contract vide **C.S No.001 of 2019** which was settled by consent.

- b) The consent judgment was partly satisfied and the Applicant applied for execution of the part of the consent unsatisfied by the failure of the Respondent to restore his land.
- c) The Respondent did not restore the borrow pit and the Applicant was forced to contract **M/s Byonta Construction Services Ltd** to do so at a restoration cost of **Ugx 140,664,000/-**.
- d) The Applicant applied for recovery of the restoration cost from the Respondent by way of attachment and sale of its property to wit M/Vehicles (1) **Low bed Reg. No. UAY 022Y**, (2) **Sino Truck T, 46 Reg. No. UAY 327Y**, (3) **Scavator XCMG Reg. No. UAY 055Y**, (4) **Wheel loader WO2 Reg. No. UAY 376 G**, (5) **Double Cabin Reg. No. UAX 6652** and (6) **M/V Reg. No. UAV 526X** as per the schedule to the warrant of attachment and sale of the movable property.
- e) The Respondent successfully applied for stay of execution and setting aside the warrant for attachment and sale of its property which aggrieved the Applicant hence the instant application.

[3] In its affidavit in reply through **Ms. Jinjing Guo**, the Respondent Country Manager, deponed inter alia, as follows:

- a) That at the hearing of the application, the Respondent would raise a preliminary point of law that the application is incompetent, wrongly brought before this court, time barred and a waste of court's time for which the Respondent would pray that the same be dismissed with costs.
- b) That the Respondent on its part fulfilled all the terms of the consent and the land was restored with the help of the rightful owner and therefore that the applicant incurred no costs as alleged.

- c) That the Respondent had been prevented by the Applicant who with the intention to defraud the Respondent of money, restricted the Respondent and its workers from accessing the land to fill the borrow pit as agreed under the contract, ~~that~~ however, with the help of the new owner who purchased the land, the Respondent accessed the land and restored the land in accordance with the required standard by NEMA.
- d) That the Applicant therefore had no interest in the land having sold the same to a one **Haruna Musinguzi** on the 13<sup>th</sup> day of May 2019 and 2ndly, the warrant of attachment having been obtained through fraud as there is no term of the payment of **Ugx 14, 0664, 000/-** under the consent.

### **Preliminary Objection**

- [4] At the commencement of the hearing of the application on 19/5/2022, as intimated in the affidavit in reply, counsel for the Respondent **Mr. Kasaija Robert**, raised a preliminary point of law to the effect that this **appeal was filed out of time** (outside the 7 days) from 10/2/2022 the date of the ruling delivered by the Registrar of this court as provided under **O.44 r.1(i)(v) CPR** and **S.79(1) (b) CPA**. He argued that in the instant case, the ruling was given and proceedings were received the same day. That he had cross checked with the record and had found no letter asking for proceedings to place the Applicant within the exception where the Appellant would have written to court to get a certified record of the proceedings. He concluded that the Application/Appeal was filed on **24/2/2022** outside the 7 days allowed by the law and therefore, it should be struck out with costs.

[5] In reply, counsel for the Applicant **Mr. Simon Kasangaki** submitted that this appeal was competent and/or filed in time. That under **S.79 (2) CPA**, in computing time for the filing of an appeal, the time taken by the Registrar in making a copy of the decree or order appealed against or the proceedings upon which it is founded shall be excluded.

[6] Counsel for the Applicant argued that in the instant case, on 14/2/2022 the Appellant requested in writing for the court to avail him with certified copies of the proceedings and ruling which letter was filed on record on the same day. That it is apparent from the court record that the certified copies of the proceedings as requested for by the Appellant have never been availed and therefore, even if the Appellant had not filed the instant appeal to date, he would still be within the time allowed to file the same as the time has not yet started running until the record of proceedings and ruling of the Registrar is prepared, certified and availed to the Appellant.

[7] **S.79 (1) CPA** provides that except as specifically stipulated in the Act or any other law, every appeal shall be entered within **30 days from the date of the decree or order of the court;** or within **7 days from the date of the order of the Registrar** as the case may be appealed against and the appellate court may for good cause admit an appeal though the period of limitation prescribed by the section has elapsed. **S.79 (2) CPA** provides thus;

*“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 against and of the proceedings upon which it is founded shall be excluded.”*

[8] In my view, **S.79(2) CPA** benefits that appellant who has notified both court and the other party by way of written letter seeking or requesting for the typed proceedings that he/she intends to appeal; See the case of **Muwonge Vs Salongo H.C.C.A No.98 of 2018** where my sister Lady Justice Margret Mutonyi ruled as follows:

*“In this type of scenario, court would consider the time within which the lower record of proceedings was certified and procured...”*

*This is proved by way of a written letter requesting for the typed proceedings and service thereof on the court which an intended appeal is preferred and upon the Respondent.*

[9] In this case, counsel for the Applicant insists that the Appellant wrote and filed a letter requesting for a typed and certified record of proceedings on the **14/2/2022**. Counsel for the Respondent on the other hand also insists that he had cross checked on the record but there was no such letter. That the Appellant’s letter on record purportedly requesting for the record of proceedings was presented after counsel for the Applicant had raised the present preliminary objection to the effect that the appeal was filed out of time. He complained that the said letter found its way in court under unclear circumstances and therefore, it is a mere concoction aimed at circumventing the wrath of **S.79(1) CPA**.

[10] In brief, it was his contention that the letter was smuggled on record outside the statutory time prescribed by the law for the Applicant to appeal against the ruling and orders of the Registrar.

[11] It is my view that **O.43 r.10 (3) CPR** which provides thus;

***“10. High Court to give notice to court where decree appealed from.***

*(3) Either party may apply in writing to the court from whose decree the appeal is preferred, specifying any of the papers of the court of which he or she requires copies to be made...”*

read together with **O.49 r.2 CPR** which requires,

*“All orders, notices and documents required by this Act to be given to or served on any person shall be in the manner provided for the service of summons;”*

It is a requirement that such a letter requesting for the typed proceedings has to be copied and served upon the opposite counsel and or party or it be made part of the appeal or else, its surprise appearance on record outside the time within which to appeal must be viewed with suspicion or be evidence that it has been smuggled on record for purposes of circumventing the requirements of **S.79 (1) CPA**. Thus, the only way to abhor the illegal and bad practice of causing the back dating of court documents on record is to insist of service upon the opposite counsel.

[12] In this case, the Applicant’s purported letter requesting for a typed and certified record of proceedings dated **14/2/2022** was never at all copied to the Respondent and there is no evidence whatsoever that it was served upon the Respondent. As a result, I am inclined to believe counsel for the Respondent that indeed at the time he raised the instant preliminary objection on **19/5/2022**, the said letter was not available and therefore could not have been on record. If it were on record as counsel for the Applicant/Appellant later claimed and submitted, he would have brought it the attention of court on the very day the

preliminary objection was raised. He instead sought for an adjournment to enable him respond by way of written submissions.

[13] As a result, I conclude that it is the finding of this court that at the time the objection was raised, there was no copy of the letter by the Applicant/Appellant requesting for a typed and certified record of proceedings either copied or served upon the Respondent. The purported letter on record was written as an afterthought after the appeal had been lodged, and its receipt on record was back dated to 14/2/2022, a practice or habit that must be abhorred by courts. As a result, it cannot be a basis of "good cause" for this court to exercise its discretion and consider admitting the appeal though the period of limitation prescribed by the section has elapsed. The Appellant and his counsel cannot be found to have come to court with clean hands to deserve judicial discretion.

[14] In this case, the ruling and orders of the Assistant Registrar of this court having been delivered on 10/2/2022 and the Appeal/Application having been fixed on 24/2/2022 as conceded by counsel for the Applicant/Appellant, the appeal was outside the 7 days' timelines provided under S.79 (1) CPA. An appeal filed out of time without leave of court is incompetent and has to be accordingly struck out; **Maria Onyango Ochola & Ors Vs J. Hannington Wasswa [1996] HCB 43.**

[15] As a result, the present preliminary objection is accordingly upheld and the appeal is struck out as incompetent with costs to the Respondent.

Dated and delivered at **Masindi** this .....<sup>16<sup>th</sup></sup>..... day of <sup>Aug.</sup> **July**, 2022.

.....  


**Byaruhanga Jesse Ruyema**  
**JUDGE.**