

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
CIVIL APPEAL NO. 58 OF 2018
(Arising from Civil Suit No. 138 of 2013)

JAMES KAJJONGOLO..... **APPELLANT**

VERSUS

1. SSEKIZIYIVU KIWANUKA

2. MARY KALIJONJO



..... **RESPONDENTS**

10 **BEFORE; HIS LORDSHIP HONORABLE JUSTICE OYUKO ANTHONY OJOK**

JUDGMENT

The appellant brought this appeal against the decision of Her Worship Mababazi Edith Mary, a Grade One Magistrate, sitting at the Chief Magistrate’s Court of Mpigi delivered on the 18th day of September 2018 in which the trial Court decided in favor of the respondents. The appellant being dissatisfied lodged this appeal on the following grounds.

20 The grounds of this instant appeal are as follows:

1. The learned trial Magistrate erred in law and fact when she failed to judiciously and properly evaluate the evidence on record on ownership of disputed land thereby coming to a wrong conclusion that the respondents were not trespassers on the appellant’s land.

2. The learned trial Magistrate erred in law and fact when she misdirected herself when she failed to properly evaluate evidence on record and found that the



respondents are bonafide occupants of the suit land situate at Budde Plot 58 Block 94.

BRIEF FACTS;

The appellant filed a suit against the respondents for recovery of land comprised in Butambala Block 94, Plot 58 land at Kabuye, for a declaration that the respondents are trespassers, an order of eviction against the defendants, permanent injunction, general damages, costs of the suit and any other remedies that the court may deem fit. The appellant claims to be the registered proprietor of the suit land and his name appears on the certificate of title. That in around October 2013 the respondents unlawfully and without any lawful claim entered onto the above suit land came onto the suit land and kibanja, claiming an interest in it, cleared 2 acres of it and started cultivating on it several seasonal crops which included beans, cassava, potatoes among others and was still doing the same by the time of filing the plaint.. That the defendants have deliberately and negligently declined to vacate the suit land and kibanja despite numerous pleas from the plaintiff and all other persons which have frustrated all efforts of an amicable settlement of the matter. The matter was heard before the Grade One Magistrates Court by Her Worship Mababazi Edith Mary and both parties adduced evidence to support their case. Judgment was given in favor the respondents hence this appeal to the High Court.

REPRESENTATION;

During the hearing, the Appellant was represented by M/S Tayebwa, Sserwadda & Co. Advocates and the Respondent was represented by M/S Semuyaba, Iga & Co. Advocates.

SUBMISSIONS;

Both parties filed written submissions.

RESOLUTION BY COURT

Duty of the first appellate court;


It is the duty of first appellate court to appreciate the evidence adduced in the trial Court, subject it to an exhaustive scrutiny and to make its independent finding of fact, giving allowance to the fact that it had no opportunity to see and observe the demeanor of witnesses in which case the appellate court will rely on the notes made by the lower court as per the case of **Attorney General v George Owor**
10 **Constitutional Appeal No. 0001/2011.**

Before I go into the merits of this appeal, I will first handle the objection raised by counsel for the respondents.

Counsel for the Respondents in his reply, first submitted on a ground of law before addressing the grounds of Appeal.

The issue of law raised by Counsel for the Respondents is that the Appeal was filed out of time.

Counsel submitted that under *Section 79 (1) (a) of the Civil Procedure Act*, every
20 Appeal from the Magistrates courts to the High Court is supposed to be entered within thirty (30) days from the date of the decree or order of the court.

He proceeded to state that *Section 79 (a) of the Civil Procedure Act* states that an appeal must be filed within thirty (30) days of the date of the decree of court, that the appellate court may however, for good cause, extend this period and that this provision requires that the intending appellant first obtain leave of court to extend time once the thirty (30) days have expired. 

Counsel for the Respondents argued that *Section 79 (2) of the Civil Procedure Act* stipulates that the thirty (30) days are computed from the date the court has made ready the record of proceedings and Counsel made reference to the case of **Godfrey Tuwangye Kazoora Vs Georgina Kitarikwenda (1992) HCB 14**.

He further stated that the judgment was read on 18th September 2018. That the decree was signed on 23rd October 2018 and the request for certified proceedings was written on 24th September 2018 and that the certified copies of the proceedings and judgment was ready on 13th November 2019.

It was therefore Counsel for the respondents' submission that the appeal was filed out of time, no extension of time was granted by this Court and that the appeal is incompetent. He prayed the appeal be dismissed with costs on this ground alone.

On this preliminary objection Counsel for the Appellant did not submit any rejoinder to this effect.

I have carefully perused the record and I have found that indeed the appeal was filed out of time and the record has no proof of good cause in line with *Section 79 (2) of the Civil Procedure Act* to sustain the Appellant's appeal.

Section 220(1) (a) of the Magistrate's Court Act, provides for appeals as of right, from the decrees and from the orders of a Magistrate's Court presided over by a Magistrate Grade One in the exercise of its original jurisdiction, to the High Court.

Section 79 (1) (a) of the Civil Procedure Act, every appeal should be filed within thirty (30) days from the date of the decree or order of the court, except where it is otherwise specifically provided in any law.

These time specifications are aimed at avoiding delays.

The subsequent provisions hence are designed to dictate a time schedule within which certain steps ought to be taken and as such was held in **Njagi Vs Munyiri (1975) EA 179**, for any delay to be excused, it must be satisfactorily explained.


Order 43 rule 1 of the Civil Procedure Rules states that;

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1. Every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for that purpose.
2. The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively.

Since the judgment of the lower court was delivered on the 13th Day of November 2019, the Appellant ought to have filed a Memorandum of Appeal within 30 days
20 from the 13th Day of November 2019.

There is no reason which has been advanced by the Appellant on the record that falls within the ambit of *Section 79 (2) of the Civil Procedure Act*.

From the evidence on record, the judgment of the Magistrate Grade One at Mpigi which the appellant appeals against was delivered with a certified copies of proceedings on the 13th Day of November 2019. 

This was further proved by a letter written by the appellant's Counsel eight (8) months after the judgment was delivered dated on the 17th Day of July 2020 at page 85 of the appellant's record of appeal acknowledging receipt of the typed Court proceedings and judgment.

There is no evidence on record, that the appellant sought leave to appeal out of time.

With due respect to learned Counsel for the appellant, *Section 79 (1) of the Civil Procedure Act* is clear. It provides;


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1. That except as otherwise specifically provided in any other law, every appeal shall be entered

a) Within thirty (30) days of the date of the decree or order of the court or... as the case may be, appealed against; "but the appellate court may for good cause" admit an appeal through the period of limitation prescribed by this section has elapsed.

My reading of the above section is that the application for extension of time should have been made before commencing the appeal which was not done in this case.

20 Accordingly it is my finding that the **Civil Appeal 58 of 2018** was filed out of time under *Section 79 (1) (a) of the Civil Procedure Act* and is, therefore, incompetent, hence dismissed for the same with costs both in the High Court and the lower court.

Given the above background and reasons, I will not proceed to determine the merits of the Appeal because it was filed out of time and no reasonable excuse was presented to court. 

Right of appeal explained.

I so order.



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Oyuko Anthony Ojok

Judge

23/02/2022

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