

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
CIVIL APPEAL NO. 001 OF 2022

(Arising from Miscellaneous Application No. 057 of 2020)

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(Arising from Miscellaneous Application No. 48 of 2020)

(Arising from Civil Suit No. 087 of 2014)

HARRIET KYOMUHENDO.....APPELLANT

VERSUS

RADHIA NAMBALIRWA MALE.....RESPONDENT

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BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE

Ruling

15 The respondent at the hearing of the appeal raised a preliminary objection to the effect that the appeal was improperly before this court as it is an appeal arising from miscellaneous application No. 064 of 2020 which was for review.

Representation:

Mr. Tumwesigye Wycliffe appeared for the appellant and Mr. Kasozi Ronald represented the Respondent. Both parties made oral submissions.

Submissions:

20 Counsel for the respondent in his submissions relied on the case of **Dr. Sheik Ahmed Mohammed Kisuule v. Greenland Bank (In Liquidation), Civil Appeal No. 11 of 2010**, where court stated that;

25 *“It is unfortunate that the learned Justices of Appeal did not all refer to this objection in their judgment. A perusal of Order XLIV (1) lays down orders from which appeals may be made as of right. Rule 2 of the same order provides as follows;*



“An appeal under these rules shall not lie from any other order except with leave of the court making the order or the court to which an appeal would lie if leave were given.”

5 *Where an application for review is rejected under Order XLIV Rule 3(1) that is not included among the orders where an appeal may be made as of right.*

10 *It is therefore, obvious that Order XLIV Rule (1) refers to the order allowing review of the judgment and not otherwise. In case an application for the review of the judgment is refused the dissatisfied party has to seek for leave before filing an appeal.”*

Counsel went on to submit that in this appeal no genuine step was taken to apply for leave either through high court or court of appeal. Thus, the appeal is incompetent.

15 In reply it was submitted for the respondent that the law provides that where an application for review is rejected, it may be appealed upon grant of leave. The leave may be granted by the court that rejected the application or the court where the appeal is intended to be. That leave to appeal in this case was granted when the right of appeal was explained especially where the advocate was in attendance to receive the ruling on behalf of the applicant/appellant. That leave was sought on the 21st/December 2020, after court read its ruling and the same was granted. That leave need not be applied for through formal application as per the case of **Sango Bay Estates Ltd & Others v. Dresdner Bank [1972] E.A 17.**

25 In rejoinder, counsel for the respondent submitted that the issue at hand is whether the leave of appeal was sought and granted. That according to the proceedings the leave was not sought for in the lower court before filing this appeal. That an application for leave of appeal is not by implication but rather is to be in written form or made orally. Hence, the appeal is not properly before this court and should be struck off with costs.

Analysis of this court:

30 I have carefully considered the submissions of both parties, the law; authorities relied upon and perused the court record.

It is my finding that indeed the appellant did not apply for leave to appeal after the application for review was dismissed. The appellant merely lodged his appeal without obtaining leave of court.

5 The law governing the application for leave to appeal is set out in **Order 44 rule 2** of the Civil Procedure Rules and it provides as follows;-

“An appeal under these rules shall not lie from any order except with leave of the court making the order or of the court to which an appeal would lie if leave were given.”

10 I do agree that an application for leave can either be made formally or informally however, in the instant case the appellant did not make any application for leave to appeal and accordingly none was granted.

I hereby find that the instant appeal is incompetently before this court as no leave to appeal was sought. The preliminary objection is accordingly upheld and the appeal stands dismissed with costs. I so order.

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OYUKO ANTHONY OJOK

JUDGE

30/3/2022