
THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT – 01 – CV – CA – 0042 OF 2022

(ARISING FROM TAXATION CAUSE NO. 26 OF 2022, ARISING FROM
ELECTION PETITION NO. 10 OF 2021)

BIRIHARIWE ERYEZA ::: APPELLANT

VERSUS

BRIGHT TOM AMOOTI ::: RESPONDENT

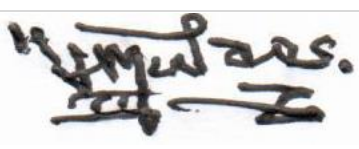
BEFORE HON. JUSTICE VINCENT WAGONA

RULING

This was an appeal filed under Sections 98 and 79 of the Civil Procedure Act and Order 50 rule 8 of the Civil Procedure Rules seeking orders that:

- 1. The decision of the Assistant Registrar in Taxation Cause No. 26 of 2022 that the Respondent’s advocate receiving instructions from the Respondent in Election Petition No. 10 of 2021 without a valid practicing certificate is allowed by law be set aside.**
- 2. That the claim that irregularities as to date of commissioning affidavits are technicalities that are curable under the constitution be set aside.**
- 3. That the decision that Counsel took back dating the documents is speculative and not proved is illegal and bet set aside.**
- 4. That the costs of taking out the application be provided to the Applicant.**

The grounds of the application are particularized in the affidavit of Mr. Birihariwe Eryeza and are:



1. That on the 21st day of December 2021, the Respondent filed a bill of Costs in Election Petition No. 10 of 2021. That on 23rd September 2022, the Respondent filed submissions to the bill on Tax Cause No. 26 of 2022.

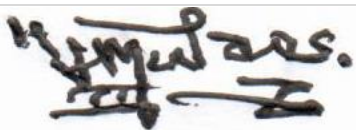
5 2. That he filed submissions on 14th October 2022 opposing the bill on ground that the advocate who took instructions from the Respondent before filing the answer to the petition did not possess a valid practicing certificate at the time. That the bill of costs filed before court and the awards claimed by the Respondent's Counsel are illegal.

10 3. That under item 1 of the bill, the Respondent's Counsel sought to recover UGX 200,000,000/= as instructions received on 17th March 2021 yet he had not practicing certificate and other items. That all items done by the Respondent's Counsel without a practicing certificate are illegal and do not
15 pass the legal test. That a preliminary objection was raised which was overruled by HW. Matenga Dawa in the capacity of a taxing officer.

4. That it is in the interest of justice that the appeal is allowed together with the orders it seeks.

20 **Representation and Hearing:**

The Appellant was represented by M/s Kesiime & Co. Advocates who filed written submissions in support of the Application. The Application was not opposed by the Respondent. There is proof of service of the application upon Counsel for the Respondent by virtue of the affidavit of service filed on 10th March 2023 deposed
25 by a one Nabirye Phiona who effected service and a copy of the return acknowledged

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by the Respondent's Counsel on 16th January 2023. I am therefore satisfied that there was proper service on the Respondent's Counsel who chose not to appear. I will this consider the application ex-parte.

5 **Issues:**

1. **Whether the appeal is proper before court.**
2. **Whether the appeal should be allowed.**

RESOLUTION:

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Issues One:

Whether this Appeal is proper before court.

Order 50 rule 8 of the Civil Procedure Rules provides thus:

15 *Any person aggrieved by any order of a registrar may appeal from the order to the High Court. The appeal shall be by motion on notice.*

Section 79(1) of the Civil Procedure Rules on the other hand provides thus:

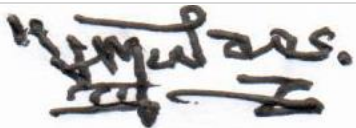
Limitation for Appeals

20 *(1) Except as otherwise specifically provided in any other law, every appeal shall be entered—*

(a) within thirty days of the date of the decree or order of the court; or

(b) within seven days of the date of the order of a registrar,

as the case may be, appealed against; but the appellate court may for good

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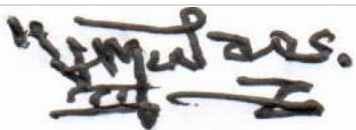
cause admit an appeal though the period of limitation prescribed by this section has elapsed.

An Appeal is a creature of statute. By virtue of Order 50 rule 8, a party aggrieved by the decision of the Registrar has an automatic right of appeal to the judge. However, by virtue of 79 (1) (b) of the Civil Procedure Act, such appeal must be filed within seven (7) days from the date the decision is made.

Where an appeal is not filed within 7 days as provided for under section 79 (1) (b), of the Civil Procedure Act, then leave must be sought to appeal out of time. The application for appeal should be filed and determined by either the registrar or the judge as the case may be. In **Murangwa Bruno & Anor Vs. Luyimbazi James, Misc. Appeal No. 0016 of 2019**, the Hon. Justice Kawesa observed thus: *“Under Section 79(1)(b) of the Civil Procedure Rules appeals against the decision of the Deputy Registrar are within 7 (seven) days from the date of the decision”*

In this case the decision appealed against was made by the Assistant, Registrar, His Worship Matenga Francis Dawa on 25th October 2022. The appeal against the decision should have been filed within 7 days after 25th October 2022. The current appeal challenging the said decision was filed in this court on 20th December 2022 after close to two months. No leave was sought by the appellant to file the appeal out of time.

I find that this appeal was not properly before the court having been filed out of time without obtaining leave of court and it is hereby struck out with no order as to costs.



It is so ordered.

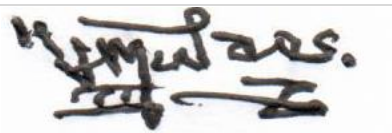
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Vincent Wagona

High Court Judge

5 **FORT-PORTAL**

17.04.2023

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