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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
MISCELLANEOUS APPLICATION NO. 141 OF 2021
(ARISING FROM CIVIL APPEAL NO. 47 OF 2021)

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LAWINO CHRISTINE KIJANGE.....APPLICANT

VERSUS

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AKURU DAVID.....RESPONDENT

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

RULING

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This is Application seeking to strike out Civil Appeal No. 141 of 2021, plus costs of the Application. The facts giving rise to the Application are that, the applicant had successfully sued the Respondent in the Chief Magistrates Court of Gulu Holden at Gulu, vide Civil Suit No.40 of 2018, for breach of contract of sale of good will in property comprised in Block 141 A, Upper Railway Quarters, plot 19 Atwal Road, Layibi Division. The Respondent received full payment of the purchase price, but thereafter sought to refund the money, contending that there was lack of consent by his spouse, whom it was alleged, had objected to the sale. After full trial, the trial Court (Her Worship Christine Turibamwe) in a Judgment given on 5th October,

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5 2020, decreed that the Respondent did not require spousal consent to perform his part of the contract. Court awarded the Applicant general damages of Ugx 8,000,000, with interest at Court rate. Court also ordered the Respondent to vacate the property and awarded costs of the suit to the Applicant.

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Aggrieved and dissatisfied, two days later, the Respondent lodged a Notice of Appeal on 7th October, 2020. The Notice of Appeal did not quote the civil suit number, but is titled as Civil Appeal No. 47 of 2020. The heading bears the name of the Appellate Court. The parties are indicated as 'Akuru David....Respondent Vs. Lawino Christine Kijange (Appellant). The document was lodged in the High Court. It is endorsed by someone who signed for the Deputy Registrar of Court. The document is shown as having been drawn by the 'Appellant' who signed it. I will comment on this document later in this Ruling.

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Grounds of the Application

In the strike out Application, the Applicant avers that the Application is springing from Civil Appeal No. 47 of 2020, which understandably, is the Notice of Appeal quoted before. In the grounds of the Application, supported by an affidavit sworn by the Applicant's Advocate, a one Muhiirwa Fednand of Jambo & Co. Advocates, the deponent, in summary deposed that, the Respondent having not been successful in the trial court, lodged a Notice of Appeal. The deponent stated that he perused the

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5 record of the trial Court and discovered that the Respondent did
not lodge a Memorandum of Appeal. The deponent further
stated that he informed the Registrar of this Court about the
absence of the Memorandum of Appeal, *vide* a letter dated 26th
May, 2021, received by Court on 31st May, 2021. The deponent
10 deposed that, as at 20th October, 2021 (date of deposing to the
affidavit), the Respondent had not taken any steps to lodge a
Memorandum of Appeal. The deponent further stated that the
Respondent's lodgment of the Notice of Appeal and seeking the
case file movement from the Magistrate Court to the High Court
15 was a trick to circumvent execution proceedings that had been
commenced by the Applicant. It was further deposed that the
Respondent's actions are an afterthought and constitute abuse
of court process. It was prayed on behalf of the Applicant that
the purported Appeal be struck out with costs for not
20 conforming to the law.

Replying affidavit

In his affidavit in reply, the Respondent deposed that his
advocates, M/s Odongo & Co. Advocates advised him that the
25 Application is brought in bad faith and that the grounds in
support does not constitute sufficient cause for the High Court
to strike out 'Civil Appeal No. 47 of 2020'. The Respondent also
deposed that he lodged a Notice of Appeal on 7th October, 2020,
and the Deputy Registrar High Court directed the trial Court to
30 forward the original case file with certified copies of proceedings

5 and Judgment. The Respondent refers to the annexed copy of
the Notice of Appeal and the letter by the Deputy Registrar. As
regards the contention that the Respondent has not lodged a
Memorandum of Appeal and therefore circumventing the
execution process and abusing the Court process, the
10 Respondent deposed that he has never been given certified
proceedings and Judgment of the trial Court and therefore,
cannot formulate grounds of appeal. The Respondent also
deposed that on 10th December, 2021, he further requested for
certified proceedings and Judgment from the High Court but
15 received none. He finally deposed that, the Application is
misconceived, frivolous and tantamount to an abuse of court
process and should be struck out with costs. The Respondent
asserted that no injustice would be suffered if the Application is
dismissed.

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Representation

At the Application hearing, the Applicant was represented by
Learned Counsel Mr. Rwalinda Jambo Godfrey while the
Respondent was represented by Learned Counsel Mr. David
25 Kinyera. The Applicant was absent but her son Oketta William
Kijange attended Court. The Respondent was absent. Court
directed the parties to file written submission. The Applicant
filed his on 19th December, 2022. There is none for the
Respondent.

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5 **Issues**

The Applicant's Learned Counsel raised two issues for Court determination, namely,

1) Whether there is a competent appeal in this Court

2) If not, what remedy is available to the Applicant

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Determination

In arguing the first issue, Learned Counsel submitted that an appeal from the decree and Order of the Magistrate Grade One and Chief Magistrate goes to the High Court by way of a
15 Memorandum of Appeal. Learned Counsel cited section 220 (1) (a) of the Magistrates Court Act Cap 16, and Order 43 rule 1 (1) and (2) of the CPR. I agree with Learned Counsel for the Applicant.

20 Counsel then argued that, filing an appeal other than by way of a Memorandum of Appeal is improper and as such, the purported appeal by way of Notice of Appeal is incompetent. Again I agree with Learned Counsel, especially with regard to the mode of filing Civil Appeals from Magistrates Court to the
25 High Court. I must however add that, in special legislations, such as under the Tax Appeals Tribunal Act, Cap. 345 (as amended), an appeal to this Court from the decision of the Tax Appeals Tribunal is by way of a Notice of Appeal, and restricted to questions of law only. The Notice of Appeal, which itself is the
30 Appeal, must state the question (s) of law that will be raised on

5 appeal. See section 27 (1) and (2) of the Tax Appeals Tribunal
Act. Similarly, further appeals to the Court of Appeal in tax
matters must also be way of Notice of Appeal under section 27A
(1) and (2) of the Tax Appeals Tribunal Act. This is the same
case with regard to the appeal to the Supreme Court of Uganda,
10 which would be a third appeal, therefore requiring a certificate
of the Court of Appeal that the intended appeal raises questions
of law of great public importance, or if denied, then the
certificate of the Supreme Court that it ought to see that justice
is done and therefore, grants a certificate of importance. See
15 section 27B of the Tax Appeals Tribunal Act.

In the present matter, it is clear that unlike in special
legislations specifying for appeals to the High Court by other
mode, appeals from Magistrates Courts to the High court must
20 be preferred by way of a Memorandum of Appeal under O.43
rule 1 of the CPR. In this case, the Respondent agree that there
is no Appeal but contends that, that is so because he is yet to
obtain certified record of the proceedings and Judgment from
the trial Court.

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In light of the above concession by the Respondent, I hold that
the purported Civil Appeal No. 47 of 2021 does not exist in law.
I hasten to add that whichever Court Registry staff received the
purported Notice of Appeal which Notice is crafted with a title
30 appearing as if it were an appeal, complete with provision for an

5 appeal number, did so in error. I think the Registry Officers and
persons in charge of the overall Court Registry should pay
keener interest in documents lodged at the Registry of Court. It
is a little surprising that the incompetent Notice of Appeal was
endorsed by a person who signed for the Deputy Registrar of
10 Court and sealed with Court seal. Had the person addressed
his/her mind to the document, he/she would not have endorsed
it.

Given that the Notice of Appeal is incompetent, I strike it out. I
15 would have declared that there is no competent notice of appeal
in this Court, which in my Ruling, is not a requirement before
appealing the decision of the Magistrates Court. However, for
the reason that the Respondent lodged the impugned Notice of
Appeal as a lay person, I would declare that the incompetent
20 Notice of Appeal should still serve the purpose he wished to
serve, if any. I do so to do substantive justice and avoid a
technicality that could result, if I were to hold that he never
lodged a Notice of Appeal. See article 126(2)(e) of the
Constitution, 1995, **Tarlol Singh Saggu Vs. Road Master**
25 **Cycles (U) Ltd, Court of Appeal Civil Appeal No. 46 of 2000.**
I am also fortified by the decision in **Kasirye Byaruhanga & Co.**
Advocates Vs. Uganda Development Bank, SCCA No. 2 of
1997.

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5 I further pay deference to the persuasive decision by G.M
Okello, J., (as he then was) in The Board of Governors and the
Headmaster Gulu Secondary School Vs. Phinson E. Odong,
High Court Civil Appeal No. MG 2 of 1990, where the then
Learned Judge held that the procedure of presenting a civil
10 appeal to the High Court is covered under Order 43 rule 8 CPR
(at the time Order 39 rule 8 CPR), by lodging with the Registry
a Memorandum of Appeal and not a notice of appeal. There,
Court concluded that a notice of appeal is not a legal
requirement in the procedure of commencing a civil appeal in
15 the High Court.

I note that the practice of filing Notice of Appeal in Civil Appeals
from decisions of Magistrates Courts appear to have grown in
this Country so much that it has now become a rule of practice
20 yet our procedural and substantive laws are silent about it. A
notice of Appeal seems to have been adopted in Magistrates
Courts to serve the simple role which a letter could do, of
enabling an intending appellant to request and obtain record of
the proceedings from the Magistrates Court. See: **Suleiman Vs.**
25 **Byekwaso, High Court Civil Appeal No. 4 of 1986 (Behigeine,**
J., as she then was).

It, therefore, seems to me that the impugned Notice of Appeal
was filed due to the erroneous belief that Civil Appeals lodged
30 in the High Court from decisions of Magistrates Courts should

5 be commenced by way of a Notice of Appeal. Whereas the
Magistrates Courts Act, the Civil Procedure Act, and the Civil
Procedure Rules are silent on the aspect of lodgment of Notice
of Appeal for purposes of commencing appeals to the High
Court, litigants seem to mix up and apply the mandatory Rules
10 of the Court of Appeal under rule 76, and the Supreme Court
under rule 72, where a Notice of Appeal is a requirement for
everyone desirous of Appealing to those Courts.

It also seems to me that some practitioners mix-up and apply
15 to civil appeals, the aspect of criminal Appeals to the High
Court, under section 28 of the Criminal Procedure Code Act
Cap. 116 which is instituted by Notice of Appeal. This is so
because no Memorandum of Appeal is envisaged in this Court
in Criminal Appeals from the Magistrates Court. This is unlike
20 the Court of Appeal and the Supreme Court where a
Memorandum of Appeal is a requirement in Criminal Appeals.
It, therefore, seems to me that the varied ways for accessing
Courts on appeal will one day need to be harmonized in all
Courts in order to reduce confusion and uncertainty.

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Turning back to the instant matter, the Application is
misconceived in so far as it seeks to strike out a non-existing
appeal. The course taken of course is understandable, as the
Applicant appear to have been frustrated by the transfer of the
30 case file from the trial Court to this Court, for the purported

5 processing of the Appeal, thereby frustrating the execution
process which had been commenced in the trial Court. I think
this course would have been averted if the Judge of this Court
was consulted by the Deputy Registrar of Court for guidance, in
case of doubt.

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Given the above state of affairs, the Application lacks merit and
is dismissed. Given the circumstances of the matter, I make no
order as to costs.

15 In the exercise of Court's powers under section 98 of the CPA
and for the avoidance of doubt, I, therefore, Order as follows;

1. Misc. Application No. 141 of 2021 is dismissed for lack of
merit, with no order as to costs.

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2. The purported Civil Appeal No. 47 of 2020: Akuru David
Vs. Lawino Christine Kijange is declared invalid and non-
existent at law.

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3. The Deputy Registrar of this Court is directed to cancel
and de register the purported Civil Appeal No. 47 of 2020:
Akuru David Vs. Lawino Christine Kijange, from the
Register of Appeals, if it had been so entered.

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5 4. The case file in Civil Suit No. 040 of 2018 is hereby
remitted to the Magistrate Grade One Court to continue
the execution process which had commenced, given that
there is no stay of execution of the Decree of that Court by
any competent Court, in the absence of a competent
10 appeal under O.43 rule 4 (1) and (2) of the CPR.

I so order.

Delivered, dated and signed in Court this 27th day of February,
15 2023.



Handwritten signature: George Okello
George Okello

20 JUDGE HIGH COURT

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5 Ruling read in Court in the presence of;

10:50am

27th February, 2023

10 **Attendance**

Ms. Avola Grace, Court Clerk.

Mr. Rwalinda Jambo Godfrey Counsel for the Applicant.

The parties are present in Court.

There is no Counsel for the Respondent.

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Mr. Rwalinda Jambo: The matter is for Ruling. We are ready to receive the Ruling.

The Respondent: Give me time to look for my Lawyer.

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Court: Ruling is stood over for 20mins.

Hutoo 27/2/2023
George Okello

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JUDGE HIGH COURT

Later at 11:40am

Respondent: My Lawyer is absent. I am ready to receive the Ruling of Court.

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Court: Ruling read in open Court.

Hutoo 27/2/2023
George Okello

JUDGE HIGH COURT