

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISC CAUSE NO. 073 OF 2013
(ARISING FROM MISC CAUSE NO. 94/ 2010
(WHICH AROSE FROM CAD/ARD NO. 011 OF 2010)

RICHARD NSUBUGA.....APPLICANT

VERSUS

NOBERT KAHIIRE.....RESPONDENT

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

By this application, the applicant sought to reverse the decision of the taxing officer of this court under Section 62 of the Advocates Act Cap 267 and Regulation 3 (1) of the Advocates (Taxation of Costs) (Appeals and References) (Regulation) SI 267-5 for orders that; the taxing officer's decision be reversed and costs of this application be provided for.

On 22/1/2014 when the matter came up for hearing learned counsel for the respondent raised a preliminary objection to the effect that the reference is filed out of time. He submitted that the certificate of taxation was filed on 31/5/2013, the detailed ruling read on 6/6/2013 and the reference was filed on 29/10/2013. That according to Section **62 of the Advocates Act**, it ought to have been filed within 30 days. Thus the reference is incompetent and should be struck out with costs.

In reply, counsel for the applicant admitted that a reference should be filed within 30 days of the taxation order. He submitted however that he did apply for the record in writing on 19/6/13 and made a follow up on 31/7/13. That copy of the record of proceedings was ready on 4/10/2013 and the certificate of correctness of the record was issued on 4/10/2013. He contended therefore that, the days started running on 4/10/2013 when the record of proceedings was ready and the reference was filed on 29/10/13 within the statutory 30 days. He further argued that **Section 62 of the Advocates Act** makes no provision for when the days should start to run after one has obtained the certified copy of proceedings. In his opinion, this was a proper case for court to exercise its discretion under **Article 126 (2) (e) and Section 98 CPA** to allow this appeal to proceed on its merits for there is no way that the applicant could have formulated his grounds of appeal without first obtaining the record of proceedings.

The reference in point is governed by **Section 62(1) of the Advocates Act** which provides that;

“Any person affected by an order or decision of a taxing officer made under this Act or any regulation made under this Act may appeal within thirty days to the Judge of the High Court who on that appeal may make any order that the taxing officer might have made.”

Therefore, going by the facts as admitted by both parties, the applicant had 30 days within which to lodge this reference/appeal i.e. by 7/7/13. He failed to do so; his defence being that the law allows him time to apply for and receive the certified record of proceedings, in order reasonably, to formulate the grounds of appeal. He also regarded his lapse to be a mere technicality that should not falter the merits of this reference. In my mind this argument is based on the provisions of **Section 79(2) of the Civil Procedure Act Cap 71** which is to the effect that *“in computing the period of limitation prescribed by this section the time taken by the court or registrar in making a copy of...the proceedings upon which it is founded shall be excluded”*.

I have much doubt that Section 79(2) CPA covers references/appeals against taxation orders. This is because S.62(1) of the advocate’s Act which makes specific provision for this type of action, made no provision to accommodate the time within which the Registrar issues a copy of the decree, order proceedings appealed against. None the less, this would not disentitle the appellant to apply for extension of time under the general rule, which he did not do.

However, on close scrutiny of Section 62(1), I believe there is still protection for the appellant.

My emphasis on S.62 (1) is on the word ‘may’, which makes the section not mandatory, but merely directory. The implication of such provisions was extensively discussed in the case of **Edward Byaruhanga Katumba Vs Daniel Kiwalabye Musoke** (Elect Appeal No.2 of 1998). In that case the Court of Appeal followed the decision in the **State for Trade and Industry Vs Langridge (1991) 3 ALLER 501** in which the court of appeal of England was of the view that the whole scope and purpose of the enactment must be considered and one must assess the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the Act. In my opinion, the emphasis should be on the outcome of non compliance.

S.62 of the Advocate’s Act was intended for parties aggrieved against taxation orders to seek relief on appeal. I believe that in such circumstances, it would be reasonable to first obtain a copy of the record in order to formulate comprehensive grounds of appeal. Faced with a similar situation, the court of National **Social Security Fund vs. Joseph Byamugisha T/A J.B Byamugisha HCCA No.19 of 2012** held that the provisions of Section 62 of the Advocates Act are not mandatory. The word used is may and not shall. The court was of the view that where ‘may’ is used as opposed to ‘shall’, then the jurisdiction of the court is not rusted and the court should proceed to allow an appeal filed out of time to be heard and determined on the merits.

According to that decision, even if the inherent powers under S.98 of the Civil Procedure Act are not used the court still has powers under S.33 of the Judicature Act.

I find merit in the above authorities. In addition, I concur with counsel for the applicant that under Article 126(2) of the Constitution substantive justice shall be administered with undue regard to technicalities. In any case, the respondent did not furnish any evidence to show that he had been aggrieved or suffered loss as a result of the delay to lodge this reference/appeal.

Accordingly, preliminary objection is overruled with costs.

EVA K. LUSWATA
JUDGE
10/02/14