

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[LAND DIVISION]  
CIVIL SUIT NO. 283 OF 2009**

**ADAM MUGGA..... PLAINTIFF**

**VERSUS**

**1. VALERIAN KIWANUKA NABUKEERA  
2. REGISTRAR OF TITLES ..... DEFENDANTS**

**RULING**

**BEFORE HON. LADY JUSTICE EVA K. LUSWATA**

During the proceedings of 14/5/15 the plaintiff made a formal prayer for the case to be heard *de novo*. In my ruling of 14/7/15 citing reasons, I denied that prayer. The plaintiff then sought leave to appeal my ruling and the following is my considered decision.

The applicant substantially relied on Order 43, 44 and 45 CPR to argue that he had raised sufficient grounds to merit leave to appeal my decision but counsel for the 1<sup>st</sup> defendant had a contrary view.

The principles to follow before granting leave to appeal in certain cases are now well settled. Invariably, an applicant who seeks leave to appeal must show the following:-

1. That there are prima facie or arguable grounds of appeal which merit serious consideration.
2. That the intended appeal has reasonable chances of success and,
3. That he/she has not been guilty of dilatory conduct.

See for example: **Sango Bay Estates Limited Vs Dresdner Bank AG (1992) EA 17, G.M. Combined (U) Ltd Vs A.K. Detergents (U) Ltd C.A. 23/94 and Degeya Trading Stores (U) Ltd Vs URA C.A.C.A. No. 6/1996.**

The plaintiff who represents himself in the matter rightly argued that a party to a suit should as much as possible be allowed to produce all their evidence so that court can effectively and fairly adjudicate upon all matters in controversy before the parties. He felt that by refusing some of his evidence, the Judge before whom this case was first placed, had denied his constitutional right to be heard. He in addition felt that the High Court had powers to make an order for *de novo* proceedings which would be a way of administering substantive justice under Article 126(e) if the Constitution to pave way for a fair hearing. In his view, denial by the Judge to hear a case *de novo* would merit serious judicial consideration by the appellate court.

Counsel for the defendant disagreed with the arguments and stated that the applicant had not raised serious questions that would merit investigation by the Court of Appeal. In his view, the prayer for leave to appeal was designed to delay hearing of the matter and deny the 1<sup>st</sup> defendant expeditious justice.

My decision to deny *de novo* proceedings hinged principally on my finding that my court as one parrell to that of Justice Kwesiga (the Judge before whom this case was commenced) cannot order *de novo* proceedings. It was my considered view, which I still hold that, my brother who had full control of his court had the power to allow or reject evidence adduced by either party in the suit. By taking on proceedings after him, I could not fetter that power which would amount to interference into the manner in which the suit had so far been conducted. I could have possibly had the discretionary power to order such proceedings if the parties were in agreement or, if the evidence was obliterated or missing from the record, which was not the case. In my estimation, the facts of the case as presented then, would not merit *de novo* proceedings. I was thereby mandated under Order 18 r. 11 (1) CPR to proceed with hearing of evidence from the stage at which, my predecessor left it. In fact, as rightly argued for the 1<sup>st</sup> defendant, the plaintiff would still have an opportunity on appeal to raise the issue of evidence that was purportedly rejected at the trial.

I therefore find that the plaintiff has not raised any matter of law or fact that would merit serious consideration by the Court of Appeal in the intended appeal, which in my view would result into an unnecessary delay to these proceedings. His intended appeal against my ruling has no

reasonable chance of success. I find that it is in the interests of justice and for the benefit of all parties concerned, that hearing of this matter continues as before me in the High Court.

In summary leave to appeal my ruling made on 14/7/15 is denied but with no order as to costs.

I so order.

**EVA K. LUSWATA**  
**JUDGE**

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