

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
MISCELLANEOUS APPLICATION NO.22 OF 2021
(Arising from Civil Appeal No.039/2019)

10 **KATSIGAZI BENSON===== APPLICANT**
VERSUS
LORNA MUSANYUSA KAMAU===== RESPONDENT

BEFORE: HON.JUSTICE MOSES KAZIBWE KAWUMI

15 **RULING**

The Applicant filed a Notice of Motion with a supporting affidavit for orders that the Memorandum of Appeal in Civil Appeal No.039 of 2019 be struck out and/or dismissed. The Applicant further prays for costs of the Application.

20 The Application is premised on the grounds that the Applicant was not served with the Memorandum of Appeal and that the Respondent did not take the necessary steps to prosecute her appeal within the time allowed by the court.

Background.

25 The Applicant filed Civil Suit No.119 of 2015 against the Respondent which was on 25th September 2019 decided in favor of the Respondent herein. The trial Court ordered each party to meet its costs to the displeasure of the Respondent who filed a Memorandum of Appeal challenging that decision only on 23rd October 2019.

30 The Memorandum/Record of proceedings were not served on Counsel for the Applicants but on 24th February 2021 they were served with scheduling notes and submissions relating to the Appeal. Counsel for the Applicant wrote to court declining to file submissions in the Appeal unless they were served with a Memorandum of Appeal. This appears not to have been done hence the filing of the present application.

5 The Respondent in the Affidavit opposing the Application contends that since the delivery of the judgment in Civil Suit No.119/2015 the whereabouts of the Applicant were not known as he had shifted to another location.

It is further contended that the situation was further compounded by the Corona pandemic and she only learnt of the Applicant's Lawyer in December 2020 when
10 they served her Lawyer in **Civil Suit No.002/2013 Akampurira John Laban V Kwarikunda Shedrac.**

Counsel for the Applicant then obtained a schedule for filing submissions in the Appeal and effected service on Counsel for the Respondent who declined to file a reply to the same.

15 **Analysis and Decision.**

The issue for this court to consider is whether the Memorandum of Appeal was served on the Applicant within the time prescribed by the Civil Procedures.

Order 43 of the Civil Procedure Rules is silent on the time within which an Appeal must be served on the Respondent .Recourse is thus to **Order 49 rule 2** of
20 the same Rules that prescribes the time prescribed for the service of summons as applicable to service of all orders, notices and documents. The time is 21 days as laid out in **Order 5 rule 2 of the Civil Procedure Rules.**

The Respondent who had filed the Appeal in time and before the advent of the Corona virus pandemic failed to serve the Applicant. The same Order 5 of the
25 Civil Procedure Rules provides for substituted service where the person to be served cannot be traced after efforts to serve him/her are taken in vain.

The Corona Virus pandemic that led to the closure of the courts in March 2020 canthus not be flagged as an excuse for failing to serve the Appeal within the prescribed time. The subsequent attempt to obtain a schedule for filing
30 submissions could only carry legal validity if service had been effected within the prescribed time and it did not amount to leave to serve the Memorandum of Appeal out of time.

Further still, Rule 4 of the Civil Procedure (Amendment) Rules 2019 provides for the abatement of matters in which no action is taken within six months. The
35 Respondent did not take any action to prosecute her Appeal from the 23rd October 2019 until the 29th January 2021 way after the stipulated time and when the Appeal had long abated.

- 5 Civil Appeal No.39/2019 is thus struck off the record and a copy of this Ruling shall be placed on the file.

I find merit in the Application but will not penalize the Respondent in costs since she should have been guided better by her own Counsel.

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Moses Kazibwe Kawumi
Judge
3rd March 2022