

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(Coram: Oder, Tsekooko, Karokora, Kanyeihamba and Katureebe, JJ. SC.).

MISC. CIVIL. APPLICATION NO. 10 OF 2005

B E T W E E N

**WILLIAM KYOBE
APPELLANT**

.....

AND

1. **GEOFREY GATETE }
ANGELLA MARIA NAKIGONYA }**
2. **RESPONDENTS.**

(Application arising from Notice of Appeal filed against judgment of Court of Appeal in Civil Appeal No. 57 of 2004).

RULING OF THE COURT.

This is an application brought under Rules 41 and 77 of the Rules of Supreme Court to strike out a Notice of Appeal filed by the respondents/ (intended appellants) on 4th November 2004. The application also prays for an order that no appeal lies in this court.

The application is supported by the affidavit of William Kyobe, the Applicant/Respondent. Mr. Niwandinda Kab Anthony, a law clerk in law firm of Bamwe & Co., Advocates, which represents the respondents has sworn an affidavit in reply. Both parties

filed written submissions.

The only ground for the application is that the respondent has failed to take the essential step of filing the appeal within 60 days of filing the notice of appeal as required by Rule 78(1) of the Rules of this Court. It was contended by the applicant that the appeal which was lodged on 6th June 2005, was well out of time, given that the notice of appeal had been filed on 4th November 2004.

The background to this application is that after the Judgment of the Court of Appeal was delivered on 3rd November 2004 in favour of the applicant, the respondent filed a notice of appeal as indicated above. At the same time on 4th November 2004 the respondent's counsel filed a letter in Court requesting for Court proceedings. On 15th March 2005, the Registrar of the Court of Appeal wrote to the respondents' Counsel informing them that the record of proceedings was ready for collection.

According to the applicant the respondents did not take steps to file the appeal within the prescribed time of 60 days from the date of the said letter of the Registrar informing the parties that the record of proceedings was ready. Accordingly, the applicant filed this application on 20th May 2005 seeking for an order to strike out the notice of appeal, since 60 days had already elapsed from the date of the Registrar's letter.

For the respondents, it is contended that after the receipt of the said letter of the registrar, the clerk proceeded to court to pay for and collect the record of proceedings, but on several occasions was told by the staff of the Registry that in fact the record was not ready. Mr. Niwandinda's affidavit states, in part, as follows:-

3. ***"That on 18th day of March 2005, my employer, Mr. Blaze Babigumira called me in his chambers and told me that proceedings in the above case were ready and that I should go and collect them.***
4. ***That on the same day I went to the Court of Appeal to pay for and collect the same but the staff in the Civil Registry told me that they were not ready and that I should keep checking.***
5. ***That I kept checking until the 1st day of April 2005 when the same staff told me that the proceedings and judgement were on the Registrar's desk for certifying.***
6. ***That I asked for a bank payment advice form and pay in slip so that I could pay in the bank and collect the proceedings when they are certified.***
7. ***That it was given to me late in the afternoon and it being a Friday I did not pay but on Monday the 4th day of April 2005, I paid in the bank and when I went to Court of Appeal I found the proceedings and judgment certified and I was given copies of the same"***

From the above affidavit, it is apparent that the record was ready and delivered to the respondents' counsel on 4th April 2005. Whatever was happening in the Court of Appeal Registrar's office is a matter of conjecture. There appears to

have been confusion in that office because the Registrar then issued a certificate on 6th June 2005 certifying that the record of proceedings had taken up to 4th April 2005 to be ready.

The bone of contention in this application is whether the letter of Registrar of 15th March 2005 should be taken as certifying that the record was ready. Rule 78(2) of the Rules of this Court states as follows:-

- (2) ***"Where an application for a copy of the proceedings in the Court of Appeal has been made within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the Registrar of the Court of Appeal as having been required for the preparation and delivery to the appellant of that copy." (emphasis added).***

Clearly there must be a certification by the Registrar as to the time it took to prepare the record of proceedings. This has to be coupled with "delivery" of the record to the appellants. Where the Registrar writes to the parties that the record is ready for collection, but it turns out that in fact the record is not ready and none is delivered to the applicant, it cannot be said that that letter is the certification required by Rule 78(2). The letter is perhaps evidence of availability in the Court of Appeal of copies of proceedings but it is not the certificate. The certificate of the Registrar dated 6th June 2005 must be taken to be the proper certification. We are satisfied that the record

was only ready and delivered on 4th April 2005 and time must be computed from thereon.

This means that the 60 days would run up to 3rd June, which we are satisfied by evidence on record, was Friday and a public holiday. In terms of section 34 (1)(b) and (c) of the interpretation act, the filing would have to be done on the next working day. Section 34 reads as follows:

34 (1) ***"In computing time for the purpose of any Act -***

- (b) ***if the last day of the period is a Sunday or a public holiday (which days are in this section referred to as 'excluded days'), the period shall include the next following day, not being an excluded day;***
- (c) ***where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day."***

In the circumstances, we are satisfied that the filing of the memorandum of appeal on 6th June, 2005 was within the time allowed by law.

There is no merit in this application. It is accordingly dismissed. However, given that the confusion was occasioned by information from the Registrar of the Court of Appeal, it would not be fair to condemn the applicant in costs. We therefore make no order as to costs.

Dated at Mengo this3rdday of ...August.....2006.

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A.H.O. Oder
Justice of The Supreme Court

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J.W.N. Tsekooko
Justice of The Supreme Court

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A.N. Karokora
Justice of The Supreme

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G.W. Kanyeihamba
Justice of the Supreme Court

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Bart M. Katureebe
Justice of The Supreme Court