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**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA**

[Coram: Odoki, CJ., Tsekooko, Katureebe, Tumwesigye & Kisaakye, JJSC.]

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Civil Appeal No. 13 of 2010

15 GIULIANO GARIGGIO
APPELLANT

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Versus

GLAUDIO CASADIO
RESPONDENT

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{Appeal from the decision of the Court of Appeal at Kampala (Engwau, Twinomujuni & Kitumba JJA.) dated 16th December, 2009 in Civil Appeal No. 91 of 2003}

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RULING OF THE COURT.

Giuliano Gariggio, the appellant, instituted a second appeal to this Court. It arose from a decision of the Court of Appeal which substantially upheld a decision of the High Court by dismissing the appeal. The respondent, Glaudio Casadio, had lodged a cross-appeal to the Court of Appeal and the Court allowed the cross-appeal.

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Background:

The appellant and the respondent were business associates for slightly over one year before the relationship went sour and broke up. The appellant sued the respondent seeking for a declaration that he is the owner of the machinery in the premises of Domus Aurea Ltd on Plot 123, 6th Street, Industrial Area, Kampala, and an unconditional order releasing the same machines to the appellant, a permanent injunction, general damages and costs of the suit.

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During trial, his evidence was that he had an oral agreement with the respondent to set up a joint venture to run a Carpentry Workshop. That the shareholding was agreed at 51% - 49% for the respondent and the appellant respectively. The business commenced around September 2000 and ended on 30/12/01 when the respondent kicked the
5 appellant out of the business.

The respondent denied the claim and set up a counter-claim stating that he was engaged by the appellant at a 10% Commission to negotiate liquidation of the appellant's 25% shares in a company known as **Kava International Ltd.** The respondent claimed to
10 have successfully carried out the task with the result that Kava International Ltd. released or transferred to the appellant land and machinery worth Ug.Shs.216,870,000/= which was equivalent to his 25% shares in the company. From the agreement between the parties the respondent's 10% commission was equivalent to Ug.Shs.21,678,000/=.

Thereafter, the appellant agreed to sell some of the machines recovered from Kava
15 International Ltd to the respondent's company called Domus Aurea Ltd. The agreed price was Ug.Shs.75,920,000/= of which a sum of Ug.Shs.30,000,000/= was paid in furtherance of the said contract. Further payments were stopped when the appellant refused to formalise the documentation for the sale of the machines for purposes of the company's records, accounts and taxation.

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The respondent further testified that for a similar 10% commission, he sold various machines on behalf of the appellant to Kapkwata Saw Mills Ltd. for Ug.Shs.24,650,000/= and thus his commission amounted to Ug.Shs.2,465,000/=.

Therefore the total amount owed by the appellant to the respondent as commission was
25 Ug.Shs.24,143,000/=. The trial judge did not believe the appellant and so dismissed the suit but allowed the counterclaim by the respondent. The appellant appealed to the Court of Appeal against the decision of the High Court. The present respondent also cross-appealed against parts of the decision of the trial judge. The Court of Appeal dismissed the main appeal but allowed the cross-appeal. The appellant has now lodged
30 this appeal which is based on six grounds.

The appellant is represented by Messrs. Kasolo & Khiddu, Advocates, and the respondent is represented by Messrs. Kahuma, Khalayi & Kaheera, Advocates. Counsel for both sides filed written statements of arguments.

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In his written arguments, counsel for the respondent first challenged the competence of the appeal and repeated that challenge when the appeal was called up for hearing on 22/03/2012. According to learned counsel, after the Court of Appeal had dismissed the appeal on 16th December, 2009, the appellant did not lodge a Notice of Appeal within
10 the 14 days after 16th December, 2009 as stipulated by **Rule 72(2)** of the Rules of this Court. Rule 72(2) states that “**Every notice under subrule (1) of this Rule shall, subject to Rules 80 and 91 of these Rules, be lodged within fourteen days after the date of the decision against which it is desired to appeal.**”

15 In this case, the appellant lodged a notice on 27th January, 2010, which, even if the Christmas court vacation was taken into account{see Rule 21(2)} is beyond the 14 days allowed by Rule 72(2). Because of that, counsel for the appellant filed in the Court of Appeal, Civil Application No. 18 of 2010 (**Giuliano Gariggio vs. Claudio Casadio**) seeking for extension of time to lodge a proper Notice of Appeal. To compound the
20 problem, His Worship Deo Nizeyimana, the Assistant Registrar, Court of Appeal, purported to hear and grant that application on 26th April, 2010. He allowed the appellant to file a Notice of Appeal out of time and purported to validate the Notice of Appeal which had been filed out of time on 27th January, 2010.

25 On the day when the appeal was called up for hearing, after hints from the bench, Mr. Kahuma for the respondent was in effect forced to abandon his objection. Mr. Mugenyi for the appellant then resuscitated the matter by arguing that leave was granted by the Registrar of the Court of Appeal and that notice of objection by respondent was withdrawn. We do not believe that such withdrawal would validate a notice filed
30 without following the rules.

We are faced with deciding whether the Registrar of the Court of Appeal has powers to grant leave to appeal to this Court. In our considered opinion, the Registrar of Court of Appeal has no powers to grant such leave for a party to appeal to the Supreme Court.

5 The appellant is relying on **Practice Direction No. 01 of 2004 {Court of Appeal (Judicial Powers of Registrars) Practice Direction}** promulgated by the Chief Justice on 02nd July, 2004 for the view that the Registrar has those powers.

As the title of the Practice Direction shows, the powers granted to the Registrars of the
10 Court of Appeal is to exercise such power as extension of time to file Notice of Appeal in the Court of Appeal under Rule 5 of the Rules of the Court of Appeal. The Rule itself reads as follows —

15 *“The Court may, for sufficient reason, extend the time limited by these Rules or by any decision of the Court or of the High Court for the doing of any act authorised or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to the time as extended.”*

20 Clearly this Rule is about the doing of an act which relates to the work of the Court of Appeal but not to the work of the Supreme Court. The only job to be done by the Registrar in so far as appeals to this Court are concerned is to receive the notice and thereafter organise the record. See Rule 77 OF THE Court of Appeal Rules and Rule 73 of the Supreme Court Rules. The Supreme Court has its own Rules which regulate
25 extension of time to do things like filing a Notice of Appeal out of time. Learned counsel for the appellant appears to rely on the ruling by Nshimye, JA., in the case of *Mandela Auto Spares vs. Marketing Information System [Court of Appeal Civil Reference No. 74 of 2008]*. The decision there is correct because it concerned extension of time in the Court of Appeal. The application or reference arose from the

decision of the Assistant Registrar who exercised power under the Chief Justices' Practice Direction (*supra*) and granted an interim order.

5 The circumstances of this appeal are different. Practice Direction No. 01 of 2004 gave powers to the Registrars of the Court of Appeal to exercise the powers which were previously exercised only by the Justices of the Court of Appeal in relation to the work of that Court. As far as we are aware, the Justices of the Court of Appeal did not have power at the relevant time, to hear applications for leave and or grant leave to file, in this Court, either a Notice of Appeal or an appeal itself.

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In the circumstance, we are satisfied that counsel for the appellant was correct in challenging the competence of this appeal.

15 For the foregoing reasons, we uphold the objection. We order that the appeal be struck off with costs to the respondent.

Delivered at **Kampala** this ...30th..... day of ...January..... **2013**.

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B.J. Odoki.
Chief Justice.

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

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B.M. Katureebe
Justice of the Supreme Court.

35 **J. Tumwesigye.**
Justice of the Supreme Court.

Dr. E. Kisaakye.
Justice of the Supreme Court.

