THE REPUBLIC OF UGAUDA

IN THE COURT OF APPEAL OF UGANDA

CIVIL APPLICATION NO. 17/37

CORAM: HON. S.T. MANYINDO, DCJ. HON. *C.*M. KATO. & J.P. BERKO, J.A

PAUL J. ERONGOT ……APPLICANT

VERSUS

N .P.A .R.T. ……RESPONDENT

RULING OF THE COURT.

This is an application to strike out Civil Appeal No. 20 of 1997. The sole ground of the application is that the applicant did not lodge the appeal in the Registry of this court within the statutory period of one month after the Judgment of the Non — Performing Assets Recovery Tribunal. The application was taken under S.17 (3) of the Non — Performing Assets recovery statute (herein referred as statute No. 11of 1994) and Rules 81 and 42 of the Court of Appeal Rules 1996.

The relevant part of S. 17 *(3)* reads as follows:—

> "*Any* person aggrieved by a decision or order of the tribunal may, within one month after the decision or order1 appeal to the Supreme Court against the decision or order".

By S. 14 of the Judicature Statute 1996, the reference to the *Supreme* Court, is reference to this court.

The judgment or order which is the subject matter of the appeal was passed by the Tribunal on 21/11/96. The appellant filed the Notice of Appeal on the 15th December 1996. The appeal was filed on 30th April 1997. That was clearly out side the one month statutory period. It is the contention of the applicant that the appeal was barred *by* the statutory limitation under 5. *17(3)* of statute No.11 of 1994 and ought to be struck out.

As against this argument, the respondent has argued that the time certified by the Registrar of the High Court as having been required for the preparation and delivery to the appellant of a copy of the record of proceedings must be excluded. The reason being that without the record of the proceedings the memorandum of the appeal could not be prepared. Reliance was placed on Rule 82 (1) (2) of the Court of Appeal Rules 1996 and S. 17 *(4)* of Statute 11 of 1994.

Clearly if the period of limitation applicable to appeals under S. 17 *(3)* of statute 11 of 1994 is the only applicable law and if no enactment or rule of law is made applicable, then this court has no residual or inherent jurisdiction to extend the period beyond the one month's period prescribed by S. 17 *(3)* of statute U of 1994.

The determination of the application, therefore will involve a consideration and construction of S 17 (4) of Statute 11 of 1994.

The Section provides: —

> "S. 17 *(4)* Any- written law applicable to appeals to the Supreme Court from the High Court in Civil cases, shall with necessary modifications or such other modifications as the

Chief Justice may decide in writing, apply to appeals from the Tribunal to the Supreme Court under this section".

The sub—section clearly gives authority to this court to apply "any written law" applicable to appeals to this court from the High Court in Civil Cases, with necessary modifications, to appeals from the Tribunal to this court. One of the written laws applicable to appeals to this court from the High Court is Rule 82 of the Court of Appeal Rules Directions 1996.

"Rule 82 (1): provides "82 (1) subject to rule 112, an appeal shall be instituted in the court by lodging in the Registry, within sixty days after the date when the Notice of appeal was lodged: -
(a) "a memorandum of appeal, in six copies, or as the registrar shall direct.
(b) the record of appeal, in six copies1 or as the Registrar shall direct.
(c) the prescribed fee, and
(d) security for the costs of the appeal"

Therefore a memorandum of Appeal and a record of appeal are necessary documents without which en appeal can not be instituted in this court. Accordingly the preparation of the record of appeal is vital in the appeal process; for without the record of appeal, the memorandum of appeal can not be prepared. Consequently the provisions of Rule 82 (2) and *(3)* are relevant.

These rules provide: —

"82 (2) where an application for a copy of the proceedings to the High Court 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 appeal is to be instituted, be excluded such time as may be certified by the Registrar of the High Court as having been

required for the preparation and delivery to the appellant of that copy.

82 (3) An appellant shall not be entitled to rely on the sub-rule (2), unless his or her application for the copy was in writing and a copy of it was served on the respondent, and the appellant has retained proof of that service".

Therefore in computing the one month period, the period excluded by Rule 82 (2) should be taken into account. If that is done, then the appeal will be within time. The decision or order appealed against was passed on the 21st day of October 1995. The Notice of appeal was filed on the 18/12/95. That was clearly within time.

The written application for a copy of the proceedings was made on 2/12/96. A copy of the written application was served on the respondent on the 2/12/96. This has not been denied. The record of appeal was completed on the 19/4/97. The appeal was lodged on the 30th April 1997. That was clearly within the statutory limitation period, if the period for the preparation and delivery of the record is excluded, as it ought to be.

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This case is distinguishable from Makula International Ltd. Vs. His Eminence Cardinal Nsubuga and another, Civil Appeal No. 4 of 1981 relied upon by learned counsel for the applicant in one respect. The Advocates Act, (Act 22) did not have a provision similar to
S. 17 *(4)* of Statute 11 of 1994 which authorises this court to apply "any written law" applicable to appeals to this Court from he High Court in Civil Cases, to appeals from the Tribunal to this Court. That was the reason why the court in that case could not apply the time allowed and appointed by Order 47 r.4 of the Civil Procedure Rules.
Mr. Byenkya argued that under S. 17 *(5)* of the Non — Performing Assets Recovery Trust Statute, this court could not deal with this matter. The Sub Section provides: — "Except in the case of c appeal under this section, it shall not be lawful for any court or Tribunal to entertain any action or proceedings of any nature for the purpose of questioning any judgement, finding, ruling, order or proceeding of the Tribunal"

We find that argument not valid. The Sub — Section only prohibits this court from dealing with matters outside an appeal. In the present case this court is dealing with interlocutory point of law arising from an appeal which is permitted by the Statute.

For the above reasons, the application is dismissed with costs to the Respondent.

Dated at Kampala this 19th day of November, 1997.

Sgd: S.T. MANYINDO

DEPUTY CHIEF JUSTICE.

Sgd: C.M.KATO

JUSTICE OF APPEAL.

Sgd: J.P. BERKO

JUSTICE OF APPEAL.

I CERTIFY THAT THIS IS THE TRUE COPY OF THE ORIGINAL.

JOSEPH MURANGIRA

REGISTRAR COURT OF APPEAL.