

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CIVIL APPLICATION NO. 54/97.**

**UGANDA REVENUE AUTHORITY:..... APPLICANT**

**VERSUS**

**BUSHENYI COMMERCIAL AG. & 2 OTHERS:..... RESPONDENT**

**CORAM; THE HON. G• M OKELLO, J.A.**

**Ruling of The Court:**

This application was brought under rule 4 of the rules of this Court seeking to lodge the appeal out of time • When it was called for hearing, Counsel for the 1st respondent raised a preliminary objection arguing that the application is incompetent as the Notice of appeal lodged on 12.7.97 was subsequently struck out leaving no notice of Appeal to support it. Counsel distinguished the case of **Delia Almeida V. CR. Carmo Rui Alimeida, civil. Application No. 15 of 1990 (S C) 1992 IV KALR** In that case, the applicant sought to lodge fresh notice of appeal out of time after the previous one had been struck out. The court granted the application. In the instant application, the applicant sought to lodge the appeal out of time • Rule 82 presupposes that appeal is lodged after the Notice of appeal has been lodged and is in existence. In the present application, the Notice of appeal was struck out. In the absence of such a notice of appeal, the appeal cannot be competently lodged.

Mr. Olany Counsel for the applicant submitted that he had intended to seek to lodge a fresh Notice of appeal after the earlier one had been struck out. That submission is not tenable in view

of the clear wording in the Notice of motion. It is clear that, there was a failure of meeting of the mind of the person who drafted the Notice of motion and what Mr.Olany intended to seek. This court goes by the document filed in court. In the circumstances I agree with Counsel for the 1st and 2nd Respondent as indeed Mr.Olany Counsel for the applicant also conceded that this application is incompetent and it is accordingly struck out with cost to the respondents.

Dated at Kampala this 22<sup>nd</sup> day of January, 1998

**G.M.OKELLO**

**JUSTICE OF APPEAL.**