

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL SUIT NO. 792 OF 93

EDITH NAKAZANA MUKASA

Suing by Attorney George

KASEKENDE MUKASA:.....PLAINTIFF

VERSUS

MUHAMUD KASUMBI:..... DEFENDANT

BEFORE: HON. MR. JUSTICE G.M. OKELLO

This application by Notice of Motion was brought under sections 80 and 99 of the civil procedure Act, Orders 47 r 6 and Order 48 r 1 of the Civil Procedure Rules for extension of the time within which to appeal against the order of a Deputy Registrar made on the 18/11/93. The application if supported by an affidavit deponed to by Mohamed Kajumbi on 12/7/94.

The Respondent strongly resisted the application and relied on an affidavit in Reply sworn by Lawrence Nyiuro of M/S Kirenga and Ndezireho Advocates, on 6th September 1994.

Briefly, the background to this Application, is as follows. The Respondent/plaintiff had instituted a summary suit under 033 of the Civil Procedure Rules against the Defendant/Applicant for recovery of land comprised in Leasehold

Register volume 869 Folio 10 Plot 366, Nsike Kampala made out of Kibuga Block 16 Plot 366 measuring 0.09 Hectares. The Plaintiff was filed on 1/11/93.

But the Defendant/Applicant did not apply for leave to appear and defend the suit as required. Then on the application of the Respondent/Plaintiff, judgment was entered for her by the Deputy-

Registrar on 18/11/93 as prayed. The Defendant/Applicant's subsequent application to stay execution, set aside the judgment and to be granted leave to appear and defend the suit was dismissed by Justice Berko on 6/7/94 principally because the execution had already been completed. There was no more execution to stay.

The applicant now seeks an extension of time within which to appeal against the order of the Deputy Registrar in which she entered Judgment against the Defendant.

The main ground of the application is that the applicant was never served with the endorsed plaint and that he learned of the case only when the court Brokers went to execute the Decree.

At the commencement of the hearing of the application, Mr. Mbogo for the Respondent submitted in what he called preliminary objection that the application was misconceived. He argued that the Decree which the applicant intend to appeal against was made under 033 r. 3 of the civil procedure Rules. According to Mr. Mbogo, Registrars have no power normally to enter judgment under this rule. This is ordinarily done by a Judge. In entering judgment under this rule, the Registrar acted under a delegated power. The order is the High Court Order and not of the Registrar.

He cited Patel v. Taylor (1943).O EACA 1 as his authority for this proposition. He finally submitted that since the Decree is the High Court's decree, appeal against it lies to the Supreme Court.

That the High Court has no jurisdiction in the matter. It has no power to entarge time to appeal against its own Decree.

Mr. Nyanzi on his part contended for the applicant that the order for the recovery of the land was made by the Deputy Registrar under 046 r. 2 of the CPR. That in such a case appeal lies to the H/C under 046 r. 8 of the CPR.

In reply Mr. Mbogo submitted that 046 r 2 of the CPR does not cover specialised matter like those under 033 of the CPR.

Upon listening carefully to the above arguments and upon reading the authority cited and the relevant law, I am of the view that the contention between the parties lies in the interpretation of 046 r.2 of the civil procedure Rules, The crucial question

to answer is whether the Deputy Registrar in entering Judgment against the applicant under 033 r. 3 of the civil procedure Rules acted on the power given to her under 046 r. 2 of the CPR.

The relevant rule 2 of order 46 reads thus:-

"2 - In uncontested cases and cases in which the parties consent to judgment being entered in agreed terms, judgment may be entered by the registrar".

The above rule stipulates specified circumstances under which the Registrar may enter Judgment. The circumstances specified are:-

- (1) in uncontested cases.
- (2) in cases where the parties consent to judgment being entered in agreed terms.

I have had the opportunity to read the above Kenya case of

Patel v. Talyar cited by Mr. Mbogo. That case is in my view

distinguishable from the instant case on their facts. In that case, the Registrar entered judgment purportedly acting under the rule similar to our 046 r.2 there is o.46 r 2 (1) and (2), of the CPR. It reads

"Judgment may on application in writing, be entered by the Registrar in the following cases:-

2(I) In uncontested cases where the Plaintiff is drawn claiming a liquidated amount and either (a) the defendant has not entered such appearance as may be prescribed or (b) the defendant having entered such appearance has failed to file a defence within the time prescribed,

(2) In all other cases in which the parties consent to judgment being entered in agreed terms".

The defendant/Appellant appealed against the order of the Registrar on the ground that the defendant had entered and was not in default with his defence. It was therefore conceded that, that case was not uncontested. This differs from the instant case. The instant case is one where the plaintiff is drawn claiming recovery of land under a summary procedure. No application for leave to appear and defend the suit was made. The case was therefore uncontested.

A registrar is empowered by r.2. of our 046 of the civil procedure Rules to enter judgment in such situation. For that reason, I find that the Registrar acted under 046 r. 2 of the civil procedure Rules when she entered judgment against the applicant on 18/11/93 in that uncontested summary suit. She did not act under any other delegated power.

Appeal against such order lie to the H/C as provided for under 046 r. 8 of the CPR. The objection is thus overruled.

On the merit of the application, I wish to point out that justice demands finality of litigations. That is to stop endless litigations. A party is expected to act within a reasonable time to enforce his rights. Equity helps those who are vigilant. In the instant case judgment was entered for the Respondent about ten months ago. The Respondent has already been placed on the land. While I am conscious of the fact that land is a very valuable asset in one's life and that each party to the dispute over land should be afforded opportunity to be heard, all the parties must act within reasonable time to enforce their rights.

In view of the undue delay in this case, I decline to allow the application for extension of time for appeal. The application is therefore dismissed with cost.

G. M. OKELLO

JUDGE

23/9/94

Ruling read in the presence of Mr. Mbogo-for Respondent Mr.  
Nyanzi - Applicant Mr. Komakech court clerk.

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G.M. KELLO

JUDGE

23/9/94