THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO.55 OF 1999

ARTMON SABIKA…… APPELLANT

VERSUS

ZEKEREYA LUGANDA…… RESPONDENT

BEFORE - THE HONOURABLE MR. JUSTICE P.K. MUGAMBA

The appellant seeks to appeal the judgment of the Chief Magistrate at Mengo delivered on 28th June 1999. Towards that end the appellant initiated Civil Appeal 55/99 by filing a memorandum of appeal dated 27th July 1999. Nothing else was filed. Both counsel proceeded to address court on the viability of an appeal filed in the fashion already related to.

Mr. Kiboneka, counsel for the appellant, argued that the appeal is competent. He cited the provisions of Article 139 (2) of the Constitution in particular noting that whereas before the commencement of the present Constitution there was need to extract a decree or order to accompany a memorandum of appeal such need no longer exists. He stated that the Article under review provides:

> 'Subject to the provisions of this Constitution and any other law, the decisions of any court lower than the High Court shall be appealable to the High Court'.

He quoted also Article 257 of the Constitution where judgment is stated to include a decision, an order or decree of the court. He argued that the position prior to the promulgation of the present Constitution was different as an appeal then was only from orders and decrees unlike now when the Constitution allows for appeals from decisions of lower courts. He called Article 273 of the Constitution to his aid. In any case, counsel continued, a decree had been extracted from the judgment of the lower court and any apparent impropriety that might attend it should be blamed on court and not the appellant. He contended there was, at any

rate, a decree on record.

On his part Mr. Lutakome counsel for the respondent argued that the appeal is incompetent. He stated that the party which wishes to appeal has a duty to extract the decree and file it with the memorandum. He said Article 273 of the Constitution in no way altered the position of the law in this respect.

Earlier on I noted that a memorandum of appeal had been filed on 27th July 1999 without a decree. On the original file from Mengo Chief Magistrate's court is what is headed "Decree In Original Suit' and dated 20th March, 2000. It is purportedly signed by the Chief Magistrate but is bereft of the court seal. Lack of a court seal denies the document any claim to authenticity. As for the date, Order 18 rule 7 (1) CPR provides that a decree shall bear the date of the day on which the judgment was delivered. This is mandatory. The likely decree is dated 20th March 2000. Judgment as already noted was delivered on 28th June, 1999. The purported decree cannot by any stretch of imagination be a derivative of the judgment being referred to in the memorandum of appeal.

I am not persuaded by the argument put forth by Mr. Kiboneka that the Constitution has effected any charge. It does not. The position is still that no appeal is competent until the formal decree or order embodying the decision complained of comes into existence. See The New Vision & Another —vs. - Luka Bamiango. Fort Portal High Court Civil Appeal MFP *2/95* reported in [1995] 11 KALR 121 and The Commissioner of Transport Vs The Attorney General of Uganda and Another [1959] EA 328.

As for the role of the court in this saga, I do not find court to blame at any stage. The law is clear on how an appeal is initiated. The appeal was initiated by professionals and it is not the role of court to extract decrees.

This appeal is struck out as incompetent with costs to the respondent.

P.K. MUGAMBA

JUDGE

17/10/2001