

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

HCT-05-CV-CA-019/2002

(From Bush. CV-CS-37193)

UGANDA MUSLIM SUPREME COUNCIL..... APPELLANT

-VS -

KANYONGONYA & 25 OTHERSRESPONDENT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

RULING

On 14th May 2003 Mr. Tumwesigye, counsel for the respondent, raised a preliminary objection saying the appeal before court was incompetent and should be struck out because it was filed out of time without seeking court's leave first. Counsel for the appellant, on the other hand, contended that the appeal was properly before court since it was filed within time, after the decree was made available to the appellant by court.

It is gainful to set out the sequence of events leading to where we are now. On 30th September 2002 the Chief Magistrate, Bushenyi, delivered judgment in Civil Suit No. 34 of 1993. On 4th October 2002 counsel for the appellants, diligently in my view, wrote to the Chief Magistrate requesting for a certified copy of the proceedings and judgment. The letter was received by the Chief Magistrate's court on 7th October 2002, the same date counsel for the appellant sought fit to file a document entitled 'Notice of Appeal' in the High Court Civil Registry at Mbarara. Such a document is of no consequence in the process of appeal. On 20th November 2002 the appellant paid Shs. 6,000/ for a decree at the Chief Magistrate's court, Bushenyi. This decree was not filed with the High Court Civil Registry at Mbarara until 18th December 2002. A certified copy of the proceedings was prepared and was ready on 11th November 2002 as was that of the judgment. I have already mentioned that the decree was filed on the 18th December 2002. The same day the memorandum of Appeal was filed.

The argument before court revolves in part on provisions of S.80 of the Civil Procedure Act. It states:

‘(1) Except as otherwise specifically provided in any other law, every appeal shall be entered —

(a) within thirty days of the date of the decree or order of the court.

(b) Within seven days of the date of the order of a registrar, as the case may be, appealed against:

Provided that the appellate court may for good cause admit on appeal though the period of limitation prescribed by this section has elapsed.

(2) In computing the period of limitation prescribed by this section the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.’

Given that the appellant applied for certified copies of the judgment and proceedings which were not available immediately, time does not start running until when the appellant receives them. There is no doubt judgment and proceedings already certificated were availed to appellant on 11th November 2002. Appellant did not lodge the appeal until 18th December 2002 which is well outside the period allowed for under S.80 of the Civil Procedure Act, nor was good cause shown for court to admit the appeal outside the period prescribed. Appellant argues that the decree was received on 20th November 2002, the day on which payment for the same was made. What was received on the date was an extract of the decree. It is not in doubt the actual decree was delivered on the 30th September 2002, a date appropriately borne by the extract. In any case there was no excuse for the appeal to be lodged outside time on account of the extract of the decree since it was available to the appellant in time. I find the conduct of the appellant in filing the appeal late dilatory and the appeal incompetent in the circumstances.

Counsel for the appellant calls to aid the provision of Article 126 (2) (e) of the Constitution to the effect that substantive justice shall be administered without undue regard to technicalities. Doubtless counsel is aware that the provision was not intended to do away with rules of procedure but in a reflection of the saying that rules of procedure are handmaidens of justice.

They are to be applied with due regard to the circumstances of each case. In Athanasious Kivumbi Lule - vs- Hon. Emmanuel Pinto [1996] HCB 9 the Court of Appeal held that failure to bring a petition under the correct article of the Constitution through the correct procedural rule is not a mere technicality but a fundamental matter that could entail dismissal. Earlier on in Civil Application No. 52 of 1995 Utex Industries Ltd - vs- Attorney General the Supreme Court had reached a similar conclusion.

Section 101 of the Civil Procedure Act is not available to the appellant either. It cannot assist concerning an application not properly before court. See: Namukasa - vs- Bukenva [1996] EA 433.

The same provision cannot aid a party who had a remedy provided by law which is barred by limitation as Osman - vs- United India Fire and General Insurance Co. Ltd [1968] EA 102 exemplifies.

Consequently this appeal is struck out as incompetent. Costs to the respondent.

P. K. Mugamba
Judge

28th August 2003

Mr. Kahungu-Tibayeita holding brief for Mr. Tumwesigye for respondent

Mr. Katembeko holding brief for Mr. Bwengye for appellant

Ms Tushemereirwe court clerk

Court:

Ruling read in court.

P. K. Mugamba
Judge