

matter outside court. However, when the Court reconvened sitting on 10th September, 2012, Counsel for the applicants, Mr. John Paul Baingana informed Court that the parties failed to settle the matter out of court.

Consequent to the above the application was allowed to proceed interparties. The parties were allowed to file written submissions, which they gracefully did.

I have considered the affidavit evidence by both parties and their respective submissions and on the face of it, the applicants as far as the dismissal of the appeal by the Deputy Registrar would be having valid reasons. According to the Court record, the appeal was dismissed on ground that no action has been taken in this matter for over a period of two (2) years pursuant to Order 17 Rule 6 (1) of the Civil Procedure Rules, on 23rd June, 2009.

I agree with Counsel for the applicant that the Deputy Registrar or Registrar has no powers to dismiss an appeal for want of prosecution. Under Order 43 rule 31 of the Civil Procedure Rules, the powers to dismiss an appeal for want of prosecution are with the Judge. In addition, the Deputy Registrar/Registrar has no powers to dismiss an appeal for want of prosecution under Order 17 rule 6 (1) of Civil Procedure Rules. The aforesaid order is even a preserve of Civil suits only.

Further, I would say that Counsel for the applicants advanced convincing arguments. However, as put by Counsel for the respondents that since June, 2009 when the appeal was dismissed up to September, 2012 when this application was brought as against the respondent, obviously there was an inordinate delay to file this application on the part of the applicants. This delay is an inexcusable.

The applicants in this application and in their submissions endeavoured to show that the dismissed appeal once readmitted has high chances of success.

I had the benefit of looking at the judgment of the lower court being appealed against and the memorandum of appeal. The judgment of the lower court was delivered on 14th December, 2005 by His Worship Komakech R. Williams, magistrate Grade I, at Mengo. The memorandum of appeal was filed in Court on 2nd May, 2006. According to Section 79 (1) (a) of the Civil Procedure Act every appeal shall be entered within thirty (30) days of the date of the decree or order of the Court. In the instant case, the appeal was entered by the applicant/appellants over five (5) months, that is over one hundred and fifty (150) days, which means that the said appeal was filed in Court out of time.

Further, according to Order 43 rule 1 (1) of the Civil Procedure Rules, an appeal is commenced by filing in Court a memorandum of appeal. Wherefore the appeal which the applicants are seeking to be re-admitted was filed in Court out of time. Therefore, there was no appeal filed against the decision of the lower court.

In the result and for the reasons that there is no appeal to re-admit and for the fact that there was inordinate delay in filing this application by the applicants, this application has no merit at all. It ought to be dismissed.

Accordingly, therefore, this application is dismissed without costs.

Dated at Kampala this 11th day of January, 2013.

sgd

Murangira Joseph

Judge