

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
CIVIL APPEAL NO. 078 OF 2012

ARISING FROM ENTEBBE CHIEF MAGISTRATE'S COURT CIVIL SUIT NO. 039 OF 2012

1. **JOHN BYEKWASO**
 2. **JANE NAMUBIRU NAKATO**.....
-**APPELLANTS**

VERSUS

YUDAYA NDAGIRE.....**RESPONDENT**

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING ON PRELIMINARY OBJECTION

When this appeal was called for hearing, the respondent's Counsel raised a preliminary objection that the appeal is incompetent and a nullity in that it was lodged by the appellant without extracting the decree or order which was being appealed against. Counsel submitted that the appeal is incurably defective in that it does not conform with the requirements of section 220(1)(a) of the Magistrate's Act which states that an appeal shall lie from the decrees and orders of a magistrate's court in exercise of its original civil jurisdiction. He argued that the requirements of extracting a decree are mandatory failure of which makes an appeal bad in law. He prayed this court to reject and/or strike off the appeal with costs. He cited **W. T. M Kisule V Nampewo [1984] HCB 55; Yoana Yakuze V Victoria Nakalembe [1988 – 1990] HCB 138** and **Robert Biiso V May Tibamwenda [1991] HCB 92** to support his position.

The appellant's Counsel opposed the preliminary objection. He submitted that extraction of a formal decree is no longer a requirement in the institution of an appeal, and that it is a mere technicality which does not take away the merits of the appeal in light of Article 126(2) of the Constitution. He cited Court of Appeal decisions in **Banco Arabe Espanol V Bank of Uganda Civil Appeal No. 42/1998** and **Standard Chartered Bank (U) Ltd V Grand Hotel (U) Ltd Civil Appeal No. 13/1999** to support his position. He also submitted that Order 21 rule 7(3) of the Civil Procedure Rules requires the magistrate who pronounced the judgement to draw up the decree, and that such magistrate's failure to extract the decree should not be apportioned on the appellant.

Section 220(1) (a) of the Magistrate's Act provides that subject to any written law and except as provided in the section, an appeal shall lie from the decrees or any part of the decrees and from the orders of a magistrate's court presided over by a chief magistrate or a magistrate grade 1 in the exercise of its original civil jurisdiction, to the High Court.

It has for long been a requirement of the law, as held in **W. T. M Kisule V Nampewo [1984] HCB 55; Yoana Yakuze V Victoria Nakalembe [1988 – 1990] HCB 138** and **Robert Biiso V May Tibamwenda [1991] HCB 92**, that failure to extract a formal decree before filing the appeal was a defect going to the jurisdiction of the court and renders the appeal incompetent. The foregoing decisions were based on section 220(1) (a) of the Magistrate's Act. All of them were made before the current Constitution which was promulgated in 1995. This legal position appears to have changed in light of Article 126(2) (e) of the said Constitution which enjoins courts to administer substantive justice without undue regard to technicalities. It has since been held by the Court of Appeal in **Banco Arabe**

Espanol V Bank of Uganda Civil Appeal No. 42/1998 that the extraction of a decree was a mere technicality which the old municipal law put in the way of intending appellants and which at times prevented them from having their cases heard on the merits, and that such a law cannot co exist in the context of Article 126(2) (e) of the Constitution. The position was maintained by the same Court of Appeal in **Standard Chartered Bank (U) Ltd V Grand Hotel (U) Ltd Civil Appeal No. 13/1999**.

It is clear from the foregoing decisions, which I am bound to follow, that the extraction of a formal decree embodying the decision complained of is no longer a legal requirement in the institution of an appeal. The court in the cited **Banco Arabe Espanol** case stated that an appeal by its very nature is against the judgment of a reasoned order and not the decree extracted from the judgment or the reasoned order. Section 220(1) (a) of the Magistrate's Act is apparently now in conflict with the Constitution which takes precedence as the supreme law of the land. Besides, as rightly submitted by the applicant's Counsel, Order 21 rule 7(3) of the Civil Procedure Rules requires the magistrate who pronounced the judgement to draw up the decree. To that extent, the magistrate's failure to extract the decree should not be visited on the appellant.

For those reasons, I overrule the preliminary objection with costs.

Dated at Kampala this 18th day of April 2013.

Percy Night Tuhaise.

JUDGE.