

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**[LAND DIVISION]**  
**MISCELLANEOUS APPEAL NO. 176 OF 2023**  
**(ARISING FROM MISCELLANEOUS APPLICATION NO. 3128 OF**  
**2023)**  
**(ALL ARISING FROM CIVIL SUIT NO. 1186 OF 2023)**

**KAMPALA CAPITAL CITY AUTHORITY ::::::::::::::: APPLICANT**  
**VERSUS**  
**OLD STANLEY HOTEL LIMITED ::::::::::::::: RESPONDENT**

**BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING.**

**Introduction:**

1. This is an application by notice of motion brought under Sections 98, 79 (1)(b) of the Civil Procedure Act Cap 71, Section 33 of the Judicature Act and Order 50 rule 8 of the Civil Procedure Rules (CPR) for orders that: -
  - i) The order granting the Respondent a temporary injunction in Miscellaneous Application No. 3128 of 2023 be set aside.
  - ii) The costs of this Application be provided for.



**Background;**

2. The Respondent filed HCCS No. 1186 of 2023 and an application for a temporary injunction vide Misc Application No. 3128 of 2023. The Temporary injunction order was granted by Her Worship Rashida Batunula in a ruling delivered on 23<sup>rd</sup> November 2023.
3. The applicant being dissatisfied by the said ruling and hence this appeal.

**Applicants' Evidence;**

4. The grounds of the application are contained in the affidavit in support of the application deposed by **JACOB BYAMUKAMA** and are briefly that: -
  - i) The Learned Assistant Registrar erred in law and fact in finding that the Respondent had made out a prima facie case.
  - ii) The Learned Assistant Registrar erred in law in granting a temporary injunction on a finding of balance of convenience, yet the learned Assistant Registrar had already found that damages as a remedy were adequate and available to the Respondent.
  - iii) The Learned Assistant Registrar erred in law and fact by granting a temporary injunction that condones illegality.

- iv) The Learned Assistant Registrar erred in law and fact when she issued a temporary injunction restraining the Appellant from carrying out its statutory duty.
- v) The Learned Assistant Registrar erred in law and fact when she issued a temporary injunction on a finding of balance of convenience, to protect private interests while disregarding national and public interest and the greater community good.
- vi) The Learned Assistant Registrar erred in law by determining the application on her own motion in the absence of submissions by the parties.
- vii) That it is only just and equitable that this appeal be granted.

**Respondent's evidence;**

5. The application is opposed to by an affidavit in reply deposed by **ISIAGI STANISLAS**, the managing director of the Respondent and briefly states as below;

- i) That the applicant's affidavit in support is devoid of any merit and full of material falsehoods and misrepresentations intended to mislead this Honourable Court.



- ii)* That the appeal is incompetent and we shall raise a preliminary point of law on incompetence of the appeal.
- iii)* That the application is an attempt to waste Court's time as the affidavit in support discloses no sufficient grounds for Court to set aside the temporary injunction issued on 23<sup>rd</sup> November 2023.
- iv)* That the Learned Registrar gave parties timelines for filing submissions but none of the parties complied and that could not stop the judicial officer from delivering her ruling.
- v)* That the Learned Registrar went for a locus visit on the suit land therefore was conversant with the matter before her.
- vi)* That the balance of convenience is not entirely based on the ability or inability to pay costs but its determined basing on the evidence available.
- vii)* That the Respondent sought permission to remodel the water channel for which designs were formulated and the Applicant was in agreement.
- viii)* That the Applicant has not shown any justifiable grounds to warrant the grant of this application and therefore it should be dismissed with costs.



**Representation;**

6. The Applicant was represented by Mr. Kwikiriza Benson from the Directorate of Legal affairs at KCCA whereas the Respondent was represented by Lillian Omongi of M/s Omongole & Co. Advocates.

The parties filed written submissions which I have considered during the determination of this Application.

**Issues for determination;**

7. The Respondent raised a preliminary point of law capable of disposing of this entire application challenging the competence of this appeal before this Honourable Court.

8. **Order 15 rule 2 of the Civil Procedure Rules** provides that where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part of it may be disposed of on the issue of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

9. Therefore, I shall proceed to first resolve the preliminary point of law under the issue below.

**i) Whether this appeal is proper before this Honorable Court?**

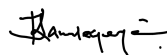
**Resolution and determination of the issue;**

**Whether this appeal is proper before this Honorable Court?**

11. The Respondent raised a preliminary point of law, that this appeal is incompetent as it was filed out of time without seeking leave of Court.
12. The ruling was delivered on the 23<sup>rd</sup> of November 2023 and the Applicant filed this appeal on the 14<sup>th</sup> day of December, 2023 which is 22 days from the date of the ruling hence the same being filed out of time.
13. Counsel for the Respondent relied on the provisions of Section 71(1)(b) of the Civil Procedure Act Cap 71 and the case of **Birihariwe Ereyeza v Bright Tom Amooti HCT-01-CV-CA-0042 of 2022.**
14. **Section 79 () of the Civil Procedure Act**  
**Limitation for appeals.**

**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;**



**or**

**b) Within seven days of the date of the order of a registrar as the case may be, appealed against; but the appellate Court may for good cause admit an appeal though the period of limitation prescribed by this section has lapsed. (emphasis mine)**

**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.**

15. The ruling in question was delivered by the Learned Registrar on the 23<sup>rd</sup> November 2023 and accordingly uploaded on ECCMIS on 24<sup>th</sup> November 2023. From the 24<sup>th</sup> day of November 2023, the Applicant had seven (7) days as statutorily provided to file this appeal, however the same was filed on the 14<sup>th</sup> day of December 2023, **21 days later** which is clearly out of the time limit provided for under Section 79 of the Civil Procedure Act.

16. Section 79 (1) (b) of the Civil Procedure Act provides that the appellate Court may for good cause admit an appeal though the

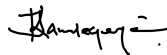
period of limitation prescribed by this section has lapsed. From the reading of the pleadings, the Applicant does not point out any reason to Court for it to consider as a good cause so as to exercise its inherent powers to admit this appeal which leaves the same incompetent and not proper before this Honourable Court.

17. This appeal is hereby determined on a preliminary point of law and the same is found to be incurably incompetent before this honorable court for being filed out of time.

18. The same is hereby dismissed.

19. Costs shall abide the outcome of the main suit.

**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**10/04/2024**