IN THE COURT OF APPEAL

AT KAMPALA

CIVIL APPLICATION NO. 15 OF 1980

BETWEEN

NSUBUGA SENFUMA……APPLICANT

AND

YAHAYA SERUGGA .....RESPONDENT

(Application from judgment of the High Court of Uganda (Musoke, P.J) dated 17/1/80 in High Court Civil Suit No.204/78

RULING OF NYAMUCHONCHO, J.A

This is an application under rule 4 f the Rules of this Court for an extension of time or lodging an appeal to this Court from a judgment and decree of the High Court. The judgment, which is to be appealed from, was delivered on 17th January 1980. The applicant, by his advocate, filed a notice of appeal on 24th January, 1980, and on the same day, he applied for a copy of the proceedings but the said copy of the proceedings was not delivered to him until 18th May 1980, by which time 60 days within which, to lodge the appeal had expired. Hence, this application.

The applicant's main ground is that his failure to lodge his appeal in time is attributable to the High Court Civil Registry which failed to give him the copy of the proceedings within the time prescribed by Rules.

The application is opposed by Mr. Zaabwe, counsel for the respondent, on two grounds. Firstly, he argued that the application would have been unnecessary counsel or the applicant complied with the proviso rule 8(1). Secondly, he argued that the counsel's supporting affidavit does not state the nature of the case to enable the Court to determine whether the rejection of the application would result in a denial of justice.

Mr. Zaabwe's first argument can be disposed of at once. It was held in Bhatt v. Tejwant Singh [1967] E.A. 497 that where an intending appellant has exercised all due diligence and done all in his power to obtain the necessary copies of documents in time, but has be prevented from doing so because the High Court Civil Registry has not been able supply them, it would in the absence of other such circumstances be a denial of justice not to extend the time. This decision was followed in Bakitara Transport Bus Co. Ltd. v. E. Biribonwa [1979] HCB 95. Subject to what I will say below about rule 81, the applicant cannot be blamed for not lodging the appeal in time. The cause for such delay was beyond his control, it was solely attributable to the High Court Civil Registry. For this reason, I would grant the application.

Mr. Zaabwe next pointed, out that the application would have been unnecessary had counsel complied with the proviso to rule 81(1) of the Court rules, 1972. This provides that where an application for a copy of the proceedings is made within 30 days of the date of the judgment and a copy of the said letter is given to the respondent there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar as having been required for the preparation and the delivery of the copy, of the proceedings to the appellant. I agree with Mr. Zaabwe that had counsel complied with this proviso the;
application would not have been necessary. There is no earthly reason why an appellant cannot take the advantage of this rule which allows him extra time within which to lodge his appeal. In Bakitara's case, Ssekandi, J.A. said:

> "Had Rule 81(2) been complied with there would have been no need for this application as the time of 60 days would have been computed from the day the record was served on the appellant. In future counsel might well be advised to comply with rule 81(2) by copying to the respondent to avoid unnecessary applications....."

The proviso to rule 81(1) first appears in the Court of Appeal of East Africa Rules, 1972 (to mitigate the harshness arising from the inability of the High Court Civil Registry to supply the record in time). It does not appear in the former East African Court of Appeal Rules 1954. Under 1954 Rules, the appellant had to seek an extension of time under rule 9 (now rule 4) he

could not look anywhere else. Now under 1972 Rules rule 81 is the enabling rule for the institution of appeals. There is no other rule to be followed. Every appellant should utilize the new rule enshrined in the proviso to rule 81(1) in order to avoid unnecessary applications. Rule 4 should be left to apply to other matters not concerned with the time limit prescribed by rule 81. This proviso was not included in the Rules inadvertently it was intended to mitigate the harsh consequences arising from the inefficiency of the High Court Civil Registry; where there is a specific rule such as rule 81 dealing with a subject matter it should be followed. I hope in future counsel will not Ssekandi, J.A. in Bakitara's case (supra) but must comply with the provisions of rule 81(1) otherwise they have their applications rejected.

The last point raised by Mr. Zaabwe was that counsel's affidavit did not state the nature of the case. Counsel for the applicant in reply stated that, that requirement is no longer necessary as it was a requirement embodied in rule 9 of 1954 Rules now revoked. I am afraid Rule 9 did not contain such requirement. This is a long time practice which arose out of the decision of the defunct East African Court of Appeal in Shah v. D. Jamnadas & Co. Ltd. (1959) E.A. 838. In that case, counsel for the respondent asked the Court to reject the application on the grounds that the nature of the case which gives rise to the application should have been stated. Sir Owen Corrie, Ag J.A. in a judgment of the court commented that that objection was the most substantial ground.
He said,

> "The object of including rule 9 in the Rules of Court is to ensure that the strict enforcement of the limitations of time for filing documents prescribed by the rules shall not result in a manifest denial of justice. It is thus essential, in my view; that an applicant for extension of time under rule 9 should support his application by a sufficient statement of the nature of the judgment and of his reasons for desiring to appeal against it to enable the court to determine whether or not a refusal of the application would appear to cause injustice."

That is how the practice started and grew. It has been followed ever since though perhaps not as Sir Owen had suggested. In Bhatt's case (supra) Sir Trevor Gould,

Ag.V.P. commented on this practice thus:

> "The rule laid down n Shah v. Jamandas is a general but non-the-less a salutaly one, and advocates would be well advised to comply with it in all cases both for the full information of the court and because failure to observe it may well result in the application being refused".

It may well be that in eases, like this, whore the fault lies with the courts it may not be necessary to follow the practice nevertheless, it is advisable to follow it for the court need not extend the time if in its opinion the case is manifestly a hopeless one. In all other cases the practice should be followed. The only sure way one can avoid it without doing any harm to one's case is to comply with the proviso to rule 81(1).

The application is granted. The applicant is given 5 weeks within which to file his appeal. Costs in the cause.

DATED AT KAMPALA this 6th day of November, 1981.

Sgd: (P. Nyamuchoncho)
JUSTICE OF APPEAL.