

**IN THE SUPREME COURT OF UGANDA**

**AT MENGO**

CORAM : WAMBUZI ,C.J.,PLATT, J.S.C & SEATON ,J.S.C

**CIVIL APPLICATION NO.6 OF 1990**

BETWEEN

DELLA ALMEDA ..... APPLICANT

AND

DR.CARMO RUL ALMEIDA ..... RESPONDENT

(Appeal from the decision of the High court of Uganda at Kampala

( Mr.Justice Okello ) dated 14/3/90)

IN

**HIGH COURT CIVIL SUIT NO. 595 OF 1987**

**RULING OF THE COURT**

There are two applications before the court, an application for stay of execution under Rule 5(2) (b) of the **Court of Appeal Rules** being No.6 of 1990, and secondly an application to strike out the notice of appeal under Rule 80 of the **Rules** being No.12 of 1990.

The situation is that if the notice of appeal must be struck out the application for a stay of execution must fail. **Rule 5(2)(b)** requires that an application for a stay must be founded upon a notice of appeal having been lodged. If therefore the notice is struck out, the application for a stay cannot be maintained.

The facts are that judgment was given in this matter on 14<sup>th</sup> March 1990. Notice of appeal was given on 21<sup>st</sup> March 1990. The intending appellant then had 60 days within which to lodge the record of appeal under Rule 81 of the **Rules**. In order to prepare the record , of course, the proceedings have to be prepared by the High Court , and to initiate that process , the intending

appellant must apply to the High Court for of that written application for proceedings to the respondent as laid down in the provision to Rule , 81 (1) and Rule 81(2) respectively . If the intending appellant does not apply within 30 days and copy that request to the respondent then the time taken by the Court to prepare the proceedings cannot be deducted from the time taken to obtain proceedings.

Unfortunately, the intending appellant did not copy his request for proceedings dated 20<sup>th</sup> March, 1990 to the respondent. No further application was made within the 30 days period. Other proceedings took place in June 1990. That was after the record should have been lodged on 20<sup>th</sup> May 1990. Consequently an essential step in the proceedings has not been taken in time as provided by Rule 80 of the Rules, and the notice of appeal stands to be struck out.

Mr.Kateera consequently asked the Court to strike out the notice.

Mr. kutesa has asked that the substance of the matter and not the form should be considered. The proceedings have not yet been sent to him. Mr. Kateera knew all along that Mr. Kutesa had called for proceedings and was content on appealing.

Looking at both sides, it is apparent that the intending appellant ought to have applied to extend time as soon as the mistake of not copying the application or proceedings to the respondent became known. There can be no doubt that Rule 81 (2) is mandatory. It is in fact part of the procedure for allowing a delay because of the slowness of the court in providing copies of the proceedings. This court would probably take into account the situation of a blameless applicant faced with delay by the court, according to the particular circumstances, but it cannot aid an applicant who is at fault.

The result must therefore be that the notice of appeal must be and is struck out with costs. It follows that the application for a stay must fail and it is dismissed with costs.

Deliverd at Mengo this 4<sup>th</sup> day of October, 1990.

Signed:

S.W.W. WAMBUZI

**CHIEF JUSTICE**

**H.G.PLATT**

**JUSTICE OF THE SUPREME COURT**

**E.E.SEATON**

**JUSTICE OF THE SUPREME COURT**