THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: MANYINDO, D.C.J, ODOKI, J.S.C., & TSEKOOKO, J.S.C.)

CIVIL APPLICATION NO.16/1995

BETWEEN

STEPHEN MABOSI …… APPELLANT

VERSUS -

UGANDA REVENUE AUTHORITY……..……..RESPONDENT

(Application to strike out Notice of Appeal from the judgment and order of the High court of Uganda at Kampala (I. Mukanza, J) dated 25 January, 1995.

IN

CIVIL SUIT NO. 699 OF 1993

RULING OF ODOKI. J.S.C.

This application to strike out a notice of appeal file by the applicant on 7th February 1995. It is brought under rules 42, 80 and 82 of the Rules of this Court.

The application is supported by two affidavits sworn by Mr. Nangwala, learned Counsel for the applicant. Dr. Bakibinga, Deputy Commissioner in the Legal Services Department of the respondent has sworn an affidavit in reply.

The main ground for the application is that the respondent has not instituted the appeal within sixty days of filing the notice of appeal as required by r. 81 (1) of the Rules of this Court. It was contended that the appeal which was lodged on 30th June 1995 was filed after the expiry of the prescribed time, and that it should have been lodged on 10th February 1995. It was also submitted that the applicant could not rely on the proviso to r. 81(1) of the Rules of this Court

as it had not complied with provisions of Sub rule (2) of Rule 81, applying for a record of proceedings.

Rule 81(1) provides that an appeal shall be instituted by lodging a memorandum of appeal and a record of appeal within 60 days of the date when the notice of appeal was lodged. The proviso to Sub rule (1) and Sub rule (2) of r. 81 states that:-

"Provided that where an application for a copy of the proceedings in the High Court has been made within thirty days of the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is instituted, be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery to the appellant of such a copy.

(2) An appellant shall not be entitled to rely on the proviso to sub rule (1) unless his application for such a copy was in writing and a copy of it was sent to the respondent

Dr. Bakibinga, for the respondent, submitted that he had complied with the provisions of Rule 81 in his Notice of Appeal in which he stated, in the second paragraph:

"The intending Appellant intends to formulate its grounds of appeal on receipt of the record of proceedings and ruling of the court,"

It was his contention that this statement amounted to a request for a record of proceedings since it was addressed to the Registrar who had custody of the proceedings. Counsel referred to his subsequent letter to the Registrar dated 20th March, 1995 which confirmed his request for the record of proceedings, in which he stated,

"Further to our notice of appeal which was lodged with the Honourable Court, this is to request that work on the preparations of the record of proceedings in the above case be speeded up in order to enable us to file a Memorandum of appeal." There was a subsequent reminder dated 15th May, 1995.

On 22nd June 1995, the Registrar issued his Certificate which read, "1 P.K.K. ONEGA, Registrar of the High Court hereby certify that the copies of the proceedings, exhibits and

judgment which were applied for by Counsel for the Defendant on 7th February 1995 were sent on 22nd June 1995."

Learned Counsel for the respondent further pointed out that on receipt of the record of proceedings, he promptly lodged the appeal on 30th June 1995.

The main issue, therefore, is whether the statement contained in the second paragraph of the Notice of Appeal amounted to an application for a copy of the proceedings under r.81(2) of the Rules of this Court, It was submitted for the applicant that the statement was not a request for proceedings.

I agree with learned Counsel for the applicant that an application normally refers to a request. However, r. 81 does not provide the form the application or request should take. The essentials of the application appear to be that:

(a) it should be in writing,
(b) it should be addressed to the Registrar,
(c) it should be made within 30 days from the date of judgment,
(d) it should request for a copy of proceedings,
(e) a copy of it should be sent to the respondent.

There was no dispute that all the requirements except (e) were complied with. The form in which the request was made by the respondent was rather unusual in civil appeals because the form of the notice of appeal provided under r.74 and Form D in the first Schedule to the Rules of the Court, does not include a request for a copy of proceedings. Therefore the normal practice is to write a separate application requesting for a copy of proceedings,

In the present application, it is clear that Counsel for the respondent introduced an additional statement in the notice of appeal in which he indicated the respondent's intention to formulate its grounds of appeal on receipt of a copy of proceedings. Counsel did not directly apply for a copy of proceedings but he has argued that the purpose of that statement in the notice of appeal was to request for a copy of proceedings to enable him lodge the appeal. Counsel for the respondent contends that his intention to apply for a copy of proceedings was well understood by the Registrar was subsequently supplied him with the proceedings whereupon

he promptly filed the appeal. He argues that the submissions of Counsel for the applicant are based on mere technicalities in order to avoid substantive justice which is contrary to the provisions of article 12 (2) (e) of the Constitution of Uganda, which provide,

"(2) In adjudicating cases both of a civil and criminal nature, the Court shall subject to the law, apply the following principles:

(a) ……

(b) ……

(c) ……

(d) ……...

(e) substantive justice shall be administered without undue regard to technicalities."

In my judgment the respondent substantially complied with the provisions of r.81 of the Rules of this Court. The respondent clearly indicated to the Registrar that it would not be able to lodge the appeal until it received a copy of the proceedings from the Registrar whose duty it was to supply it with the copy of proceedings. The notice of appeal therefore was combined with an application for a copy of proceedings. A copy of the notice of appeal was sent to the applicant who was therefore aware that the respondent was waiting for a copy of proceedings from the Registrar. The Registrar understood the notice of appeal as containing a request for a copy of proceedings which he supplied as soon as it was ready.

In these circumstances, the respondent must be entitled to rely on the proviso to rule 81(1) so that the period of sixty days started to run with effect from 22 June 1995, the date when he received a copy of proceedings. The respondent filed its appeal on 30th June 1995 within the prescribed period. Clearly the respondent has, been vigilant in prosecuting the appeal and it would be unjust to drive it away from the seat of judgment.

In the result, I would dismiss this -application with costs to the respondent.

Dated-this' 2nd day of February, 1996

B.J. ODOKI,

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL.

E.K.E. TURYAMUBONA,

DEPUTY REGISTRAR, THE SUPREME COURT.

RULING OF MANYINDO, D.C.J.

I have read the separate Rulings of Odoki J.S.C. and Tsekooko J.S.C. in draft. I agree with Odoki J.S.C. that this application should be dismissed. The essentials of an application under rule 81 have been set out by Odoki .J.S.C, in his Ruling.

In my view the statement in the Notice of Appeal to the effect that the appellant would prepare the grounds of appeal on receipt of the record of proceedings and the ruling of the High Court put Registrar of that court on notice that the appellant required the record of the case. It amounted to a request for the record of the Proceedings and the Ruling. That is how the Registrar also saw it and rightly acted on it. In the result the application to strike out the notice of appeal is dismissed with costs to the respondent.

Dated at Mengo this 2nd day of February 1996.

S.T.MANYINDO,

DEPUTY CHIEF JUSTICE

CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL.

E.K.E TURYAMUBONA,

DEPUTY REGISTRAR, THE SUPREME COURT.

RULING OF TSEKOOKO, J.S.C.

In the High Court the applicant obtained judgment against the respondent.

On 7th Feb, 1995 the respondent lodged a Notice of Appeal intending to appeal against the decision of the High Court. On 24th/4/1995 the applicant instituted the present application under **Ruled 42, 80 and 82** of the Rules of the Court. By that application the applicant seeks to have the Notice of Appeal struck out because the respondent had not instituted the appeal within 60 days as provided by **Rule 81(1)** of the Rules.

Mr. Nangwala, Counsel for the applicant swore affidavit in support of the application. Dr. Bakibinga, the Deputy Commissioner and Counsel for the respondent on 13/11/1995 filed an affidavit in reply. To each affidavit are annexed documents to which I shall refer to in the course of this ruling.

The gist of Mr. Nangwala's application is that as the respondent did not file the appeal by 10/4/1995, by virtue of Rule 81(1), then the Notice of Appeal lapsed thereafter and, therefore, any purported appeal filed on 30/6/1995 by the respondent is of no effect. Learned Counsel contended that the second paragraph in the Notice of appeal which the respondent seek to rely on is of no effect and does not save the Notice of Appeal by virtue of the provision to Rule 81(1) because the respondent should have formally applied for a typed record of proceedings as it is stipulated by Rule 81(2) of the Rules.

Dr. Bakibinga submitted that the second paragraph of the Notice of Appeal is in effect as effective as any application made under Rule 81(2) He contended that that paragraph was followed by his two subsequent letters reference URA/HLS/SNM - 95 dated 20/3/1995 and

15/5/1995. He further contended in effect that if there is a lapse here it is mere technicality which should nature affecting the appeal.

The relevant parts of Rules 81 and 82 are these:

"81(1) an appeal shall be instituted by lodging in the appropriate registry, within sixty days of the date when the notice of appeal was lodged.

(a) a memorandum of appeal, in quadruplicate

(b) ……

(c) ……

(d) ……

Provided that where an application for a copy of the proceedings in the (High) Court has been made within thirty days of the date of -the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such a time as may be certified by the Registrar of the (High) Court as having been required for the preparation and delivery to the appellant of such copy.

(2) An appellant SHALL NOT be entitled to rely on the proviso to sub rule (1) unless his application for such copy was IN WRITING and a copy of it was sent to the respondent."

Rule 82 states in part that:

"82 If a party who has lodged a Notice of Appeal fails to institute an appeal within the appointed time,

(a) he shall be deemed to have withdrawn his notice of appeal and shall, unless the court otherwise orders be liable to pay the costs arising there from of any persons on whom the notice of appeal was served".

Clearly unless the second paragraph of the Notice of Appeal can be construed as an application under the provisions of Rule 81(2) this application to strike out the Notice of Appeal would be upheld. I would not subscribe to the view that this was a mere technicality which should be glossed over.

It is unnecessary to set out all the contents of the Notice of Appeal. But the second paragraph thereof was couched in the following language:

"The intended appellant intends to formulate its grounds of appeal on receipt of the record of proceedings and the ruling of the Court".

Dr. Bakibinga submits that the Notice of Appeal was addressed to the Registrar of the High Court who has custody of the record; that the Notice of Appeal "Contained-indication that there was a request for proceedings". That this was followed by the two letters earlier referred to. He however, concedes that in the Notice of Appeal there was no specific request for the proceedings. He submitted in the alternative that the Registrar understood the Notice of Appeal to be a request for proceedings and that is why the Registrar issued certificate (annexture "A" to Dr. Bakibinga's affidavit).

Undoubtedly the Notice of Appeal in this application presents novelty. But I am not persuaded that the contents of the second paragraph (which actually reflects the requirements of Section.-326(3) of the **Criminal Procedure Act** in respect of a criminal Notice of Appeal filed in the High Court can be construed as either an application for a copy of a typed record of proceedings or as a substitute for such an application. I don't think that the misunderstanding by the Registrar of the second paragraph of the Notice of Appeal cures the defect. In any case the Registrar could have been misleading by the reminder letters. The words in the Notice of Appeal amount to nothing more than a mere declaration of intention by the respondent to formulate grounds of appeal in future on receipt of the record of proceedings and the ruling of the Court. They do not ask for proceedings. To hold otherwise would be stretching the meaning of an application to absurdity. Neither of the two subsequent letters cured the omission to apply for the proceedings in writing. It would have been possible to treat the letter of 20/3/1995 as such application if it had been written 30 days after 7/2/1995 i.e. before or by 9/3/1995. But since that letter was written after neither the expiration of 30 days within which to ask for proceedings neither that letter nor the Registrar's certificate nor the subsequent filing of the purported appeal could validate the Notice Appeal. This is because the Notice of Appeal was deemed to have been withdrawn and at the time no valid Notice of Appeal was legally on the record. See **Court of Appeal for Uganda, Civil Application No. 6 1982 Kitariko vs. Twino-Katama (1982) H.C.B. 97: Court of Appeal Civil Application No. 4 of 1987 — M.A. BREGANI vs. J.O. Ochola.** In these cases applications for proceedings were actually made but made after 30 days. I don' think this is a case where I could say the mistake of an Advocate should not be visited upon applicant.

For the reasons I have endeavored to give I would allow the application to strike out the Notice of Appeal with costs to the Applicant.

Delivered at Mengo this.... 2nd...Day of February, 1996.

J.W.N.TSEKOOKO,
JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS THE TRUE COPY OF THE ORIGINAL.

E.KE.TURYAMUBONA,

DEPUTY REGISTRAR, THE SUPREME COURT.

REASONS FOR THE JUDGEMENTOF THE COURT:

We heard this appeal and allowed it. We promised to give our reasons which we now give;

The second respondent is the Chairman and Managing Director of the first respondent which is a holding company of several other companies. One of such subsidiary companies is called Pride year Motors Ltd., having contact offices in London, in the United Kingdom.

From the pleadings and the evidence of the Plaintiff the facts of this case are simple. The case was heard exparte for purposes of assessment of damages only since the respondents never entered appearance nor did they file their defences.

In 1981/82 the respondents employed the appellant. In December, 1986 the appellant was confirmed in the employment of the respondents in this country as General Manager (Finance and Administration/Ag. Company Secretary). During 1989 the respondents appointed the appellant on secondment to their London contact office - Pride Years Motors Ltd., as Resident Director. As such Resident Director he was to receive monthly pound sterling 200 and in addition was to be accommodated and

maintained at the cost of the respondents. He was free to further his education during his free time.

For the period 1st January, 1990 to 31st December, 1992, (i.e., for 36 months) the appellant was in the London Office of the Respondents performing the respondents' duties. The respondents appear to have paid him the Uganda currency component of his salary but did not pay him the sterling component. He resigned in December 1992 and demanded for his pay. He received none. In January, 1994 he instituted a suit in the High Court praying for, inter alia.

"Special damages of the equivalent of U.K. pound sterling 7,200 with interest at the rate of 30% p.a. from 1st January, 1993"

Pound Sterling 7,200 represents the total pay due in respect of the 36 months. The plaintiff was the only witness who testified as the case was heard for purposes of assessment of damages. The learned Judge found as a fact that the respondents owed the appellant a total of pound sterling 7,200 but he dismissed the suit on the ground that the Minister of Finance had not given consent for payment of the money in foreign currency as required by the provisions of **Section 5 of the Exchange control Act (Cap. 108 of the Laws of Uganda) as amended by Decree 18 of 1972.**

Hence this appeal.

The appeal contains only one ground of appeal which states:

"That the learned trial Judge erred in law when he held that Court could not enforce the appellant's claim because the arrangement between the parties lacked the necessary consent of the Minister."

During the hearing, Mr. Twesigye, learned Counsel for the appellant, conceded that no Ministerial consent was given to the arrangement under which the respondents were to pay the appellant in pounds sterling. But he submitted, and the learned Judge held in his judgment, that the arrangement was not illegal abinitio.

Learned Counsel submitted that it was the respondents who had to seek consent of the Minister before payment and that this the respondents had not done. He submitted that in any case the appellant was seeking for payment in Uganda Currency. He submitted that the

decision or this court in **Supreme Court Civil Appea1 No. 23 of 1993 (G.W. Katatumba t/a Technoplan vs. Uganda Co-operative Transport Union Ltd.** (unreported) supports the appellant claim.

In our view there was a valid service contract between the appellant and the respondents where under the respondents were obliged to pay the appellant pound sterling 200 per month as salary among other benefits. It was the responsibility of the respondents to obtain permission for the payment of the money in pound sterling. It was not the responsibility of the appellant to seek consent. In that regard we agree that the learned Judge erred in dismissing the appellant's claim on the ground the Ministerial permission had not been obtained. The provisions of **S.5 of the Exchange Control Act as amended by Decree No 18 of 1972 on which the learned Judge relied state that:**

> "5 Except with the permission of the Minister, no person shall do any of the following,
>
> (a) make any payment to or for the credit of a person resident outside the scheduled territories; or
>
> (b) …….
>
> (c) open any account outside the scheduled territories and/or make payment to such account held by a person resident in the schedule territories;
>
> (d) place any sum to the credit of any person resident outside the schedule territories."

We find nothing in these provisions which bars the appellant from enforcing his claim. As was held by this Court in **Katatumba Case** (supra) Courts can give judgment in foreign currency leaving it to whoever is to pay it to apply for permission to pay the money. However in this case the appellant had prayed for payment of pound sterling 7,200 to be made in equivalent to Uganda currency. So the question of consent did not arise. That settles the issue of special damages. The issue of general damages for breach of contract and inconvenience was not dealt with by the learned Judge. In his plaint the plaintiff prayed for general damages. He asked for general damages in his testimony. The learned Judge did not discuss this point although Counsel for the appellant addressed him on it. The memorandum of appeal prayed

for general damages to be awarded in the event of success of the appeal. The appellant's counsel did not suggest a figure.

We think that the assessment of general damages should be made by the trial judge in case; there may be an appeal against such assessment. For these reasons we held that the learned trial Judge erred in dismissing the suit. We accordingly allowed the appeal with costs. This means pound sterling 7,200 will be converted into Uganda Shillings at the rate obtaining on 01/01/1993.

The amount found due will carry interest at the rate of 15% p.a. from the date till payment in full. For purposes of general damages the proceedings are remitted to the trial judge for assessment of general damages.

Dated at Mengo this 21st day of June 1995.

B.J.ODOKI,
JUSTICE OF THE SUPREME COURT

A.O. ODER
JUSTICE OF THE SUPREME COURT

J.W.N. TSEKOOKO
JUSTICE OF THE SUPREME COURT

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