THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

{CORAM: TSEKOOKO, KATUREEBE, OKELLO, TUMWESIGYE & KISAAKYE, JJSC.}

Civil Application No. 02 of 2010

1. DR. KASIRIVU ATWOOKI
2. GEN. D. TINYEFUZA
3. MAJOR GENERAL KALE KAYIHURA
4. S. MUKITALE BIRAHWA

BETWEEN

:::::::::::::::::::::::::::::::::::: APPELLANTS

AND

1. GRACE BAMURANGYE BOROROZA
2. RUSAGARA GODFREY
3. MWESIGWA WILSON
4. HIGIRO GODFREY & 50 OTHERS

:::::::::::::::::::::::::::::::::::: RESPONDENTS

*{**Application Arising from Supreme Court Civil Appeal No. 05 of 2010**}*

REASONS FOR THE RULING OF THE COURT

On 12th October, 2010 we heard a notice of motion instituted by Dr. Kasirivu Atwooki, Gen. D. Tinyefuza, Maj. General Kale Kaihura and S. Mukitale Birahwa (the applicants). By this motion the applicants sought to have Civil Appeal No. 05 of 2010 struck out. The Civil Appeal had been instituted by Grace Bamurangye and 53 others, the present Respondents.

We struck out the appeal at the conclusion of the hearing. Because of the nature of arguments, we promised to give our reasons about the arguments later. We now give the reasons.

We start by setting out relevant facts. The Respondents in these proceedings instituted an appeal in the Court of Appeal against a decision of the High Court. The applicants, as

respondents in the Court of Appeal, filed a Court of Appeal Civil Application No. 85 of 2008 seeking to have the appeal in that Court struck out for failure of service upon them of the notice of appeal as required by the Rules of the Court of Appeal. That application is an interlocutory matter. The ruling was given on 05/06/2009. Thereafter, the present respondents through the firm of Mukasa – Lugalambi, Advocates, sought to appeal and so filed in this Court a notice of appeal followed by the institution of Civil Appeal No. 05 of 2010 on the 10th February, 2010. On 09th April, 2010, Messrs Byenkya, Kihiika & Co. Advocates, lodged the present notice of motion asking this Court to strike out the appeal on the following three grounds—

1. ***No appeal lies to this Honourable Court against the decision of the Court of Appeal made in Civil Application No. 85 of 2008 on the 05th June, 2009. The impugned decision was not one that confirmed, varied or reversed a decision of the High Court.***

2. ***The appeal raises matters arising from preliminary objections that were overruled by the Court of Appeal on the 26th May, 2009. Leave to appeal was expressly denied by the honourable Court of Appeal. No leave has been sought from this honorable Court to appeal against the said matters.***

3. ***The applicant (sic) did not take the essential step of filing the appeal within the time limited by the rules of this honourable Court after receiving the record of proceedings in Civil Application No. 85 of 2008.***

The motion is supported by an affidavit sworn on 31st March, 2010 by Stephen Mukitale Birahwa, the 4th applicant. In essence his affidavit gives reasons in support of the above three grounds. In reply, Mwesigye Wilson, the 3rd respondent, swore an affidavit on 08th October, 2010 in opposition to the application. In it he dwelt on how the Court of Appeal heard and disposed of Civil Application No. 44 of 2008 and

Civil Application No. 85 of 2008. He mistakenly perceives that the way the two applications were decided by the Court of Appeal gives the respondents a right of appeal to this Court.

At the hearing, Mr. Ebert Byekya of Byenkya, Kihiika & Co, Advocates, and Mr. Mwambushya, a state attorney from the Attorney General's Chambers appeared for the applicants. Mr. Mukasa-Lugalambi appeared for the respondents.

At the start of the hearing, Mr. Mukasa-Lugalambi, Counsel for the respondents, half-heartedly objected to the validity of the affidavit sworn by Stephen Mukitale Birahwa basically on the basis that the affidavit offends S.5 of the Oaths Act. He claimed that it did not contain a statement at the end saying that *"the contents of the affidavit were true and correct."* We think that the objection has no basis and learned counsel must have quoted a wrong law. Section 5 reads as follows:—

1) 'Whenever any oath is required to be taken under the provisions of this or any other Act, or in order to comply with the requirements of any law in force for the time being in Uganda or any other country, the following provisions shall apply, that is to say, the person taking oath may do so in the following form and manner—

a) he or she shall hold, if a Christian, a copy of the gospels of the four evangelists or of the New Testament, or if a Jew, a copy of the Old Testament, or if a Moslem, a copy of the Koran, in his or her uplifted hand, and shall say or repeat after the person administering the oath the words prescribed by law or by the practice of the Court, as the case may be;

b) in any other manner which is lawful according to any law, customary or otherwise, in force in Uganda.

2) For the purpose of this section, where a person taking oath is physically incapable of holding the required copy in his or her uplifted hand, he or *she*

may hold the copy otherwise, or, if necessary, the copy may be held before him or her by the person administering the oath.'

This Section is clearly not applicable. Moreover we think that the affidavit was properly sworn. Thus, paragraph18 and the jurat in the affidavit read as follows:—

18) That what is contained in this affidavit is based on my knowledge save what is stated to be a matter of information or belief which is based on the grounds herein.

Sworn at Kampala this 31st day of March, 2010 by the said Stephen Mukitale Birahwa.

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Deponent

With respect to learned counsel for the respondent, we find no substance in the objection. Clearly Section 5 of the Oaths Act does not support the objection. There is nothing in the Section showing what would be the consequence of failure to include the phrase "the contents are true and correct" in the affidavit. As a matter of fact the affidavit contains a jurat indicating that the deponent swore the affidavit before a Commissioner for Oaths which is the mandatory requirement stipulated by the statute.

We now consider the merits of the application. For the applicants, Mr. Mwangushya, SA, argued ground one of the Notice of Motion and Mr. Byenkya augmented the submission when he responded to the submissions of Mr. Mukasa. In brief the learned State Attorney contended that the respondents have no automatic right of appeal to this Court against the decision of the Court of Appeal made in an interlocutory matter. Therefore Supreme Court Civil Appeal No. 05 of 2010 which is against the ruling of the Court of Appeal dated 05/06/2009 in Civil Application No. 85 of 2008 is incompetent. The learned State Attorney relied on section 6(1) of the Judicature Act.

For the Respondents, Mr. Mukasa-Lugalambi contended that his clients have a right of appeal and he based this contention on sections 4 and 6 of the **Judicature Act, Section 78 of**

the CP Act and Article 132 of the Constitution. He also appealed to us to use our inherent powers as set forth in Rule 2(2) of the Rules of this Court not to strike out the appeal. He casually cited two cases without giving their full details nor were copies of any provided to Court. He casually cited **F. Musiitwa Kyazze's case and Mugenyi Vs National Insurance Corporation.** We do not find them helpful. Mr. Byenkya in reply submitted that inherent jurisdiction cannot be used to confer statutory jurisdiction.

With the greatest respect to Mr. Mukasa-Lugalambi, we are not persuaded by his arguments. Nor do we find the two cases helpful. This Court does not have inherent powers of appeal. There are many decided cases to support the opinion that appellate jurisdiction is conferred by Statute. See **Uganda Vs Lule [1974] EA 362, Attorney General Vs Shah (No.4) [1971] EA 50 and Sesiriya Nakanwagi Vs Kyagwe Motor Spares [1964] EA. 41.** The Court can where necessary use its inherent powers to correct an illegality as was the case in **Makula International Vs H.E Cardinal Nsubuga (1982) HCB. 11.**

Indeed S.4 of the Judicature Act relied on by learned counsel for the respondents is against his arguments. It states thus—

'An appeal shall lie to the Supreme Court from such decisions of the Court of Appeal as are prescribed by the Constitution, this Act or any other law.'

This confirms the opinion that appellate jurisdiction for this Court is conferred by statute. Indeed it is Section 6 of the Judicature Act [and not S.78 of CPA] which

provides for appellate jurisdiction of this Court. Its relevant subsection (i) reads thus—

> ***'An appeal shall lie as of right to the Supreme Court where the Court of Appeal confirms, varies or reverses a judgment or order including an interlocutory order given by the High Court in the exercise of its original jurisdiction and either confirmed, varied or reversed by the Court of Appeal.'***

This section is too clear to need any expounding by this Court.

There are two recent decisions of this Court in which this Court pronounced itself with regard to this matter. The first decision is **Uganda National Examination Board Vs Mpora General Contractors [Civil Application No. 19 of 2004].** The second is **Beatrice Kobusingye Vs Fiona Nyakana & Another [Supreme Court Civil Appeal No.5 of 2004].** In this Kobusingye Appeal we approved the opinion we gave earlier in the UNEB case [Supra]. At page 2 of the lead judgment with which the Chief Justice and other Justices of the Supreme Court concurred, Tsekooko, JSC., stated in part—

> *"As we recently stated in the UNEB case of Uganda National Examinations Board Vs Mpora General Contractors ……..…there is no right of Appeal to this Court originating from interlocutory orders of the Court of Appeal which orders are incidental to the appeal but not resulting from the final determination of the appeal itself"*

We have not been persuaded to change that opinion.

Neither Section 78 of CPA nor Article 132 of the Constitution confer any right of appeal to the respondents nor does either confer any jurisdiction on this Court to entertain an appeal arising from the decision of the Court of Appeal in interlocutory matters such as the ruling in the Court of Appeal Civil Application No. 85 of 2009 between the present parties. Interlocutory applications are generally an exercise intended to help that Court to do house clearing. If appeals were allowed to come to this Court from interlocutory rulings of the Court of Appeal, this Court would be swamped with wholly unnecessary multiplicity of appeals. Indeed the Court of

Appeal itself would be clogged with many pending appeals which could not be heard and decided because they would await decision on such interlocutory appeals to this Court. We can foresee the possibility of encouraging multiplicity of unnecessary appeals to this Court. Delays would affect expeditious disposal of appeals in the Court of Appeal.

This ground succeeds. The success of this ground disposes of this application and we find it unnecessary to consider the remaining two grounds.

It was because of these reasons that we struck out Civil Appeal No. 05 of 2010.

Delivered at Kampala this **8th** day of **December** 2010.

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JWN Tsekooko
Justice of the Supreme Court

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B.M. Katureebe
Justice of the Supreme Court

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G.M. Okello
Justice of the Supreme Court

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J. Tumwesigye
Justice of the Supreme Court

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E.M. Kisaakye
Justice of the Supreme Court