**THE REPUBLIC OF UGANDA**

**IN THE HIGHCOURT OF UGANDA HOLDEN AT MUKONO**

**HCT – 14 – LD – CA – 0098/2018.**

**ARISING FROM CIVIL SUIT NO. OO14/2014**

**YOKOSOFATI MUWONGE::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPELLANT**

**VERSUS**

**GODFREY MATOVU SALONGO: RESPONDENT**

**BEFORE HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT**

**JUDGMENT**

1. ***Introduction:***

This is an appeal against the judgment and orders of her worship Akello Irene Magistrate Grade one Kayunga dated *7/6/2018*.

The appellant listed 4 grounds of appeal and later added the 5th ground. The appellant’s counsel and the respondent’s counsel filed written submissions on all the 5 grounds.

Godfrey Matovu Salongo, the respondent was the successful party in the lower court.

1. ***Background:***

Yokosofati Muwonge and Godfrey Matovu Salongo are biological brothers, the latter suing the former for trespass on his land measuring 40 acres.

The learned Grade One Magistrate of Kayunga H/W Akello Irene decided the case in favor of the respondent Godfrey Matovu Salongo. The Appellant filed a Notice of Appeal with this court on *21st June 2018*, and a memorandum of appeal on *19th March 2019.*

1. ***Illegalities discovered during perusal of the Appeal file.***

Before proceeding with the appeal case, it is important for the appellate court to satisfy itself about the pleadings because appeals are governed by the laws and procedure that must be complied with.

The Appellate court must therefore check the propriety of the appeal pleadings to ensure that the appeal before it is competent and filed within the ambit of the law.

At the time of perusing the lower record, Appeal record and all the submissions, court observed that there is a serious irregularity and illegality committed by the appellant which cannot be condoned by this Court.

The record of Appeal indicates that the Appellant filed a Notice of Appeal on *21st June 2018.* The notice was dated *11th June 2018*, duly signed by the Appellant and lodged in the Registry of Court on 21st June 2018. It was endorsed and sealed by the Deputy Registrar H/W Flavia Nabakooza on *25th June 2018.*

**Order 43 rules 1** and **2** of the **Civil Procedure Rules** provide for the form the memorandum of appeal takes in the following mandatory wording;

***“Every Appeal to the high court shall be preferred in the form of a Memorandum signed by the Appellant or his or her Advocate and presented to the Court or such offices as it shall appoint for the purpose.”***

***The Memorandum shall set forth concisely and under distinct heads the grounds of objection to the decree appealed from without any argument or narrative and the grounds shall be numbered consecutively***.

The Notice of Appeal merely puts the Appellate Court, the Trial Court and Respondent on notice. It should never be the basis of opening up an Appeal case and assigning it a case number in the Court system. That is the reason why no court fees are prescribed for notices of Appeal.

In his notice of appeal Muwonge Yokosofati stated;

*“Take notice that the above-named Appellant having been aggrieved and dissatisfied with the Judgment of Her Worship Akello Irene Magistrate Grade one of Kayunga Magistrates court passed on 7th June 2018 so desired to Appeal to the High Court of Uganda at Mukono against the said Judgment.*

*Take further notice that the appellant shall formulate his grounds of appeal as soon as the typed and certified copies of the Judgment and proceedings are availed to him.”*

The content of the notice of appeal are self-explanatory. It is a mere notice and does not set out the grounds of appeal at all.

It is apparent that in his notice he clearly expressed his desire to appeal against the Judgment and Orders of her Worship Akello Irene.

***Section 79(1) (g) of the CPA provides that,***

***“Except as otherwise specifically provided in any other law, every appeal shall be entered, (a) within 30 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 the section has elapsed:***

***(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 the order appealed against and of the proceedings upon which it is founded shall be excluded.”***

The import of the above section is to;

(1) Enable the aggrieved party get the record of the Trial Court, digest the decision, extract the order and make an informed decision as to whether he or she has grounds of Appeal or not.

(2) It is also intended to guide both the court and the parties in computing the period of limitation because the Appellate Court has the discretion to extend the time within which to Appeal.

(3) To curtail delays in the Appeal process which should commence within 30 days after the decision of the Court.

This implies that a party that has not complied with the statutory period to perform a specific act must seek leave of Court to have the time extended.

The Court being a court of justice would determine whether there was a just cause for delay. In this case it’s the Appellate Court to extend the time.

In this type of scenario, Court would consider the time within which the lower record of proceedings was certified and procured and the fact that the Appellant was vigilant in procuring them but was delayed by circumstances beyond his control, such as delay in typing and Certification of Proceedings by the Trial Court.

This is proved by way of a written letter requesting for the typed proceedings and service thereof on the court against which an intended Appeal is preferred and upon the Respondent.

In the case under consideration, the certified copy of its Proceedings and Judgment has the dates of *14th June 2018* and *14th September 2018* and some papers are stamped with a certified copy of the original signed but not dated.

***The decree appealed against was actually sealed by the magistrate court of Kayunga on 7th June 2018, the same date the Judgment was delivered and certified on 14th June 2018.***

As the Appellate Court I would consider *14th September 2018* as the date of certifying the proceedings in the interest of justice.

However, no Memorandum of Appeal was filed around that time and no application was made to the Court for leave to appeal out of time. Instead the learned Deputy Registrar received a letter from Alliance for Public Legal Education in Uganda signed by Counsel for the appellant requesting for endorsement of the hearing notice. Attached to this letter were copies of a hearing notice and a Memorandum of Appeal signed by counsel for the appellant dated 19th March 2019 and endorsed by the Deputy Registrar on *20th March 2019* with evidence of payment of court filing fees of 5,300 paid and deposited on *19th March 2019* under payment registration number 2190003149393 paid in by Sserugo Francis.

This clearly shows and proves that the appeal was filed outside the statutory period as the memorandum of Appeal was filed 8 months and 12 days after the decision appealed against was passed.

This Appeal therefore raises two pertinent issues;

1. What is the role of the Registrar of Court and 2 what is the role of Counsel as an Officer of Court.

The Registrar in our court system is a Judicial Officer in charge of the High Court Registry or other superior courts of record. Besides hearing certain civil matters of interlocutory nature, the Registrar is responsible for ensuring that proper pleadings are filed before Court.

In the case of appeals, the Registrar who authorizes the opening of an Appeal file, should ensure that an appeal case is opened upon filing of proper documents one of which is the memorandum of appeal in accordance **with O.43 r 1** and **2** of the **CPRs**. The Registrar as a Sub Accounting Officer, should also ensure that relevant fees are paid before the file is opened unless he or she allows the litigant time to pay fees later.

It’s the duty of the Registrar of Court to help the Judge by ensuring all pleadings are on file and the file is ready for hearing before cause listing for trial.

In case there is a serious legal error like in the instant case, the Registrar of Court should be the first person to raise the issue of filing the Memorandum of Appeal outside time to the parties and or the Judge. The Registrar of Court then H/W Flavia Nabakooza wrote a letter to the Trial Magistrate of Kayunga on *17/9/2018* calling for the lower record, stating that the appellant filed an appeal vide Civil Appeal *No.96/2018* when actually there was no Memorandum of Appeal on record.

She opened an appeal file on a mere notice of appeal. Had the Registrar of court known her duties, she wouldn’t have opened an appeal file on a mere notice of appeal.

What is the role of an advocate? An advocate is an officer of court and is expected to know the law and apply the law to the facts of his client’s case. The advocate must ensure that all legal proceedings have been followed to the dot and all necessary laws have been complied to while filing pleadings because he or she knows the consequences of acting in breach of the laws and laid down legal procedures.

I am alive to the well-established principle of the law that mistakes/fault/lapses or dilatory conduct of counsel should not be visited on the litigant.

It is also trite that the administration of justice requires that the substance of the dispute should be heard and decided on merit as was held in the case of ***Andrew Bamanya Vs Shamsherali Zatel Supreme Court Civil Application No.20 of 2001***.

Whereas there are situations where the negligence of Counsel may not be visited on the client, deliberate breach of the law like in the instant case where Counsel smuggles in documents outside the statutory period prescribed by law, does not fall within the ambit of court’s discretionary power.

The Advocate who is time barred must move court seeking for its discretion. In the instant case, this was not done.

**Final Finding:**

I find that non-compliance with the statutory provisions under **section 79(1)(a)** of the **CPA** and **O.43 r** 1 and **2** of the CPRs at the time of filing the Appeal makes the Appeal incompetent as it was filed on *21st June 2018* using a Notice of Appeal. The Memorandum of **Appeal** was filed on *19/3/2019* long after the lapse of the statutory period within which to file the appeal.

The Memorandum of Appeal ought to have been lodged on or before the 7th of July 2018. The Memorandum of Appeal was smuggled on the court record secretly and illegally with the help of Deputy Registrar who endorsed it erroneously since no leave of court had been sought to extend time. Endorsement and sealing of a document or pleading illegally filed in court does not cure the illegality or irregularity. Likewise, the agreement by both Counsel to file written submissions in respect of an incompetent appeal does not render it competent for adjudication by the Judge.

It is trite that where illegalities are discovered by Court, it surpasses all pleadings including consents. REF Makula International limited versus H.E. Cardinal Nsubuga and Another CA NO 4/1981.

In the result, the appeal is dismissed for being incompetent.

No order is made as to costs because the Respondent and the Counsel allowed toproceed on an incompetent Appeal. The aggrieved party is free to appeal to the court of Appeal within 30 days from the date of this Judgment.

*Dated this* ***20th*** *day of* ***September 2019***

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**Margaret Mutonyi**

**RESIDENT JUDGE**

**MUKONO HIGH COURT**