

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA  
CIVIL APPEAL No. 55 of 2017**

1. BAAKI BYEBANAKOLANGA                   ===== APPELLANT  
2. MUSANA s/o THE LATE NTENDE

VERSUS

BYAKIKA PETER                                   ===== RESPONDENT

**BEFORE: HON. JUSTICE MICHAEL ELUBU**

**RULING**

This is an appeal against the decision of H/W KAGGWA JOHN FRANCIS which was delivered on the 9<sup>th</sup> of March 2017. The Appellants are (BAAKI KYEBANAKOLANGA and MUSANA s/o The Late NTENDE). The Respondent is Byakika Peter.

At the commencement of the hearing, Counsel for the Respondent took a preliminary Objection that this appeal was filed out of time and is therefore incompetent.

**Submissions**

Counsel for the respondent argued that the appeal was filed on the 19/5/17 following the decision delivered on the 9/3/17.

Counsel submitted that time limits for filing appeals are provided for by **Section 79(1)(a) of The Civil Procedure Act**. That appeals must be filed within 30 days of the date of the decree or order of the Court.

That in this instant appeal, the memorandum was filed after two months and was therefore out of time and that no leave was sought to file the appeal out of time. The Respondents relied on The High Court decision in **Ogbuonye Gerald Vs. Kawooya Alex H.C.C.A (Commercial Court) No. 40/2016** which re-states the position of the law as stipulated in **S.79 (1) (a) of The Civil Procedure Act**.

The Contention of the appellants in reply was that the preliminary objection ought to be dismissed with costs.

That under **S.79 (2) of The Civil Procedure Act** when computing time limitation periods under **S.79 of The Civil Procedure Act**, the time taken by the Court in making a copy of the decree or order, and the proceedings shall be excluded.

The appellants argue that on the 16/3/17, they wrote to the Registrar of this Court praying for certified copies of the proceedings to enable them pursue an appeal. That the record makes no indication when the proceedings were certified or delivered to the appellants. That there is therefore a presumption that immediately the proceedings were obtained the Memorandum of Appeal was filed.

It is the contention of the appellants that in the absence of any evidence to the contrary, the proceedings were not delivered in time. The proof is in the record of appeal which, though it is certified, does not indicate the date on which it was certified.

## **Resolution**

The relevant facts in this matter are that the Judgment was delivered on the 9<sup>th</sup> of March 2017. On the 16<sup>th</sup> of March 2017, a letter written by the then defendants, requesting for a certified copy of the typed record of proceedings, was received in this court.

There is a certified record of proceedings on the court record but it does not bear a date indicating when it was certified.

On the 19<sup>th</sup> of May 2017 the then defendants (now appellants) lodged a memorandum of appeal initiating this appeal.

The question now is whether the appeal was entered in time.

The law regulating time within which appeals may lawfully be registered is Section 79 of **The Civil Procedure Act**. It provides as follows:

(1) Except as otherwise specifically provided in any other law, every appeal shall be entered—

(a) within thirty 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 this 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 order appealed against and of the proceedings upon which it is founded shall be excluded.

It is sub section (2) above which is relevant in these circumstances.

In this instant case there is no indication when the record was actually obtained by the appellants but considering that it was a period of about 2 months between 16/3/17, when an application for the proceedings was made, and 19/5/17 when the memorandum of appeal was filed, then this court finds it probable that the appeal was lodged as soon as the proceedings were ready.

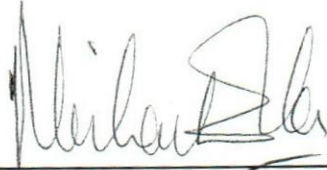
The law is clear; in computing the period of limitation, the time taken by the court in making the proceedings shall be excluded.

This provision applies with equal force to appeals lodged in the High Court against decisions of the Magistrate's Court as it does to appeals filed in the Court of Appeal and Supreme Court, which particular interpretation of the law has been confirmed in several decisions of this and Higher Courts.

- Asadi Weke Vs. L. Oola (1985) H.C.B. 50
- Godfrey T. Kazzora Vs. Georgina Kitakwenda (1992 – 93) H.C.B. 145
- Haji M. Nyanzi V A. Segne (1992-93) HCB 218.

In the result this court finds that when the appellants lodged their memorandum of Appeal on the 19<sup>th</sup> of May 2017 it was in time. The intervening period has been excluded when reckoning the time as this court deems it to be the period when the court was making copies of the certified proceedings to be availed to the parties.

For that reason the preliminary Objection is dismissed with costs.



**MICHAEL ELUBU**

**JUDGE**

**10.1.19**

15.1.19.

Parties present.

Plaintiff - Babirye; Clerk.

Defendant present.

Costs, Being delivered in the presence of  
the above.



15.1.19