

- (a) Allowing the appellant to file a defence in the suit.
- (b) Setting down Civil Suit 55 of 2008 for hearing.
- (c) Costs of this Appeal.

When this matter came for hearing Mr. Beitwenda Dan, appearing for Respondent raised an objection to the validity of this Appeal. He contended that this order appealed does not fall within the categories of orders that are appealable from without leave of court. That leave to appeal is mandatory and therefore this appeal is irregularly before the court. Mr. Murumba who appeared to have been taken by surprised in reply stated that this order is one of those appealable from as of right without seeking courts leave.

I have considered the contentions of both Advocates in this matter and to resolve the disagreement reference has been made to both The Magistrate's Court Act (Cap 16) and The Civil Procedure Act together with The Civil Procedure Rules.

Section 220 (1) (a) of The Magistrate Courts Act (Cap 16) provides:

That subject to any written Law and except as provided in this section, an Appeal shall lie

“(a) From the decrees or any part of the decrees and from the orders of a Magistrate’s Court presided over by a Chief Magistrate or Magistrate Grade One in exercise of its original jurisdiction to the High Court.”

The above sections grants the right of Appeal subject to any written Law. This section must be read and applied with provisions of Order 22 of the Civil Procedure Rules (S1 71-1). Under Order 44 Rule (1) (a) to (u) catagorises orders from which Appeal shall lie as of right without seeking leave to Appeal.

Order 44 Rule 2 C.P.R clears states *“(2) An Appeal under these Rules shall not lie from any other order except with leave of court making the order or of the court to which an appeal would lie if leave were given.”* The order dismissing an application for leave to defend under Summary Suits or Order 36 of C.P.R is not one of the orders set out in order 44 rule 1. Therefore the appellant ought to have sought leave to appeal as prescribed under Rules 3 and 4 of this Order. In the circumstances this appeal was filed in violation of the written Law above referred to.

I have had the opportunity to examine the application for leave to defend the original suit. I was prompted by the Appellant's prayers on appeal. I find that the trial Magistrates holding in issue where he/she dismissed the Application was justified. The ruling is supported by evaluation of the affidavits of the Applicant and Respondent which she considered. In the final result, this Appeal has suffered to blows: it was filed with incurable irregularity and it ought to be struck off and in the second place it lacked any merit. The Appeal is stuck off with costs to the Respondent. This file shall be returned to the trial court to conclude the proceedings in the original suit.

Dated at Kabale this **8th** day of **December, 2011**.

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J.W.KWESIGA

JUDGE

8/12/2011

This Ruling to be served on:-

M/S Beitwenda & Co Advocates for Respondent.

M/S Murumba & Masiko Advocates for Appellant.