

The application is supported by an affidavit sworn by Mr. Owin-Dollo, counsel for the applicants. According to this affidavit, the applicants filed a notice of record were ready.

The main ground for the application is that the applicants failed to file the appeal in time because no decree had been extracted, although the other documents of the Appeal Rules 1972 for extension of time within which to file either the decree or fresh records of appeal.

RULING OF ODOKI, J.S.C.

Civil Suit No. 99 of 1987

IN

(Appeal from judgement of the High Court of Uganda (Mukanza AG.J) dated 15th October 1987

RESPONDENT

.....

NOEL GRACE SHALITA SPANANZI

A N D

MARY NAMATOVO

APPLICANTS

.....

THE EXECUTRIX OF THE ESTATE OF THE LATE CHRISTINE MARY NAMATOVO TERAJUKIRA

B E T W E E N

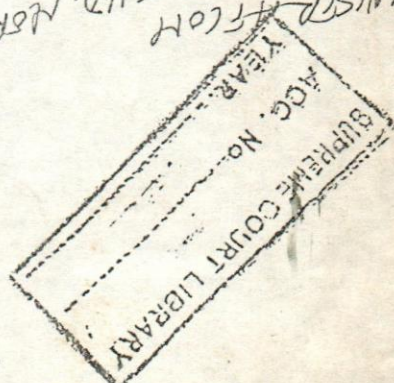
CIVIL APPLICATION NO. 8 OF 1988

(CORAM: ODOKI, J.S.C.)

AT MENGO

IN THE SUPREME COURT OF UGANDA

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which were the subject matter of the suit. He further
 oversight, the decree did not mention one of the two plots
 that subsequently it was discovered that through an
 Registrar who approved it on 15/4/88. Counsel admits
 Mulira then submitted the draft decree to the Deputy
 decree on the ground that it was a court document. Mr.
 counsel for the applicants refused to approve the draft
 counsel for the applicants. But by letter dated 16/10/87
 was delivered he drafted a decree for the approval of
 for the respondent, states that soon after the judgement
 In his affidavit in reply, Mr. Mulira, learned counsel

Deputy Registrar in August, 1988.
 to have the decree rectified, and this was done by the
 the trial court. He then caused the respondent's counsel
 of the extracted decree did not tally with the judgement of
 appeal containing the decree. Later he discovered that
 counsel for applicants filed a supplementary record of
 party. The decree was extracted on 15/4/88. On 25/5/88,
 respondent's extract the decree as he was the successful
 for applicants discovered this, he demanded that the
 done before a decree had been extracted. When counsel
 Appeal in the court on the same day. However, this was
 the appeal, his firm in his absence, filed the record of
 handed it to his firm. With a view to expedite
 certified that the record of proceedings was complete and
 On 28th March 1988, the Deputy Registrar of the High Court
 appeal in this court.

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 28th March 1988
 YEAR

In his submissions Mr. Ojha conceded that he was in error when he filed a defective record, but he argued that his mistake should not be visited on the applicants who had no professional control over him. He relied on the cases of Kyambal v. Zirondu, Civil Application No. 41/79 (1980) H.C.B. II and National Pharmacy v. Kampala City Council, Civil Application No. 6/79 (1979) H.C.B. 132. He contended that this mistake was not due to dilatory conduct on his part because he acted on the strength of the certificate of completeness of record issued by the Deputy Registrar. He argued further that he could not be blamed solely for the mistake since the decree drafted by counsel for the respondent and approved by the court was found defective. On the authority of Bakara Transport Bus Co. Ltd v. Birbonwa Civil Application No. 7/79 (1979) H.C.B. 95, he submitted that the applicants should not be penalised for the delays caused by the Court.

Mr. Multra, learned counsel for the respondent, submitted that since the application was brought under r.4 of the Rules of the court, the applicant had to show sufficient cause for extension of time. He contended that there is no provision providing for time in which to file a decree and therefore extension of time could not be granted to file a decree. Secondly, he submitted that no leave is required to file a supplementary record of appeal.

the decree through the slip rule in August 1988. admit that the Deputy Registrar corrected the mistake in

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Thirdly, he contended that if any of the documents required to be included in the record of appeal is not filed the appeal is incompetent. In this case, counsel argued, the decree was not included in the record due to lack of diligence on the part of counsel for the applicants. It was his contention that the draft decree was submitted to Court before the end of October 1987 and was all along on the record and therefore it was difficult to understand why the Deputy Registrar gave a certificate of completeness to a record which did not include a decree.

Finally, Mr. Mulira submitted that since the absence of a decree makes the appeal incompetent, the only remedy is to strike out the appeal and then it is for the applicants to resurrect the appeal. In support of his submissions he cited the cases of Kiwenge and Mude Sial Estates Ltd. v. M.A. Nathwani (1952) E.A.C.A. 160, Mukasa v. Chohli (1968) E.A. 89 and Essaji v. Polanki (1968) E.A. 218.

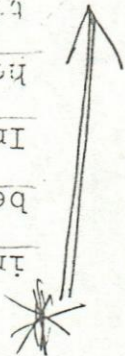
It is now trite law that no appeal lies to this court until the decree appealed from has been extracted: See Farah Incorporated v. The Official Receiver and Provisional Liquidator (1959) E.A. 5, Commissioner of Transport v. Attorney General of Uganda (1959) E.A. 329 and Kiboro v. Posts and Telecommunications Corporation (1974) E.A. 155.

Rule 85 (I) (h) of the Rules of this court requires the record of appeal to contain copies of the decree or order appealed from and failure to do so renders the appeal incompetent. It is also well settled that the decree or order cannot be filed as a supplementary record since it is

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*Assuredly
the appeal*
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It is well settled that an applicant for extension of time in which to file the appeal must show sufficient reason before the court can exercise its discretion in his favor. In other words, the applicant must satisfy the court that he was prevented by sufficient reason from adhering to the time limit set out in the Rules. It is sufficient reason of that application.



extension of time, and it now proceeds to consider the merits this court is properly seized of the application for under r. 52 (c) of the Rules of the Court. In my opinion strike out a notice of appeal or an appeal, as provided Court has no jurisdiction to entertain an application to striking out the appeal. Secondly, a single judge of this first place, there is no proper application before me for for extension of time in which to lodge the appeal. In the be struck out first before entertaining this application his submission that the present incompetent appeal should must be struck out and not dismissed. But I do not accept I agree with Mr. Mulira that an appeal which is incompetent extension of time in which to lodge the appeal.

omitted decree can only be filed after the court has granted time for filing the record of appeal has expired, an Appeal No. 5 of 1987 (C.A.) (unreported). Therefore where (supra) Barclays Bank of Uganda v. Eddy Rodrigues Civil See: Kiboro v. Posts & Telecommunications Corporation a basic and not a supplementary document.

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must relate to his inability to take a particular step in

the first instance. See: Muzo v. Wanjiru (1970) E.A. 481.

The applicant can do so by showing that the delay has not

been caused by his dilatory conduct. See Shanti v. Handocha

& Others (1973) E.A. 207.

In Shanti v. Handocha & Others (supra) Spry V-P said at

p. 209,



"The position of an applicant for an extension of time is entirely different from that of an application for leave to appeal. He is concerned with showing "sufficient reason" why he should be given more time and the most persuasive reason he can show as in Batt's case (1962) E.A. 497, is that the delay has not been caused or contributed to by dilatory conduct on his part. But there may be other reasons and these are matters of degree. "He does not necessarily have to show that his appeal has a reasonable prospect of success or even that he has an arguable case, but his application is likely to be viewed more sympathetically if he can do so, and if he fails to comply with the requirement set out above, he does so at his peril."

There is a line of authorities to the effect that a

mistake or negligence by counsel is not necessarily a bar to his obtaining an extension of time. See: Gatti v.

Shoosmith (1939) 3 All E.R. 916, Shahir Din v. Ram Parkash

Anand (1955) 22 E.A.C.A. 48, Ngoni-Matengo Cooperative

Union Ltd v. V. Osman (1959) E.A. 577, Essaji v. Solanki

(1962) E.A. 223, Kyamulabi v. Strondomu Civil App. No. 41 of 1979 (1980) H.C.B. II.

In the present case counsel for the applicant received the record of appeal on 28/3/88 without the decree appealed from. Yet the Deputy Registrar issued a certificate of completeness of record on the same day. Counsel's legal assistant rushed to file the record of appeal on the same day without ensuring that the decree was included in the

"The general principle laid down in that case (Gatti v. Shoosmith) (supra) that a mistake of counsel is not necessarily a bar to his obtaining an extension of time has been followed by this court in a number of cases among which may be mentioned Shabir Din v. Ram Parkash Anand (1955) 22 E.A.C.A. 48). More recently it is true that this court has laid down that in view of the clear terms of the relevant rules requiring the decree or order to be extracted before the appeal is lodged, in particular r. 56, an applicant who fails to take steps to comply with that requirement cannot excuse himself by pleading that his failure was due to any error of judgment on his part, and such failure may not of itself be held to afford sufficient reasons for the purposes of r. 9. It was so held in the recent cases of Farrah Incorporated v. The Official Receiver and Provisional Liquidator (1979) E.A. 5 (C.A.), N.V.S. Airport Services Ltd. v. Attorney General of Kenya (1959) E.A. 349 (C.A.) and Commissioner of Transport v. The Attorney General of Uganda and Another (1959) E.A. 329.

In Nkont-Matengo Co. v. Cooperative Marketing Union Ltd v. Osman (supra) counsel applied for the decree in the case to file an appeal. Her was handed a decree which was in fact an order made on a preliminary ruling in the case. At the hearing, objection was taken that the decree appealed from had not been filed in time. In granting an extension of time, the court said,

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record. It is clear from affidavits of both counsel that the decree was not approved by the Deputy Registrar until 15/4/88. This is the decree which counsel for the applicant sought to file as a supplementary record on 25/5/88. Since the Deputy Registrar certified that the preparation of the record of appeal was completed and delivered to counsel for the applicant on 28/3/88, the 60 days in which to appeal started running against the applicant with effect from that day. (Sec r.81 of the Rules of the Court). This means therefore that by the time the applicant filed the decree on 25/5/88, he was still within the prescribed time. In my opinion it would not have mattered whether the applicant called it a supplementary record or not. Once all the necessary appeal papers had been filed within the prescribed time, then there would have been no need for this application.

Unfortunately, the decree drafted by counsel for the respondent and approved by the Deputy Registrar, a copy of which was filed by the applicant in the so called supplementary record was defective. The error was corrected in August 1988. Counsel for the respondent and the Deputy Registrar were responsible for this error, although I am of the view that counsel for the applicant should have detected the mistake and had it corrected in time. In these circumstances it would be wrong to penalise the applicants who have shown diligence for the mistakes of the court, counsel for the respondent and their counsel.

"Secondly the record of appeal had already been lodged when an extension of time for lodging it was sought. Mr. Khanna submitted both before the judge and before us that r. 9 of the East in Appeal Court of Appeal rules 1954 only empowers a judge to authorize a future act, not to validate a past one. This submission was rejected by the judge and again we think it was right. We think that when the time for lodging a document is extended, the document is duly lodged, if lodged within the

Hindocha & Others (supra) where G.P.V. said at p. 208, There is support for this view in the case of Shanti v.

and in proper form.

documents or document if those already filed are complete

filing of documents. The applicant need not file fresh

legal effect is therefore to validate or excuse the late

lodging is before or after the order of extension. The

it lodged within the time so extended whether the actual

lodging a document is extended, the document is duly lodged

It seems to be the legal position that when the time for

out of time before application for extension of time is made.

legal effect of extending time to file documents in court

Counsel for the applicants asked the court to clarify the

appeal.

discretion in extending the time in which to file the

shown sufficient reason for this court to exercise its

For these reasons I am satisfied that the applicants have

pursuit of his rights.

lapses should not necessarily debar a litigant from the

stigated and decided on their merits and that errors and

require that the substance of all disputes should be inve-

(supra) that the administration of justice should normally
I agree with what Georges C.J. said in Essaji v. Solanki

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SUGGESTION
REPLY



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The following
What is the

REGISTRAR SUPREME COURT

B. P. B. BABIGUMBA

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

JUSTICE OF THE SUPREME COURT

B. P. CPOKI

Sgd:.....

DATED at Mombasa this 4th day of November, 1988

appeal.

Costs of this application shall abide the outcome of the appeal. From the date of this ruling in which to file the appeal, applicants are granted an extension of 14 (fourteen) days. In the result, this application is allowed. The

authority does not strictly assist them.

In the present case, the applicants have to file a fresh copy of the corrected decree and therefore the above

time so extended whether the actual date is before or after the order of extension. To hold otherwise would serve no purpose and would merely result in further costs being incurred. It is not irrelevant in this connection to note that under r. II the Registrar has no power to refuse to accept an appeal on the ground that it is out of time, which clearly implies the delivery of the appeal out of time may be excused or validated."

MAR. 1989
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