

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 0037 OF 2018
(Arising out of Civil Appeal No.31 of 2009)
(Arising out of High Court Civil Suit N0.81 of 2005)

BETWEEN

NYIRABABOREVANNIS:.....APPLICANT NO.1

GAKURU:.....APPLICANT NO.2

AND

NYIRAKUBANZA SARAFINA:.....RESPONDENT NO.1

KWIGEZE MARIA:.....RESPONDENT NO.2

MUGISHA STELLA:.....RESPONDENT NO.3

RULING OF THE COURT

Introduction

1. This is an application brought under Rule 5 of the Judicature (Court of Appeal Rules) Directions S.I 13-10. The applicants seek an order for extension of time to file a Memorandum of Appeal. The applicants also pray for costs.

2. The grounds for the application are set out in the notice of motion as follows;

- 1) Judgment was delivered on 10th July, 2017
 - 2) That the 60 days are running from 10th July 2017 to 10th September 2018
 - 3) That in the premises upon writing to the Registrar, Court of Appeal and the Inspector of Court
 - 4) That the appellants are waiting that the court record be certified that an appeal is filed
 - 5) That is upon notification by the registrar that the record is to be certified.
 - 6) That the extension is to accommodate the difference of time from the Notice of Appeal (which was filed within time) and the Memorandum of Appeal wherein sixty days have elapsed.
3. The application is opposed by the respondents and is supported by the affidavit of Dorcus Namara on behalf of the respondents.
 4. The applicants were represented by Ms. Basaza Gloria and the respondents by Mr. Agaba Asaph.
 5. The applicants 'case is that they were dissatisfied with the decision of the trial court. The applicants instituted an appeal in this court and are awaiting for the record of proceedings to be certified so that their appeal is heard which has a high chance of success.
 6. The respondents contend that this application is improperly before this court as no notice of appeal has ever been served on the respondent. Counsel for the respondent further averred that the letter requesting for the certified copy

of proceedings has never been received by the High Court in Kabale and has never been served on the respondent.

7. He prayed that this application be dismissed with costs as it is frivolous, vexatious, devoid of merit and bad in law.

Analysis

8. Rule 5 of the Judicature (Court of Appeal Rules) Directions S.I 13-10 states;

‘The court may, for sufficient reason, extend the time limited by these Rules or by any decision of the court or of the High Court for the doing of any act authorised or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to the time as extended.’

9. The power granted to this court under this rule is discretionary and can only be exercised upon the applicants satisfying court that there is sufficient cause for the extension of time. In this case the applicants pray for an order for extension of time to file the memorandum of appeal.
10. Under Rule 76 of the Judicature (Court of Appeal Rules) Directions S.I 13-10, a person who desires to appeal to this court should give a notice in writing. The notice of appeal is lodged in duplicate with the Registrar of High Court within fourteen days after the date of the decision against which it is desired to appeal. There is no evidence before me that a notice of appeal was ever lodged.

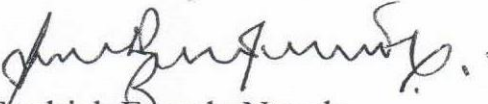
11. Rule 83 presupposes that an appeal is lodged after the Notice of appeal has been lodged and is in existence. In the absence of such a notice of appeal, the appeal cannot be competently lodged.
12. Rule 78 mandates the intended appellant to serve the notice of appeal on the persons directly affected. There is also no evidence of service of the notice of appeal on the respondent.
13. Further Rule 83 (1) requires that an appeal be instituted by lodging a memorandum of appeal and the record of appeal within sixty days after filing a notice of appeal. Under Rule 83 (2) where an application for a copy of proceedings in the High Court has been made within thirty days after the date of the decision against which it is desired to appeal, in computing time within which the appeal is to be instituted, there shall be excluded such time as may be certified by the Registrar of the High Court having been required for preparation and delivery to the Appellant of that copy. But Rule 83 (3) provides that an Appellant shall not rely on sub-rule (2) unless his or her application for a copy of proceedings was in writing and a copy was served on the Respondent, and the Appellant has retained proof of that service. See Horizon Coaches Ltd v Francis Mutabazi & Ors, Court of Appeal Civil Appeal No.20 Of 2001 (unreported).
14. The respondents contend in the affidavit in reply that the letter requesting for the certified copies of the record of proceedings was not served on them as Rule 83(3) mandates. A letter requesting for the certified copy of the proceedings dated 14th November 2017 is attached to the applicants' application though it bears no endorsement by court. This letter ought to have been endorsed. In the absence of the endorsement on the letter there is

no way of proving that the letter was served on the respondents. Service and proof thereof is mandatory. See National Housing & Construction Co. Ltd v Salome T.B Kyomukama, Court of Appeal Civil Application No. 133 of 2009 (unreported).

15. This court cannot exercise its powers under Rule 5 to extend time to file the memorandum of appeal when it is not established that a notice of appeal was lodged as required by the law. It should also be noted that this court made an order for the applicants to file the record of appeal in this court and serve the same on the respondents but this was not done and no justifiable reason was given for the non-compliance with the court order.

16. In the result I find that the applicants have not availed this court sufficient reason to grant the extension of time. This application is dismissed with costs.

Signed, dated and delivered at Kampala this 3rd day of Sept. 2018


Fredrick Egonda-Ntende
Justice of Appeal