

UGANDA / JUDGMENT

Barugare v Attorney General (Civil Application 46 of 1992) [1997] UGSC 14 (7 April 1997) [1997] UGSC 14

COURT

Supreme Court of Uganda

BEFORE

Oder, JSC

CASE / FILE NUMBER

Civil Application 46 of 1992

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■■■»« THE— REPUBLIC —^m..^c -mm—«.- ^aOF—.■
ⁱ , ⁱ— rj.?UGANDA law. [~] rr —.

IN THE SUPREME COURT OF UGANDA

AT MENGO

(COR-JI; ODER, J. S. C.)

CIVIL acsrPPLIO-TION ⁱ —rmarNO. ⁿ ^r
sup> iiwb —16 OF 1992

BETWEEN

| BaRUGaRE
JOVELYN | | o • • | applicant | |-----|-----|-----| | A
N D
| | | GENERAL
ATTORNEY | | | RESPONDENT | | | |

No. 1B of 1992 J. BARUG.. RE vs GENERAL). (arising out of Supreme Court Civil Appeal No.13 J.
BARUG-RE... vs ATTORNEY

RULING OF ODER J.. J3W3.

The Applicant is the Appellant in Supreme Court Civil Appeal NO. 13 of 1992. By this application, brought under Rule 4 of the Respondent of the Notice of Appeal in that Appeal. Rules of this Court, she seeks extension of time for service on the

Grounds of the application are that the Respondent had denied having received and signed the Notice of Appeal which the Applicant that in the interest of justice, this technicality should be removed so that the appeal is heard on its merits; that the Notice of Appeal was filed in time; and that the Respondent has failed to file a reply to the Appellant's statement in support of the appeal and is merely relying on the technicality of the Notice of Appeal. By "statement" the Applicant in effect, written submission or arguments. The application is supported by an affidavit deposed to by Mr. Mugabi, the learned Counsel for the Appellant. contends had been served on him; appears to mean,

The application came for hearing on 3rd February, 1993 but the hearing did not proceed because Miss Stella Arach, the learned Counsel for the Respondent took a preliminary objection on the ground that the application is: incompetent, because it was made before the appeal was withdrawn and the Respondent served with the notice of withdrawal. Another ground for the objection is that the application was made after the appeal had already been called for hearing. The learned Counsel contended that in the circumstances, the Applicant had not complied with Rule 93 Sub-Rules (1), (2) and (3) of the Rules of this Court concerning withdrawal of appeals. Under sub-Rule (1) withdrawal of an appeal should be effected before the appeal is called for hearing. In the instant case the appeal had already been called for hearing thrice before the Notice of withdrawal was filed, as it was done on 1st February 1993. Under Sub-Rule (2) an Appellant withdrawing his appeal should also serve copies of the notice before or within seven days after lodging the Notice of withdrawal on the Respondent who has supplied his address for service under Rule 78 of the Rules. This, it is contended, the Applicant did not do. Sub-Rule (3) provides that if all the parties to the Appeal consent to the withdrawal of the appeal, the Appellant may lodge in court the documents signifying the consent of the parties and, thereupon, the appeal shall be struck out of the list of pending. It is contended that the Respondent not having been served with a copy of the Notice of withdrawal of the appeal, he was not in a position to consent to the withdrawal.

In reply Mr. Mugabi, the Counsel for the Applicant confirmed that the appeal had, in fact, been withdrawn by a Notice to that effect filed on 1st February, 1993. He contended that a copy of the Notice had not been served on the Respondent because the Respondent had not supplied his address for service as required by Rule 78.

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intention to serve the appeal. contention that he was not served with a Notice of the Appeal in the first place. Mr. Mugabi also said that it was the Appellant the Respondent with the Notice of withdrawal of In my view, this point does not arise in view of the Respondent's

application. Court, states as follows: The Notice, Indeed a Notice withdrawing the Appeal in this case has been filed by the Appellant who is the Applicant in the present, addressed to the Registrar of this

of Supreme Court Rules "This is to give you Notice that the Appellant does not intend further to prosecute the appeal under Rule 93 (1)

1993. the learned Counsel for* the Appellant has not given any explanation as to why the appeal was withdrawn while the application was still pending. The Notice of withdrawal itself is silent on the matter. One explanation which comes to mind appears to be that while steps are being taken by means of this application to regularise what may have gone wrong regarding the appeal If that is the The recent decision of this for instance, The Notice of withdrawal was lodged subsequent to the filing of the present application which was itself filed on 14th December service of Notice of the Appeal on the Respondent, should be brought to an end because the essential step of service of Notice appears -to have run into difficulties. Court in the ca.se of HaJ i Hurdin* MAtovu »«vs»... Ben Kiwanuka^y Ciyi_l_Appeal No. 12 of 1991 appears to be an authority to the effect that where an incompetent appeal has been called for hearing when xio application has been filed to cure a defect, reason for the withdrawal it would appear that the step so taken by the Applicant is not a condition precedent for bringing an application for extension of time. Mir. Mugabi,

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necessary application to be made. It appears that once an adjournment for that purpose has been given by the court then the application, for extension of time to cure the defect should be heard on its merit. Th-t is vzhat appears to have happened in the instant case. When the appeal was called for hearing, there was a dispute about whether the Respondent had been served with Notice of Appeal. Hence this application for extension of time in to extend time for taking an essential steps it is open to the Court to strike out the appeal or to adjourn it to allow the which to serve the Notice on the Respondent.

the application has done more than just file an application for extension of time. She has withdrawn the appeal. it appears to me that in order to effect a valid the Applicant should comply with all the requirements of. Rule 93 of the Rules of this Court. Such withdrawal in my opinion would not debar the applicant from making an application for extension of time to serve a Notice of Appeal on the which in. any case is a first step in the procedure of instituting an appeal. Consequently, withdrawal, However, Respondent,

I would overule the preliminary objection taken by the learned Counsel for the Re-spondent and order th^t the hearing of the merit of this application should proceed. It is so ordered. In the circumstances,

Dated at Mengo this 7th day of April, 1993*

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I would overrule the preliminary objection taken by the learned Counsel for the Respondent and order that the hearing of the merit of this application should proceed. It is so ordered. In the circumstances,

Dated at Mengo this 7th day of April, 1993•

A. H. O. ODER

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A TRUE

COPY OF THE ORIGINAL

B. F. B. BABIGUNIRA

REGISTRY

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Prepared on 13 October 2026 · Esheria