

UGANDA / JUDGMENT

Ex Parte [1950] EACA 293 (1 January 1950)

[1950] EACA 293

COURT

East African Court of Appeal

BEFORE

Worley, P

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H. M. COURT OF APPEAL FOR EASTERN AFRICA

Before SIR NEWNHAM WORLEY (President) in Chambers (Reported by special leave of the Judge)

(Civil Application No. 10 of 1956 relating to application for refund of fees paid in Civil Appeals Nos. 42, 43, 44 and 45 of 1956)

\$Ex\$ PARTE

Fees paid on filing records out of time-Whether "deposited" or "paid"-Refund -Indian Land Acquisition Act, 1894-Eastern African Court of Appeal Rules, 1954, rules 11 (1) and (2) and 58—Eastern African Court of Appeal Order in Council, 1950, section 19 (4)-Eastern African Court of Appeal Rules, 1925, First Schedule.

This was an application for an order that fees paid to the Registrar of the Court upon the lodging of four appeals should be refunded, the records having been filed out of time. The Registrar was obliged to accept them under rule 11 of the Eastern African Court of Appeal Rules, 1954, and the appropriate fees were paid. Under rule 11 (2) of the same Rules the appellants' advocates were directed to make formal application inter partes for an extension of time but before the hearing date the appellants' advocates received instructions to withdraw the appeals and the application was dismissed with costs. The appellants' advocates then applied for a refund of the fees paid, submitting that the appeals had not been "lodged" and the fees had only been deposited conditionally on leave to appeal out of time being granted. The Registrar did not accept this as there was no authority in the Court's Rules to authorize a refund and as the fees had been paid into revenue he referred the matter to the Treasury. The Accounting Officer for the Court of Appeal stated that he could not agree to authorize a refund and this application was filed.

Held (24-8-56).—(1) The appeals were filed and "lodged" when the records were accepted in the Registry.

(2) The fees were not deposited but paid.

- (3) There is no express power under the Eastern African Court of Appeal Rules, 1954, to order any refund of fees paid and, in the absence of any enabling provision, neither the Court nor any Judge thereof has power to authorize payments to be made out of the general revenues of any constituent territories, this being a matter for the administrative or revenue authorities.

Application dismissed.

No cases.

Gledhill for applicant.

RULING.—This is an application for an order that fees amounting to Sh. 5,308 paid to the Registrar of this Court upon the lodging of four appeals should be refunded. The matter has arisen in this way. The appellant is the Collector under the Indian Land Acquisition Act, 1894. Being dissatisfied with four awards made by the Supreme Court of Kenya in respect of the compulsory acquisition of certain lands in Nairobi, he gave notice of appeal on 24th February, 1956, from those awards to this Court. Under rule 58 of the Eastern African Court of Appeal Rules, 1954, the record in each of these four appeals should have been filed within 60 days of the filing of those notices, but for reasons which I need not now go into, the records were not ready and were not, in fact, filed by the Collector's advocates, Messrs. Gledhill & Oulton, until the 5th day of June, 1956. Although this filing was out of time, the Registrar could not, by reason of the provisions

of rule 11 of the above Rules, refuse to accept the appeals for filing or entry, and on a direction given under sub-rule (2) of that rule the appellants' advocates were directed to make a formal application **inter partes** for the necessary extension of time. This application was duly filed and came before a Judge of this Court on 28th June. Before that date, however, Messrs. Gledhill & Oulton had been instructed not to prosecute further the four appeals and they gave notice of this to the Registrar of this Court and to the opposite parties on 21st June. Accordingly, when the application for extension of time came on for hearing, Mr. Gledhill did not pursue it and it was dismissed with consequential orders for costs. On 21st June, Messrs. Gledhill & Oulton also applied to the Registrar of this Court for the return of the sum of Sh. 5,308, which they alleged was "deposited" in respect of filing fees for the four appeals. Their grounds for asking for a refund were that they had been instructed not to proceed with the appeals and that, as leave to appeal out of time had not yet been granted, the appeals had not, in fact, been lodged. On 5th July the Registrar replied that he could not accept the view that the appeals had not been lodged and stated that there is no provision in the Rules of this Court under which he could authorize a refund of the fees paid. He also added that the fees having been paid into revenue, the question of a refund was entirely a matter for the Treasury and the application had accordingly been referred to that department. On 16th July the Registrar again wrote to Messrs. Gledhill & Oulton saying that the accounting officer for this Court could not agree to authorize a refund. The advocates for the appellant thereupon filed the present application.

Before me Mr. Gledhill's argument was that the money which he is now seeking to recover on behalf of his clients was paid contingently on leave being given to file the appeals out of time. He argued that although the appeal papers were physically lodged in the Registry they were not filed "legally" because the appellant was directed to make a formal application for leave to file the appeals out of time and that, unless and until such leave was granted, the appeals were incompetent.

If I were disposed to grant this application it would, I think, be incumbent on me to direct that it be made **inter partes** as I think I could not properly order a refund of fees paid without hearing somebody representing the revenue authorities. But as I cannot accept Mr. Gledhill's argument and, furthermore, am of opinion that I have no jurisdiction to order a refund, this point does not arise.

As to Mr. Gledhill's contention that the appeals were not "filed", I think the true position is that the appeals were filed on 5th June, 1956, although irregularly filed. Moreover, I cannot accept the view that the money paid as filing fees was merely deposited. Rule 11 (1) makes it clear that the Registrar cannot refuse to accept for filing any appeal which is delivered to him out of time; equally he cannot accept and file any appeal except upon payment of fees. He has no power in such a case to take a "deposit" in respect of the fees payable upon lodging an appeal. The position may be tested by supposing that the President in pursuance of his power under sub-rule (2), instead of giving a direction that a formal application should be made for extension of time, had directed that the appeals should be treated as if filed within time without prejudice to any objection which the respondents might in due course take on the ground of late filing. If that direction had been given and if the respondents in the event did not raise any objection, the competency of the appeals would never be called in question. Moreover, it is important to bear in mind that the question of late filing had nothing whatever to do with the withdrawal of the appeals.

In any case, I am fully satisfied that I have no jurisdiction to make the order asked for in this case. As I have said, the appeal fees were not deposited but were paid to the Registrar and have been credited to the public revenue. Fees paid in respect of proceedings in this Court do not constitute revenue of the Court but are paid into the general revenues of the territory wherein the proceedings giving rise to the appeal were commenced, in the instant case, the Colony and Protectorate of Kenya: section 19 (4) of the Eastern African Court of Appeal Order in Council, 1950. In the absence of any special enabling provision. I am not aware of any power in this Court or any Judge thereof to authorize payments to be made out of the general revenues of any constituent territory. In the Eastern African Court of Appeal Rules, 1925, there was provision in the First Schedule (which prescribed the fees leviable on filing an appeal) that, in the event of an appeal being withdrawn, the Court should have a discretion to remit not more than one-half of the fees charged: there is no similar provision in the 1954 Rules. In my opinion, the question whether a refund should or should not be made is entirely for the revenue or administrative authorities and this Court cannot interfere with their decision. I would point out that if an intending appellant is, or fears he may be, out of time in lodging his appeal, it is always open to

him either to defer filing the appeal until he has obtained the necessary extension of time or to apply for an extension before the sands have run out.

For these reasons I must dismiss this application.

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