

Kacaca v Byarugaba (Civil Appeal 29 of 2022) [2023] UGHC 439 (7 September 2023)

[2023] UGHC 439

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The Appellant denied the allegations and contended that she acquired the suit land from her father who had bought it from the Respondent's father in 1963 and had utilized the same until his death and they shared it among themselves.

Representation

During the hearing of the appeal, the Appellant was represented by M/S Legal Aid Project of the Uganda Law Society while the Respondent was represented by M/S Muhangi Justus & Partners Advocates.

Grounds of the appeal.

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- 1. The trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on record and came to a wrong conclusion thus occasioning miscarriage of justice.
- 2. The learned trial Magistrate erred in law and fact when he brought in
- extraneous facts on which he relied on thus reaching a wrong conclusion. 3. The learned trial Magistrate erred in law and fact when he handled the proceedings as they were captured by his predecessor thus coming to a wrong conclusion.

Both parties through their counsel filed submissions. However, it should be noted that the Respondent raised preliminary objections which were not addressed by the Appellant's counsel in rejoinder. Nonetheless, court shall address the

Duties of first appellate court

- 1. It is the duty of the first Appellate Court to re-evaluate the evidence as a whole and decide whether or not the decision of the lower court can be sustained as was held in D. R. Pandya Vs Republic [1957] E. A. 336.
- 2. It is the duty of the Appellate Court to make its conclusion bearing in mind that the Appellate Court did not have the opportunity to observe the demeanor of witnesses as they testified in the lower Court as per Fredrick Zaabwe Vs Orient Bank & 5 Others, Supreme Court Civil Appeal No.4 of

Preliminary objections.

Before addressing the merits of this appeal, Court shall handle two preliminary objections raised by counsel for the Respondent. Counsel for the Appellant did not make any submissions in rejoinder on these points of objections in view Order 15 Rule 2 of the Civil Procedure (Amendment) Rules, which enjoins the Court with powers to determine points of law, if in its opinion it has the effect of disposing of part of or the whole suit.

a) Filing the appeal out of time.

It was submitted for the respondent that judgment was delivered by the lower court on 2nd March, 2020 but the Appellant never filed her memorandum of appeal until 27th August, 2020. It is their submission that the appeal was filed beyond 30 days and in contravention of Section 66 of the Civil Procedure Act and Order XLII of the Civil Procedure Rules, S. I-71.

b) Failure to serve memorandum of appeal.

Counsel for the Respondent submitted that the Respondent was never served with the memorandum of appeal contrary to Order 5 of the Civil Procedure Rules. He invited court to consider the decision of Ndyareeba Francis vs Busingye Juliet Civil Miscellaneous Application No. O72 of 2020, where the High Court dismissed an appeal for failure to serve the memorandum of appeal within 21 days.

Decision of the court

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a) Filing the appeal out of time.

Court takes judicial notice that Uganda went into lockdown on 25th March, 2020 where Public and private transport was suspended and this happened 23 days after the lower court delivered its judgment that is 2nd March, 2020.

Some COVID19 restrictions were subsequently lifted on 31st July, 2021 which allowed movement of public and private transport.

Records of proceedings were certified on 30th March, 2020 which meant the appellant was supposed to file her appeal by 29th April, 2020. The Appellant chose to file the appeal on 28th August, 2021, clearly 16 months from the time she was supposed to file her appeal.

Section 79 (1) (a) of the Civil Procedure Act is to the effect that an appeal must be filed within 30 days from the day of the decree or order of the Court. Section 79 (2) of the same Act takes the time taken for preparing records of proceedings of the lower court into consideration in computation of time.

Where an appeal is to be filed out of time, leave is supposed to be sought as per Order 51 Rule 6 of the Civil Procedure Rules. No application for extension of time was filed in this matter. Therefore, I find that the appeal was filed out of time and the same was contrary to the Rules.

b) Failure to serve a memorandum of appeal.

Whereas Order 43 of the Civil Procedure Rules is silent on the time within which to effect service in an appeal, Order 49 Rule 2 of the same Rules is to the effect that time stipulated for service of summons are applicable to service of all orders, notices and documents. By implication, service of memorandum of appeal is 21 days as provided under Order 5 Rule 2 of the Civil Procedure Rules. Memorandum of appeal, for purposes of an appeal is the mode of commencement of an appeal and failure to serve memorandum of appeal renders an appeal incompetent. There is no affidavit on record to show that the Appellant ever served the Respondent with the memorandum of appeal. Service of process is intended to preserve the inviolable right to fair hearing and to avoid trial by

Failure to serve an essential document, more so, one which commences an action in Court as in the instant suit, that is memorandum of appeal, is not a simple procedural matter that could be cured by Article 126 (2) (e) of the Constitution of the Republic of Uganda, 1995. To that end, I find that the appeal filed in this court is incompetent.

In the final result, Court orders that: -

- 1. Civil Appeal No.029 OF 2022 formerly Civil Appeal No.035 of 2020 is incompetent and it is dismissed;
- 2. Costs of this appeal and that of the Court below allowed.

It is so ordered.

..... day of SEPT..... Delivered at Rukungiri this.. TOM
CHENUTAI JUDGE

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Prepared on 14 October 2026 · Esheria