

UGANDA / JUDGMENT

Karai & 5 Others v Vudiga (Civil Appeal 11 of 2021) [2024] UGHC 1001 (4 October 2024)

[2024] UGHC 1001

COURT

High Court of Uganda

BEFORE

Acellam, J

CASE / FILE NUMBER

Civil Appeal 11 of 2021

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA****CIVIL APPEAL NO. 0011 OF 2021****MISCELLANEOUS APPLICATION NO.003 OF 2021****(ARISING FROM ADMINISTRATION CAUSE NO. 003/2006)** **$\$ \mathit{S} \$$** **KARAI JINARO ABBA**

- 2. TIONDI PATRICK
- JURUGO PASCAZIO
- 4. MADRARA HENRY
- 15 5. MINDRA ANTONIATA 6. MORIKU
FLORENCE=====APPELLANTS

VERSUS

1. VUDIGA GODGREY =====RESPONDENT

RULING**BEFORE: HON. JUSTICE COLLINS ACELLAM****Brief Introduction**

The Appellants filed Application N0.003/2021 under section 234 of the Succession Act, section 98 and Order 52 rule 1 & 2 seeking orders that:

- a) Letters of administration granted to the Respondent in respect of the estate of the late Makario Eberu be revoked and
- b) An order be made appointing the 2nd and 5th Applicants/ Appellants as administrators to the estate of the late IYU LAJOPI
- c) Costs be provided for.
- Her Worship Nantawoo Agnes Shelgah, the Magistrate Grade one of the Chief Magistrates Court 30 of Moyo at Adjumani ruled in favor of the Respondent. Being dissatisfied with the said ruling, the

appellants filed a notice of appeal on the 2nd June 2021 and they have to date not filed any 5 memorandum of appeal.

The Respondent through his advocate Matovu N. J CO. Advocates addressed court by a letter dated 28th August 2023 on the status of the appeal and therefore prayed that this honorable court dismisses the said appeal as it is an abuse of court process and is intended to frustrate the Respondent from executing the decree of the lower court.

Representation.

The Appellants have been represented by M/S Okurut-Magara Associated Advocates in the previous applications and suit. However, it appears that they don't have legal representation in this appeal. The Respondent is represented by Matovu N. J Co. Advocates

15 Issues**Whether there is a competent appeal in this Court?****Determination****Whether there is a competent appeal in this Court?**

It is trite law that every appeal in the High Court is commenced by way of Memorandum of appeal. 20 Order 43 Rule 1 of the Civil Procedure Rules SI 282-1 provides that every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for that purpose.

I am persuaded by the case of Geoffrey Nangumya T/A Namgumya Co. Advocates v Security Plus (U) Limited Miscellaneous Application No. 0060 of 2020 where Justice Stephen Mubiru noted that a notice of appeal does not commence an appeal in the High Court from the Judgment of the Magistrate's Court. An appeal in the High Court is commenced by way of a memorandum of appeal.

Section 79(1)(a) of the Civil Procedure Act Cap 282 provides that except as otherwise specifically provided in any other law, every appeal shall be entered within thirty days of the date of the decree or order of the court. In Miggadde Richard & Ors v Nakibuule Sandra & Ors (Civil Appeal NO.53

of 2019)[2021] UGHCLD 4(22 January 2021) it was held that appeals from the Magistrate Grade 30

One and chief Magistrate shall be lodged in the High Court within 30 days from the date of decree or order.

Furthermore, in Ogbounye v Kawooya Civil Appeal 40 of 2016 court stated that the rationale for the timelines under section 79(1) (a) is to avoid delays in administering Justice and the subsequent provisions are designed to dictate a time schedule within which certain steps ought to be taken, the

10 delay must be satisfactorily explained.

In light of the above-mentioned provisions of the law, I hold that the purported civil appeal No 0011 of 2021 does not exist in law. It is also trite that litigation must come to an end. In Brown v Dean [1910]AC 373, [1909]2 KB 573, It was emphasized that in the interest of society as a whole, litigation must come to an end, and "when a litigant has obtained judgment in a court of justice... he is by law entitled not to be deprived of that judgment without very solid grounds." The maxim *reipublicae ut finis litium* is strictly followed. See also Oyet v Okello (Miscellaneous Civil Application No. 53 of

2017) [2018] UGHCCD 53 (25 October 2018)

I have also noticed that the appeal was drawn by the Appellants. I understand the fact that they are lay person and may not have the knowledge of the law on drafting court documents, therefore had they filed the memorandum of appeal within the prescribed time, I would take it that the incompetent Notice of Appeal still serves the purpose they wished for. This is to dispense substantive Justice without technicalities as stipulated under Article 126(2) (e) of the 1995 Constitution. This was the position in Lawino Christine Kijange v Akuru David Misc Application No. 141 of 2021, where court was faced with the same fact and the learned Justice Okello George held a similar view.

\$25\$ It is clear from the record that the Appellants through the Assistant registrar requested the lower court to forward three typed and certified copies of proceedings, ruling and judgment together with the original court file and exhibit if any, the same has been transmitted to this Honorable court however the Appellant has not filed his Memorandum of Appeal in Court to

date.

The purpose of request of proceedings is to enable the intending appellant to obtain certified copies of the proceedings and judgments and prepare a memorandum of appeal. The 30 days within which the appeal must be commenced do not stay running until such proceedings are available. This was stated in *Buso Foundation Ltd v Bob Maate Phillips* where court noted that in computing the period of limitation, the time taken by the court or registrar in making the copy of the decree or order appealed against and proceedings upon which it is founded shall be concluded.

- It is now 2 years and some months from the time the notice of appeal and the record of proceedings was provided to the Appellants yet to date they have not filed any memorandum of appeal in the above stated civil appeal. This is a delaying tactic taken by the Appellant to deny the Respondents from enjoying the fruits of his judgment.
- A litigant who resorts to delaying tactics in order to prevent the court from trying the case within a reasonable time or proceeds with such care free attitude towards an expeditious conclusion of the suit or engages in conduct which otherwise compromises the integrity of the court's procedures, ipso facto forfeits his or her right to have the court hear his or her case. Such a litigant cannot be heard to complain when the doors of justice are finally closed to him or her for what is clearly a subversion of the judicial process. Courts have an inherent jurisdiction and indeed a duty to take effective action
- to vindicate their authority and preserve the due and impartial administration of justice. The interests of justice require that suits should be brought to a timely end.

By virtue of the powers conferred on to this Honorable under section 98 of the Civil Procedure Act Cap 282 and Section 17(2) and 33 of the Judicature Act Cap 16, I therefore strike out Notice of Appeal filed on the 2nd of June 2021 with orders as to costs.

I SO ORDER

Delivered this... 2024.

COL JUDGE

\$25\$

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Prepared on 14 October 2026 · Esheria