

**Kawalya v Uganda Electricity
Transmission Co. Ltd (Civil Appeal 32 of
2022) [2025] UGHC 210 (20 April 2025)**
[2025] UGHC 210

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MASAKA CIVIL
APPEAL NO. 32 OF 2022 (*Arising from Civil Suit No. 69 of 2018 in the Chief
Magistrate's Court at Masaka*)**

**EDWARD
KAWALYA ::APPELLANT
VERSUS UGANDA ELECTRICITY TRANSMISSION CO.
LTD ::::::::::::::::::RESPONDENT Before: HON JUSTICE LAWRENCE TWEYANZE**

JUDGMENT

Introduction.

1. This is an appeal in which the Appellant/Plaintiff being dissatisfied with the Judgement and orders of His Worship Charles Yeteise, Chief Magistrate at Masaka in Civil Suit No. 69 of 2018, brought this appeal seeking orders that: The appeal be allowed, That the orders and judgment in Civil No. 069 of 2018 be set aside; That the Appellant is compensated by the Respondent in the current market value for his Kibanja; That the Appellant be compensated by the Respondent for his house they destroyed and house property in current market value, and that the costs of this appeal and in the lower Court are granted.

Brief Background to the Appeal.

2. The Appellant /Plaintiff instituted Civil Suit No. 069/2018 against the Respondent / Defendant seeking for compensation of Ug. Shs. 30,000,000/= for the land, property and plants converted by the Defendant into its use, general damages, permanent injunction order; interest at Bank rate from the date of transmitting into the Plaintiff's land. The

Appellant 's/Plaintiff 's case was that Edward Kawalya and a one Nakiyuni Alice are the Administrators of the Estate of the late Yokana Balaba who was the owner of land comprised in Buddu Block 298 Plot 118 measuring 3.15 hectares.

- 3. That during the year 2015 and 2016 the Respondent passed their line through the Appellant's land and ownership was contested, and a final settlement was reached in the presence of the staff of the Respondent but the Respondent declined to pay

Page 1 of 6

for compensation and instead further destroyed other properties in the course of their duty. Further that the Respondent paid a one Hamidu Nsamba a.k.a Paul Nsamba to the detriment of the Plaintiff hence the suit.

- 4. The Respondent/Defendant in the Written Statement of Defence, denied all the allegations, and also filed a Counter - Claim seeking for a declaration that the Counter - Defendant/Plaintiff (now Appellant) is a trespasser on the house and land and the surrounding area formerly occupied and belonging to Paul Nsamba. That the Counter - Claimant/Defendant is the rightful owner of the house having fully compensated the occupant one Nsamba Paul and other related claims. That in 2008 the area in or around Kaddugala Nsambano was surveyed and enumeration carried out where all the persons affected by Kawanda - Masaka High voltage Electricity Transmission line project were identified. A one Paul Nsamba was identified as one of the occupants of the affected land by the project whose developments on the land included a residential house.
- 5. That the said Nsamba Paul vacated the house and the Respondent/Defendants took over. That a small portion of the Appellant/Plaintiff land was also affected by the project and the Appellant/Plaintiff was also captured at reversionary interest of 30% of the value of the affected land but he rejected the compensation for the reversionary interest on the affected land. The Respondent/Defendant claimed for declaration that the Counter - Defendant/Plaintiff is a trespasser on the house and land, that the Defendant/Counter- Claimant is the rightful owner of the house, an eviction order to issue against the Counter - Defendant, permanent injunction to issue against the Counter- Defendant/Plaintiff, general damages and interest.
- 6. The Trial Magistrate Court found in favour of the Respondent/Defendant. The Appellant being dissatisfied with the said Judgement delivered on the 15th November 2021 filed this Appeal in this Court by way of Memorandum of Appeal on the 1st June 2022.

The Grounds of Appeal.

- 7. The Appellant raised seven (7) grounds of appeal in his Memorandum of Appeal namely that:

Page 2 of 6

- *1. The Chief Magistrate erred in law and fact when he failed to conceive that this was a Trial with in a Trial as the subject matter had long been decided and execution of giving vacant possession completed Vide C. S 102 of 2002 at Masaka in favour of the Appellant.*
- *2. The Learned Chief Magistrate erred in law and fact when he failed to conceive that the essence in the suit was the half payment wrongly made to Paul Nsamba by the Defendant and yet the same had to be paid to the Appellant by virtue of C. S 102 OF 2002 at Masaka Court on record.*
- *3. The Learned Chief Magistrate erred in law and fact when he regarded the suit subject matter as that of Nsamba Paul yet it had long been verdict (sic) and legally given to the Appellant in 2006 by Court and no appeal was ever preferred to challenge the decision.*
- *4. The Chief Magistrate erred in law and fact when he failed to adduce that upon giving vacant possession of this kibanja and all developments on the 7/7/2006, the Appellant had only licensed Nsamba Paul to stay in this kibanja as a relative born to Appellant 's sister (Katasi Night -now late)*
- *5. The Learned Chief Magistrate erred in law and fact when he failed to compound his mind that the agreement between Gerades Nakalanzi and Nsamba Paul dated 02/08/1998 was the one invalidated in Civil Suit 102 of 2002 and execution done handing this kibanja (Customary tenure) to the Appellant .*
- *6. The Learned Chief Magistrate erred in law and fact when he failed to compound his mind that suing the Respondent was not tarnishing their name but directing them to who the rightful person to pay was hence no need for damages as all in all it was a closed circuit in Court*
- *7. The Learned Chief Magistrate erred in law and fact when he failed to properly evaluate evidence on record and thereby made an erroneous judgment.*

Representation and hearing.

8. The Appellant was represented by M/s Ardent Advocates while the Respondent was represented by M/s Rem Advocates. Court directed the parties to file written submissions but only Counsel for the Respondent filed their submissions. There is no submission from the Appellant and if any was filed, then the same was not brought to my attention at the time of this Judgment. Therefore, Judgment is made without submissions from the Appellant .

Page 3 of 6

Duty of the first appellate Court

- 9. The duty of a first Appellate Court is to scrutinize and re-evaluate the evidence on record and come to its own conclusion and to a fair decision upon the evidence that was adduced in a lower Court **See:** *Section 80 of the Civil Procedure Act Cap 282 (Revised Edition)*. This position has also been re-stated in a number of decided cases like *J.*F. Zaabwe vs Orient Bank Ltd* CACA No. 4 of 2006*.
- 10. In case of conflicting evidence, the appellate Court has to make due allowance for the fact that it has neither seen nor heard the witness, it must weigh the conflicting evidence and draw its own inference and conclusions (*See *Lovinsa Nankya Vs Nsibambi* (1980) HCB 81).*

Preliminary objections.

- 11. Counsel for the Respondent raised two preliminary objections, that Civil Appeal No. 32 of 2022 is incompetent for being filed outside prescribed statutory period; and that the grounds of appeal contained in Memorandum of Appeal are argumentative, narrative contrary to the law.
- 12. In regard to the first preliminary objection, Counsel submitted that the Judgment in Civil Suit No. 69 of 2018 was delivered on the 15/11/2021 as per judgment and record of proceedings contrary to what is contained in the Memorandum of Appeal that it was delivered on 17/9/2021. That the Appellant filed the Memorandum of Appeal in this Court on the 1/6/2022 which was after a period of six months and fifteen days (195 days) more than a half year. That the Appellant should have filed the Memorandum of Appeal on the 15/12/2021 from 15/11/2021 when judgment of Court delivered by the Chief Magistrate. That the Appellant and his Counsel were present in Court when judgment was delivered. The Appellant the Memorandum of Appeal on 1/6/2022 contrary to Section 79(1) of Civil Procedure Act Cap 71, now Cap 282 (Revised Edition) which limits/ restricts an appeal to be filed within thirty (30) days from date of judgment to be appealed against. That this was a period of 195 days and the instant appeal is illegal and incompetent on Court record and liable to be struck out with costs to the Respondent.
- 13. That since an appeal is commenced by Memorandum of Appeal, the Appellant was under the law required to file his Memorandum of Appeal by the 15/12/2021 within 30 days required under section 79(1) of CPA but filed Memorandum of Appeal on 1/6/2022. That the Appellant did not commence file the Memorandum of Appeal within 30 days required under the law. The Appellant cannot benefit

Page 4 of 6

from the exception contained in Section 79(2) of CPA which requires an intending Appellant to write and serve a letter requesting for the record of proceedings which has the effect of freezing thirty (30) days. That this letter must be filed and served on the Respondent to entitle the Appellant benefit of Section 79(2) of CPA. That further, an appeal to the High Court is not commenced by Notice of Appeal but a Memorandum. Any Notice of Appeal filed in Court has no legal effect at all but that the letter requesting the record of proceedings is sufficient to commence an appeal.

Decision of the first preliminary objection.

- 14. Order 43 rules 1 and 2 of the Civil Procedure Rules requires that every appeal be instituted by a Memorandum of Appeal in a prescribed form. Justice B. Kainamura in **Ogbuoye vs Kawooya (Civil Appeal 40 of 2016) [20181 UG Comm C 58** relying on **Sempebwa William vs Byamungu Muhammed. HCA No.12 of 2012**, stated that the mode of appealing from Magistrates Court to High Court is clearly stated under Order 43 r 1 CPR and it is by way of a Memorandum of Appeal.
- 15. In this case, there is a Memorandum of Appeal dated and filed in this Court on the 1st day of June 2022. I do not know why the Respondent argues that there is no Memorandum of Appeal filed on Court record, yet the record indicates that there is a Memorandum of Appeal. The question would be if the said Memorandum of Appeal was filed within the required time.
- 16. **Section 79 of** **The Civil Procedure Act Cap 282 (Revised Edition)** provides that an appeal to the High Court shall lie within 30 days of the date of the decree or order of the Court. A notice of appeal does not commence an appeal in the High Court from the judgment of the Magistrate's Court. An appeal is commenced by a Memorandum of Appeal lodged in the High Court, and an appeal filed out of time without the leave of Court is incompetent and will be struck out as incompetent (see **Loi Kageni Kiryapawo vs. Gole Nicholas Davis, S. C. Miscellaneous Civil Application No.15 of 2007**). However, in computing the period of limitation, the time taken by the Court or the Registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded is excluded (see **section 79 (2) of** **The Civil Procedure Act**).
- 17. Furthermore, Section 79 (1) of **The Civil Procedure Act** provides that an appellate Court may for good cause admit an appeal though the period of limitation prescribed has elapsed. Good cause must relate and include the factors which caused inability to file the appeal within the prescribed period of 30 days (see **Tight**

***Security Ltd v. Chartis Uganda Insurance Co. Ltd H. C. Misc. Application No. 8 of 2014*).**

- 18. From the record of the lower Court, Judgement was delivered on the 15th November 2021 in the presence of Counsel Kaliisa for the Plaintiff and the Plaintiff was also present in Court. The Trial Court made available the certified record of proceedings on the 11th May 2022. The Appellant filed this appeal by way of Memorandum of Appeal in this Court on the 1st June 2022, which was approximately over 6 months from the date of judgment. There is no evidence that the Appellant immediately after the Judgment applied for a certified copy of the record of proceedings, and it was not made available to him within time. The appeal was clearly out of the mandatory time and there is no proper justification. There was no any Application for leave to file this appeal out of time and this makes this appeal incompetent in this Court
- 19. I therefore uphold the first preliminary objection and I strike out this appeal for being filed out of time without leave of Court which was against Section 79 of the Civil Procedure Act. It is not necessary to address the other preliminary objection and /or the grounds of the appeal since this finding disposes off this appeal. I will award costs to the Respondent. I hereby make the following orders:
 - i. This Appeal is dismissed for being filed out of time.
 - ii. Costs are awarded to the Respondent.

It is so ordered.

Judgment signed and delivered electronically at Masaka this 20th day of April, 2025

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