

UGANDA / JUDGMENT

Ms City African Textile Shop Uganda Limited v Jan Mohammed Jaffers Limited (Civil Application 130 of 2003) [2004] UGCA 25 (3 February 2004) [2004] UGCA 25

COURT

Court of Appeal of Uganda

BEFORE

Mukasa-Kikonyogo, DCJ, Engwau, JA, Byamugisha,
JA

CASE / FILE NUMBER

Civil Application 130 of 2003

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

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CIVIL APPLICATION NO. 130 OF 2003

**CORAM: HON. LADY JUSTICE L. E. M. MUKASA-KIKONYOGO, DCJ HON. MR.
JUSTICE S. G. ENGWAU, JA HON. LADY JUSTICE C. K. BYAMUGISHA, JA**

M/S CITY AFRICAN TEXTILE SHOP (U) LTD:::::::::APPLICANT \$20\$

VERSUS

JAN MOHAMMED JAFFER LTD :::::::::::RESPONDENT

(ARISING OUT MISCELANEOUS APPLICATION NO. 437 OF 2002 AND HCCS NO. 304 OF 1994)

\$30\$

RULING OF THE COURT

This is an application by way of notice of motion filed on behalf of Ms City African Textile Shop (U) LTD hereafter to be referred to as the applicant. It is brought under rules (42) r1, 81, 82 and 83 of the rules of the Court of Appeal. It is seeking an order of this Court to strike out the notice of appeal filed on 1-08-1997 on behalf of Jan Mohammed Jaffers Ltd, the respondent. The application is supported by two affidavits sworn by Mugoooha Jackson, the managing director of the applicant company.

It is the submission of Mr. Akampurira, counsel for the applicant, that failure by the respondent to take the necessary steps to prosecute the appeal within the prescribed time,

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particular after being served with the record of the proceedings, was fatal. As far as the applicant was concerned it was an abuse of the Court process and intended to frustrate the applicant. and in

10 20 In reply Counsel for the respondent, Mr. Sekabanja, conceded that on the evidence before court, on 25/07/1997 the High Court delivered judgement in HCCS No. 304 of 1994 in favour of the applicant. Aggrieved by that decision the respondent instructed its counsel to file a notice of appeal which was lodged on 1-08-97, a copy of which is annexed as Annexure "A". It is, further, admitted that on 16th day of September 2003, the advocates for the respondent were served with a record of proceedings, a copy of which is also annexed as Annexure "B". The aforesaid notwithstanding, it is the contention of counsel for the respondent that in the peculiar circumstances of this matter this application should not have been filed especially in view of the settlement signed by the parties.

We agree that Mr. Akampurira stated the correct position of the law, where a party fails to comply with the laid down procedure relevant to the case. Rule 81 of the Rules of this Court, provides as follows:

> *"A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal apply to the Court to strike out the notice of appeal as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken within the prescribed time".*

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Further as submitted by Mr. Akampurira under Rule, 83 of the Rules of this Court it is incumbent on the appellant to take steps to file the appeal. Rule 83 provides as follows:-

"If a party who has lodged a notice of appeal fails to institute an appeal within the prescribed time;

- (a) he shall be taken to have withdrawn his or her notice of appeal and shall unless the Court otherwise orders be liable to pay the costs arising from it of any persons on whom the notice of appeal was served".

ought The record of the proceedings was ready for collection on 1st/09/03 and counsel for the appellant was informed. The to have been filed within sixty (60) days of that date. The stipulated time was supposed to expire on 16/11/03. Before it did, the parties through their advocates reached a settlement which inter alia reads as follows

Upon consent ^of both parties cc

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- 1. The plaintiff/Judgement creditor accepts the sum of ug. Shs. 58.063,125/= (fifty eight million, Sixty three thousand, one hundred and twenty five shillings only) as full and final settlement of the judgement and decree in HCCS No. 304/94".
- 2. The Plaintiff/Judgement creditor shall maintain no further claim whatsoever against the Judgement/Debtor.

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- 3. The Defendant/Judgement Debtor hereby withdraws the appeal against the Judgement and decree together with all the applications subsequent to the decree.

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- 4. The sum of 64.063,125/= Sixty four million Sixty three thousand, one hundred and twenty five shillings only, deposited with the Court be paid to the parties through the advocates in the following inquirer.

(underlining is ours)

- Plaintiff. The (i) Ug. Shs.58,063,125/= to the Judgement/Creditor.
- to the Defendant/the (ii) Ug. Shs. 6.000.000/= Judgement/Debtor.
- ²⁰ 5. No further orders as to costs.

DATED at Kampala this 5th day of November, 2003.

M/S AKAMPURIRA & PARTNERS Signed by----- - M/S SEKABANJA & CO ADVOCATES

GIVEN UNDER my hand and seal of this Honourable Court this 7th day of November, 2003."

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DEPUTY REGISTRAR

Drawn and filed by

M/S Sekabanja & Co. Advocates, Plot 9, Kampala Road, P. O. Box 2064, KAMPALA.

With that settlement which is so clear and self explanatory the total claim was settled. It is incumbent on the Registrar of the High Court to effect payment as stipulated in the settlement. The decretal amount had already been deposited into court and the terms of payment clearly spelt out. The respondent had no part to play as stated in paragraph 5 of the affidavit in reply deponed to by Hanif Hudda, company secretary of the respondent company which clearly states as follows:-

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> *"That by virtue of the said settlement, the respondent had withdrawn the appeal and all subsequent applications to the decree, and the applicant agreed not to make any further claims whatsoever against the respondent".*

20 In view of the above, the notice of appeal had been withdrawn and apart from the decretal amount stated in the settlement the respondent was not liable to settle other subsequent claims by the applicant including payment of costs. The respondent was not required to take any further steps because there was no intended appeal. There is no notice of appeal to strike out. The confusion brought about by the several advocates briefed by the respondent did not concern it. The advocates negotiated the settlement to withdraw the appeal and agreed on the amounts to be paid and the terms of payment.

30 Clearly in the peculiar circumstances of this case, there was no need to file this notice of motion and to claim costs. In accordance with the settlement the responsibility to pay is squarely at the door of the court which was in possession of the decretal sum.

In the premises the application to strike out the notice of appeal is dismissed with costs.

DATED at Kampala this.-. Q^Jb

Hon. Lady Justice L.^M^^Vkasa-Kikonyogo, DCJ

Hon. Mr. Justice S. G. En au, J. A

Hon. Lady Ju ugisha C. K, J. A

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