

UGANDA / JUDGMENT

Nyakana v Valley Technical Services Limited (Civil Application 200 of 2016)

[2020] UGCA 2167 (8 October 2020)

[2020] UGCA 2167

COURT

Court of Appeal of Uganda

BEFORE

Kakuru, JA, Kiryabwire, JA, Madrama Izama, JA

CASE / FILE NUMBER

Civil Application 200 of 2016

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE COURT OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 200 OF 2016

(Arising from Civil Appeal no 140.140 of 2016)

S NYAKANA GODFREY:..... APPLICANT

VS

VALLEY TECHNICAL SERVICES LTD:..... RESPONDENT CORAM

HON. MR. JUSTICE KENNETH KAKURU, JA <sup>10</sup> HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

RULING OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE. IA

1s INTRODUCTION

o

O

This is an Application by way of Notice of Motion (brought under Rule 82 and 84 of the Judicature (Court of Appeal Rules) Directions, SI 13-10 hereinafter referred to as the Rules of this court. It seeks orders that Civil Appeal No 140 of 2016 be struck out for being incompetent, defective and filed out of time.

The motion is supported by the affidavit of the Applicant Mr. Godfrey Nyakana dated 11th, July 2016. The motion is not opposed by any affidavit.

No affidavit in reply was filed by or on behalf of the Respondent.

5 Due to the Global pandemic of Covid 19, this court issued directions for lawyers of the parties to address it in written submissions and the judgment would follow thereafter. The written submissions of the Applicant were drawn and filed by Messrs Kabega, Bogezi, and Bukenya Advocates who represented the Applicant. The written submissions in reply of the Respondent was drawn and filed by Messrs. Lubega and Co. Advocates.

o

a

¹⁰ Background

An application was brought to the High Court Execution Division before Hon. Mr. Justice Ralph W. Ochan. The Applicant sought leave to address court on ^a preliminary point of law relating to Jurisdiction.

15 The background to this Application is that a suit was filed at the Chief Magistrate's court of Nakawa for recovery of a liquidated sum in respect of a sale contract of a caterpillar grader. The subject matter of the suit was Ug shs 150,000,000/=.

In his submissions, counsel for the Applicant addressed court on a preliminary point of law relating to the jurisdiction of court with regard to the subject matter. The trial court found that no judgment, order, decree or execution can be done without jurisdiction. The trial Court therefore quashed and set aside the orders decrees and execution carried out on the basis of the proceedings in Nakawa CS No. 221/3013 and EMA No.1066 of 2013. The trial Court further ordered the restitution of the equipment sold in execution to the Applicant.

21

ase

The Respondents then lodged an Appeal in the Court of Appeal against the trial Court's Ruling. It is this Appeal that Applicants now seek to strike out.

Submissions

Counsel for the Applicant submitted that the Applicant filed an Application HCMA No.1456 of 2013 against the Respondent which sought the following reliefs;

- a) A declaration that the trial magistrate court did not have jurisdiction to entertain the matter that led to the judgment sought to be executed against the Applicant.
- b) The execution proceedings, decree, attachment and sale by the High Court Execution Division of caterpillar Grade Reg No. UAB 5934X be set aside.

- c) The court issues restitution orders.

He submitted that following this Application the High court made a Ruling in 1s the applicant's favour which quashed and set aside the orders decree and execution carried out on the basis of the proceedings in the Chief Magistrates Court Nakawa. The Court further ordered restitution requiring the O Respondent to hand back the grader caterpillar to the Applicant.

Counsel for the Applicant submitted that the Respondent did not comply with the conditions for leave to Appeal set by the High Court namely that the attached property be placed in the custody of court to enable the Respondent to exercise its option to commence the Appeal process.

o 10

He submitted that the Notice of Appeal was filed and served outside the mandatory 14 days set down in the Rules of this court. He therefore submitted that the Appeal was incompetent before the court.

Counsel for the Applicant submitted that the Respondent was required to have filed the Notice of Appeal in the Court of Appeal not later than 11th September 2013 since leave to Appeal was granted on 23rd August 2013.

He submitted that the Notice of Appeal however was filed at the court of Appeal on 13th June 2016 outside the required time.

He submitted that the Appeal was incompetent and ineffective and ought to be struck out. 10

Respondent's submissions

The Respondents did not make any submissions on this Application.

Court's findings

I have addressed my mind to the law and submissions of counsel in addition to carefully perusing the pleadings and have come to the conclusion that the 15 application succeeds.

Rule 82 of the Rules of this Court under which the Application was lodged provides as follows;

$\$S$

"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 or the 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 or has not been taken within the prescribed time"

The meaning of failure to take an essential step in the proceedings was considered in *Andrew Maviri v fomayi Property Consultants Ltd* CACA No 224 of 2014, where it was stated at page 8 that:

"Taking qn essential step is the performance of an act by a pqrtly whose duty is to perform that fundamentally necessary qction demanded by the legal process, so that subject to permission by the Court, if the action is not performed qs led by law prescribed, then whether legal process has been done before, becomes a nullity".

In the case of Dr. S. B Kenyatta & Rugyeyo Coffee Factory Ltd v Subramania Gopalan & Anor [2001-2005] HCB 29, it was held that the failure by an Appellant to take an essential step in the prosecution by law renders the Appeal incompetent.

Similarly, in the case of the Environment Action Network Ltd v foseph Eryau (2008) ULR 313, this court reiterated the legal position that failure by an Appellant to take some essential step in the prosecution of the Appeal, renders the purported Appeal no Appeal in fact.

Since the Ruling was delivered on 23'd August 2013, and the Notice of Appeal was in the Court of Appeal on 1-3th June 2016. Clearly this was outside the prescribed time and thus an essential step was missed.

I therefore allow this Application and strike out the Notice of Appeal with zs costs.

5lPage

o

o

Before I take leave of this matter, I have taken note that on the 13th Iuly 2016 which is the same day this Notice of Motion was filed, the Respondent (as Appellant) filed Civil Appeal No. 140 of 2016. The Respondent went on to file conferencing notes but the Applicant [as Respondent) did not. Given this Ruling it follows therefore that Civil Appeal No. 140 of 2076 cannot stand and should be struck out and removed from the list of Appeals in this Court.

o

I so Order

¹⁰ Sc-Dated at Kampala this day of 2020. €

¹⁵ HON. MR. JUSTICE GEOFFREY KIRYABWIRE JA o

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 200 OF 20L6

[Arising from Civil Appeal No. 140 of2016]

NYAKANA GODFREY APPLICANT

VERSUS

RESPONDENT VALLEY TECHNICAL SERVICES LTD

o CORAM: Hon, Mr. Justice Kenneth Kakuru, f <sup>A</sup>

Hon. Mr. Justice Geoffrey Kiryabwire, f A

Hon. Mr. Justice Christopher Madrama, fA

JUDGMENT OF JUSTICE KENNETH KAKURU. JA

I have had the benefit of reading in draft the Ruling of my learned brother Hon. Geoffrey Kiryabwire, JA.

I agree with him that this application ought to be allowed for the reasons he has set out in his Ruling. I also agree with him that Court of Appeal Civil Appeal No. 140 of 2016 is incompetent and ought to be struck out,

As Hon. Madrama JA also agrees, this application is allowed with costs. Court of Appeal Civil Appeal No. 140 of 2016 is hereby struck out with no orders as to costs.

It is so ordered.

o

Dated at Kampala this .day of 2020. R tG.

-.<

Kenneth Kak JUSTICE OF APPEAL

llPage

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA CIVIL APPLICATION NO. 200 OF 2016 (ARISING FROM CIVIL APPEAL NO 140.140 OF 2016) (CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA) NYAKANA GODFREY}

VS

VALLEY TECHNICAL SERVICES LTD} RESPONDENT**RULING OF HON. MR. JUSTICE CHRISTOPHER MADRAMA, J**

I have had the benefit of reading in draft the ruling of my learned brother Hon. Mr. Justice Geoffrey Kiryabwire, JA and I agree with his analysis of the facts and the law.

I concur with the decision of my learned brother Kiryabwire, JA that the application be allowed and the Notice of Appeal and the subsequently filed appeal be struck out with the orders he has proposed and I have nothing useful to add.

Dated at Kampala the $\overline{\mathcal{L}}$ day of 2020

Christopher Madrama Izama

Justice of Appeal

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ugca/2020/2167/eng@2020-10-08>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/nyakana-v-valley-technical-services-limited-civil-application-200-of-2016-2020-ugca-2167-8-october-2020-unknown-topic-unknown-court-2020>

Prepared on 14 October 2026 · Esheria