

UGANDA / JUDGMENT

Okoya & Another v Akumu & Another (Civil Appeal 25 of 2018)

[2024] UGHC 421 (9 June 2024)

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COURT

High Court of Uganda

BEFORE

Phillip Odoki, J

CASE / FILE NUMBER

Civil Appeal 25 of 2018

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

(CIVIL APPEAL No. 25 OF 2018)

(Arising from Amuru Civil Suit No. 060 of 2013)

1. OKOYACHARLES

2. OTINGA OTUKA ===== APPELLANTS

VERSUS

1. AKUMU VERONICA

2. KOMAKECH CHARLES ===== RESPONDENTS

BEFORE HON. MR. JUSTICE PHILLIP ODOKI

RULING

Introduction:

- [1] This ruling arises from the preliminary objection which was raised by counsel for the Respondents regarding the propriety of this appeal. The appeal arises from the decision of the Magistrate Grade 1 of Amuru (His Worship Joseph Angole) dated 7th March 2018. The

Appellant, being dissatisfied with the judgement, filed what they termed as a 'Tentative Memorandum of Appeal' seeking for orders that, the appeal be allowed; the decision of the trial Magistrate be set aside; and the costs of this appeal and the costs in the lower Court be met by the Respondents. The grounds of the appeal which were stated in the 'Tentative Memorandum of Appeal' to be;

1. That the learned trial magistrate erred in law and facts when he failed to properly evaluate the evidence on record regarding ownership of the suit land thereby arriving at a wrong conclusion.
2. That the learned trial Magistrate erred in law and fact when he did not consider that the land in question was customary land.

Legal representation and submissions:

- [2] The Appellants were represented by Mr. Donge of M/s Donge & Co. Advocates. The Respondents were represented by Mr. Douglas Odyek, Simon Peter Ogenrwot and Aneco Caroline of M/s Redeem International.
- [3] When the appeal come up for hearing, counsel for the Respondents raised a preliminary objection that there is no appeal before the Court because the Appellants filed a 'Tentative Memorandum of Appeal' and not a substantive appeal with grounds of appeal. They prayed that the appeal be struck out. Counsel for the Respondents relied on the decision in **Ocan Amos Versus Oyoo Wilson High Court Civil Appeal No. 051 of 2016** in which case the court cited with approval the case of **Mayanja Grace versus Yusufu Lubuyera (1977 HCB 133**; **Mahutu George versus Mpengere Bulasiya [1982] HCB 55**; and **Westmont Land (Asia) BHD versus The Attorney General [1988 – 2000] HCB 46** where the court expressed the view that a provisional memorandum of appeal was not a proper document to be considered in computing time.
- [4] In reply, counsel for the Appellants submitted that indeed an appeal in the High Court is commenced by a memorandum of appeal. He however submitted that the calling of the memorandum of appeal as a 'Tentative Memorandum of Appeal' is a misnomer which cannot make the memorandum fatally defective. He relied on the case of **Kaggwa Michael versus Olal Mark & 6 others High Court Civil Appeal No. 10 of 2017** in which the Court expressed the view that if it is a case of misnomer, the name could be corrected by replacing the erroneous name with the correct name. Counsel for the Respondent further submitted that the error can be cured under Article 126 (2) (e) of the **Constitution of the Republic of Uganda, 1995**. Counsel submitted that in **Ocan Amos Versus Oyoo Wilson**, the Court relied on Article 126 (2) (e) of the Constitution and proceeded to determine the appeal on merit. Counsel prayed that the preliminary objection should be overruled in the interest of justice.

Analysis and determination of Court:

[5] Order 43 rule 1 of the *Civil Procedure Rules S.1 71-1* provides that:

(1) 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.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively."

[6] In the instant case, what was referred to as a 'Tentative Memorandum of Appeal' was presented to the Court by the Appellants without the assistance of any lawyer. It was presented to the Court on the 22nd March 2018 within the prescribed time allowed for filing an appeal. It sets out concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds are numbered consecutively. Although it would appear that the Appellants intended to file a substantive memorandum of appeal later, that is why they called it a 'Tentative Memorandum of Appeal', they have chosen to rely on it as their Memorandum of Appeal. In my view, for all intents and purposes, the 'Tentative Memorandum of Appeal' meets all the requirements of Order 43 rule 1 of the *Civil Procedure Rules S.1 71-1*. There is no issue before this Court regarding computation of time of filing the memorandum of appeal. It would not only be illogical, but also a travesty of justice, to strike out this appeal only on the basis that the memorandum of appeal was termed 'Tentative Memorandum of Appeal' when it meets all the requirements of the law.

[7] Even if this court were to regard the 'Tentative Memorandum of Appeal' as a document not capable of commencing a civil appeal since it is unknown to law, as was the view expressed in the cases cited by counsel for the Respondents, I am alive to Article 126 (2) (e) of the *Constitution of the Republic of Uganda, 1995* which enjoin this Court to administer substantive justice without undue regard to technicalities. This Article has been interpreted severally by the Supreme Court to mean that it gives the constitutional force the well settled common law position that rules of procedure are handmaidens of justice. The Supreme Court has guided that the Article, was not intended to do away with the requirement that litigants must comply with the rules of procedure in litigation; can only be applied subject to the law, which includes the rules of procedure; and is not a magic wand in the hands of defaulting litigants. A litigant who relies on Article 126(2)(e) of the Constitution must satisfy the court that in the circumstances of the particular case, it is not desirable to pay undue regard to a relevant technicality. See: *Mulindawa George William versus Kisubika Joseph, SCCA No. 12 of 2014*; *Utex Industries Ltd versus Attorney General, SCCA No. 52 of 1997*; and *Kasirye & Braruhanga and Co. Advocates versus Uganda Development Bank, SCCA No. 2 of 1997*.

[8] In my view, it is not desirable to pay undue regard to the technicality that because the appeal was initiated by a 'Tentative Memorandum of Appeal' which is a document not known in law, it should be struck out, even when it meets all the requirements of Order 43 rule 1 of the *Civil* *Procedure Rules S.1 71-1*. Indeed as was rightly submitted by counsel for the Appellant, in *Ocan Amos Versus Oyoo Wilson*, although the Court stated that it would have struck out the appeal which was commenced by a tentative memorandum of appeal, it went ahead and determined the appeal on merit relying on Article 126 (2) (e) of the *Constitution of the Republic of Uganda*,

1995.

[9] In the premises, the preliminary objection is accordingly overruled. This Court shall proceed to hear and determine the appeal on its merits.

I so order.

Dated and delivered this 9th day of June, 2024

Phillip Odoki

Judge.

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