

OBJECTION MY LORD!



CIVIL PROCEDURE:

**Comprehensive analysis of civil litigation,
from commencement to judgment.**



Isaac Christopher Lubogo

REVISED AND UPDATED SECOND EDITION

CIVIL PROCEDURE AND PRACTICE

OBJECTION MY LORD: LEGAL PRACTICE DEMYSTIFIED

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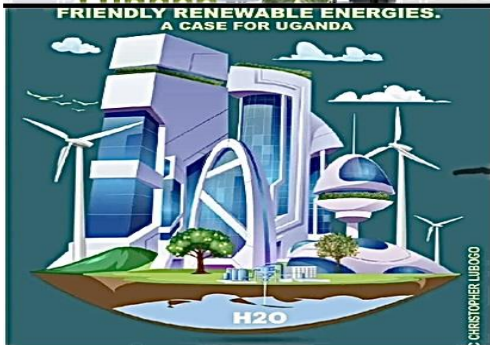
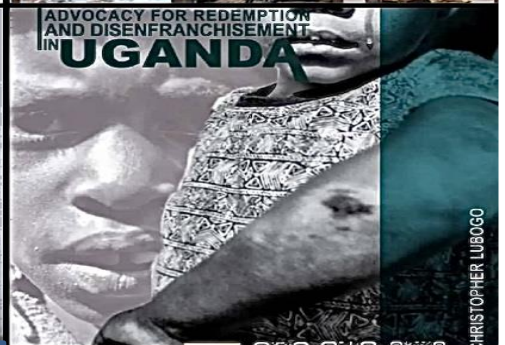
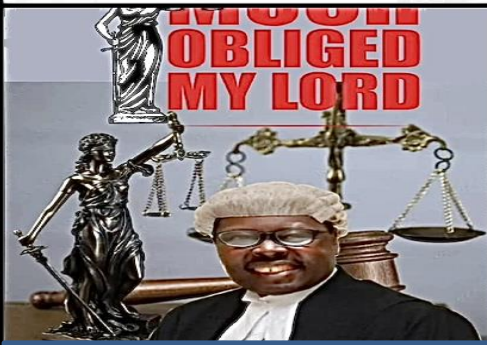
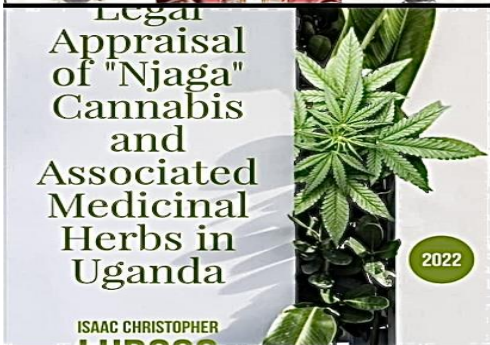
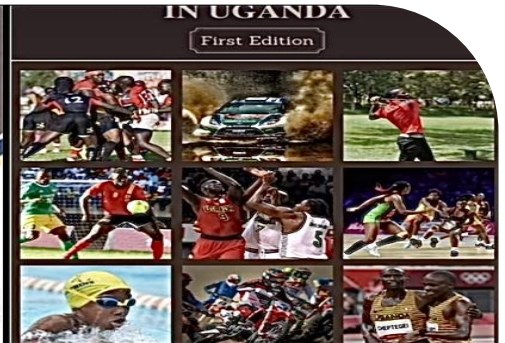
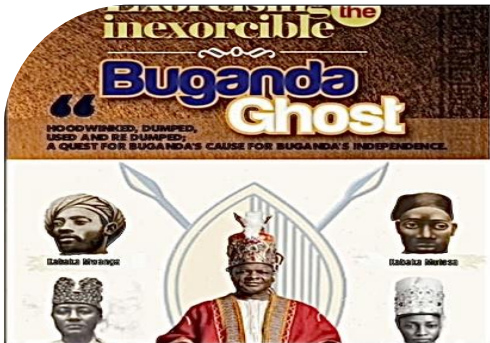
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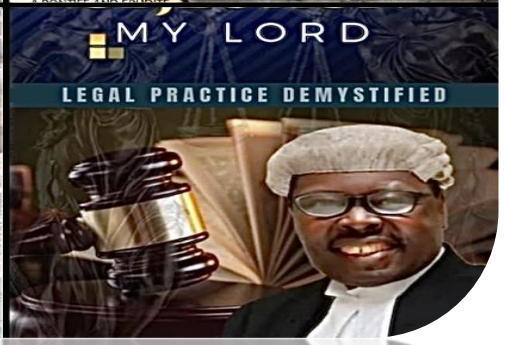
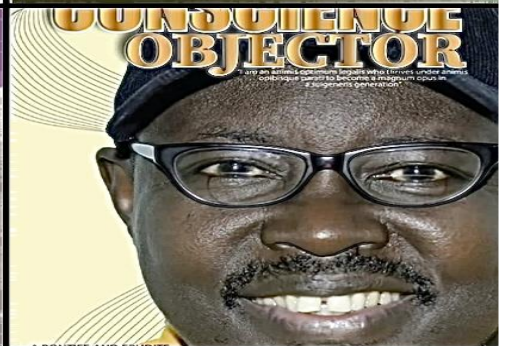
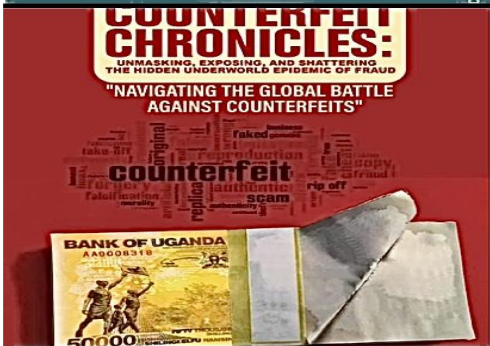
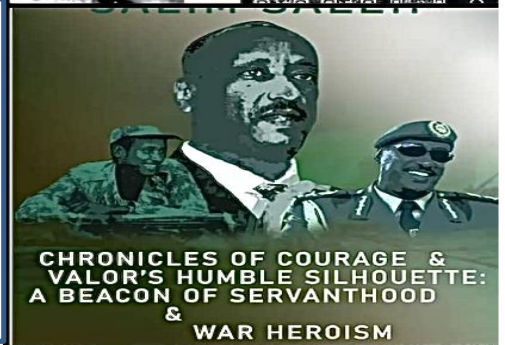
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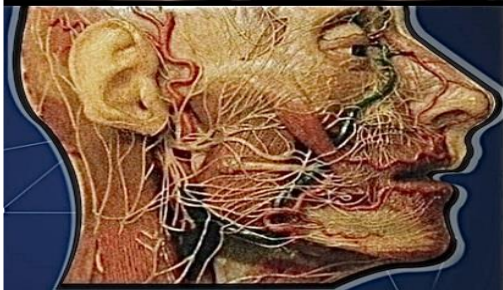
A LEGAL PHILOSOPHICAL APPRAISAL OF THE NEED TO AMEND THE LAW



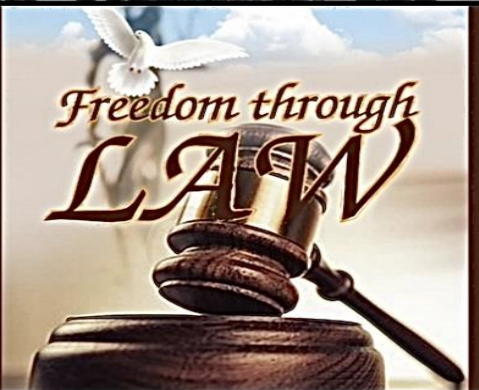
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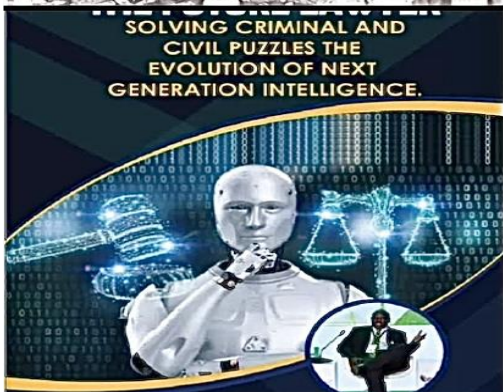
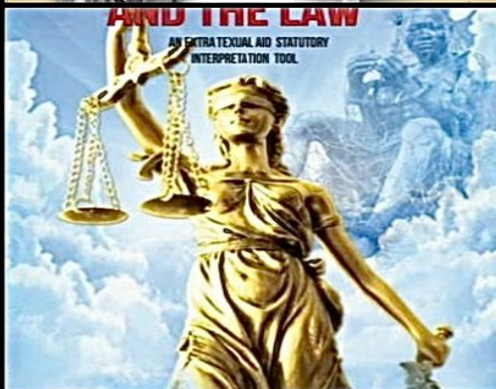
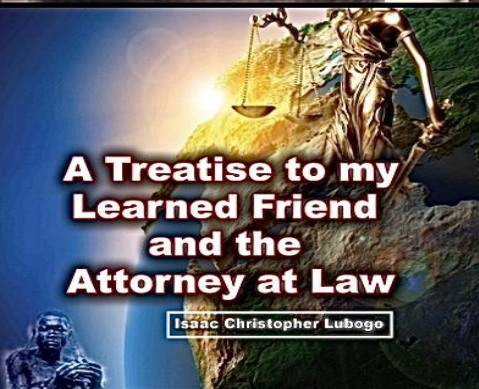
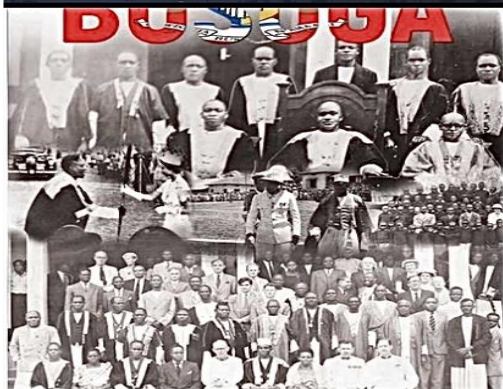


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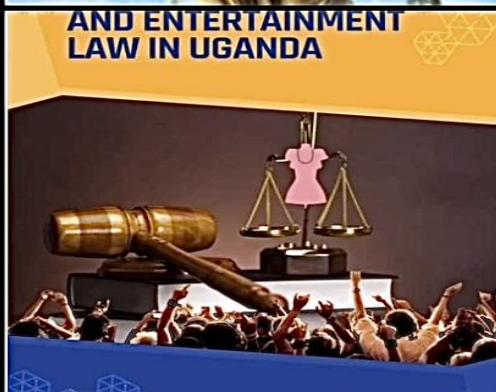
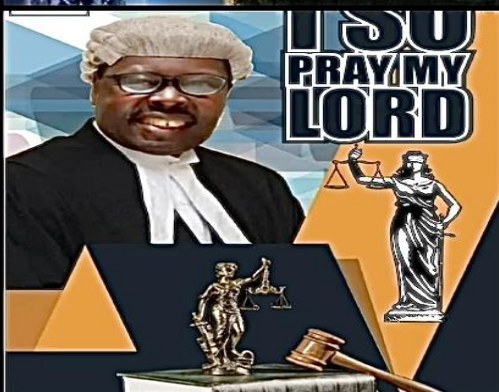


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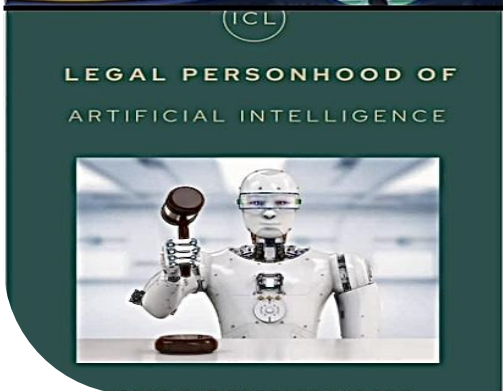
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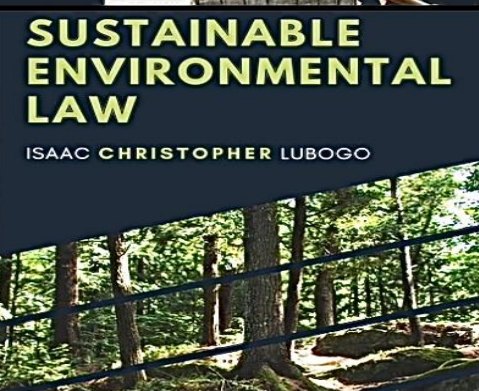
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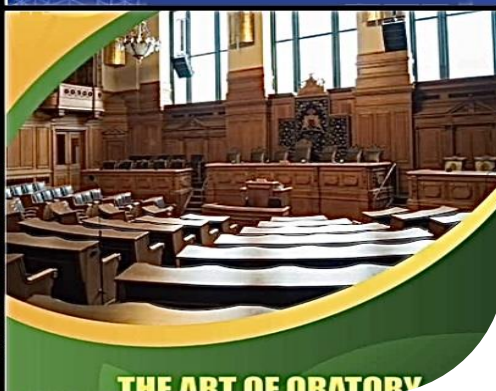


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ISAAC CHRISTOPHER LUBOGO



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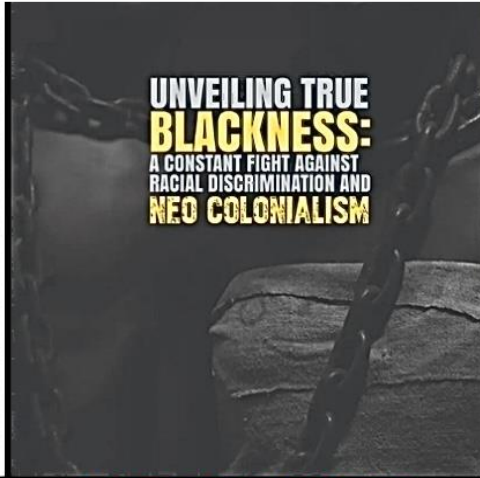
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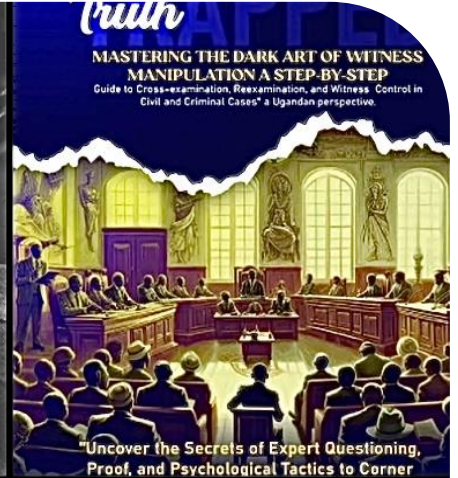
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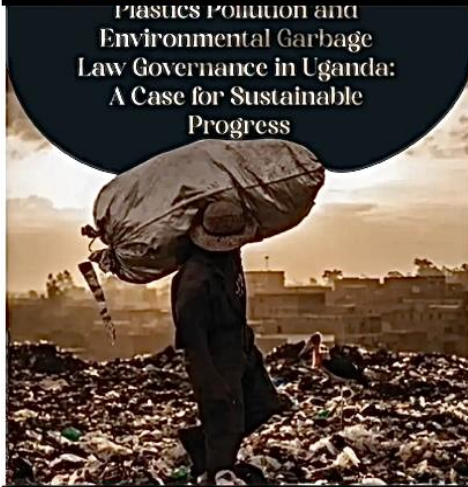
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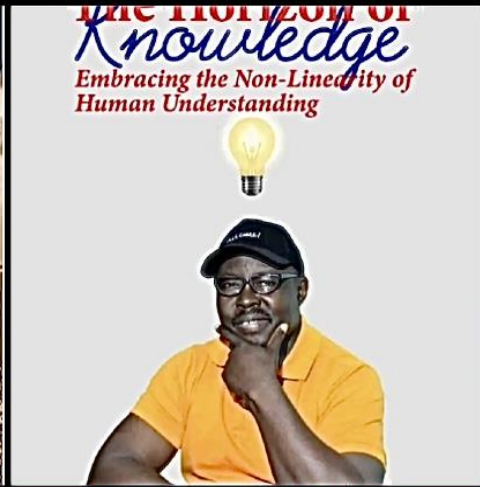
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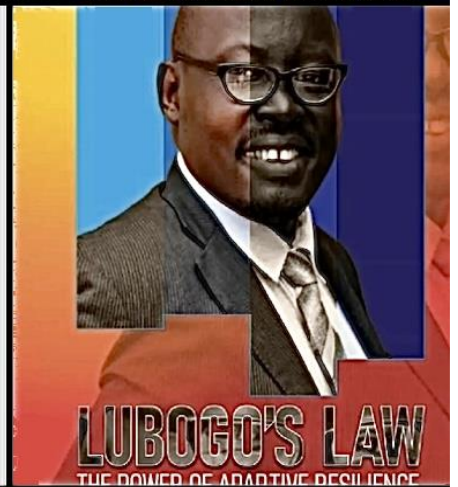
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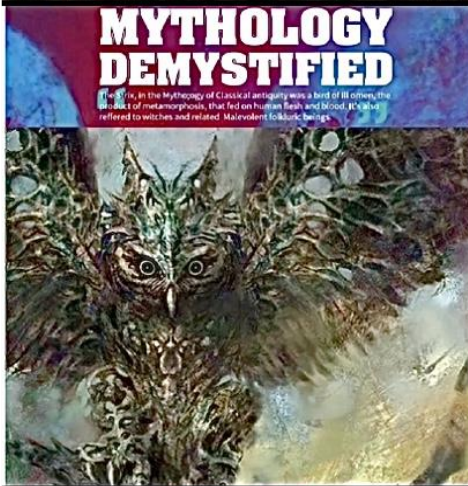
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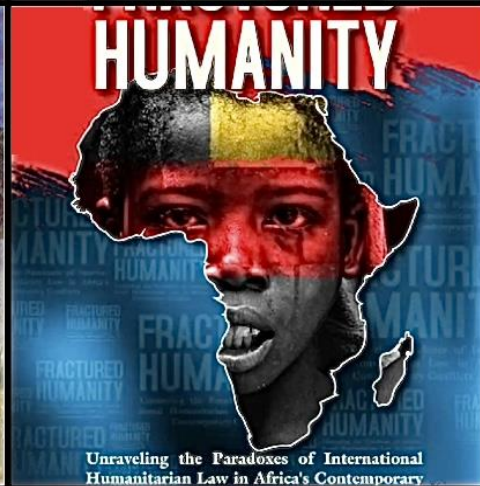


LUBOGO'S LAW THE POWER OF ADAPTIVE DECILIGENCE



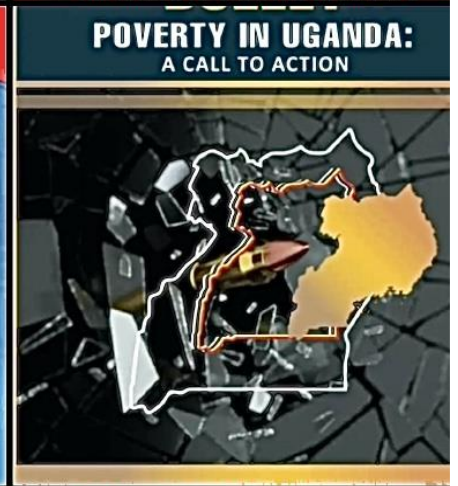
MYTHOLOGY DEMYSTIFIED

Legend has it, in the mythology of Classical antiquity was a bird of ill omen, the
symbol of metamorphosis, that fed on human flesh and blood. It's value
referred to witches and related Malevolent folkloric beings.

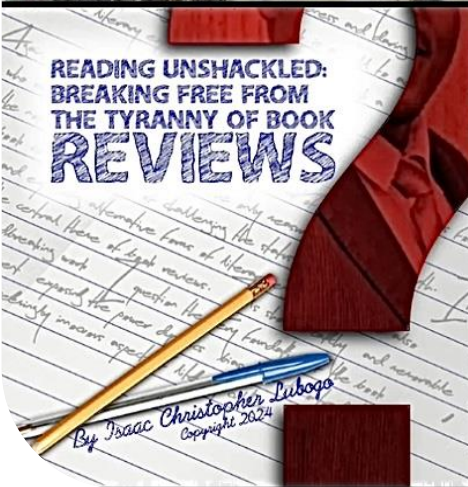


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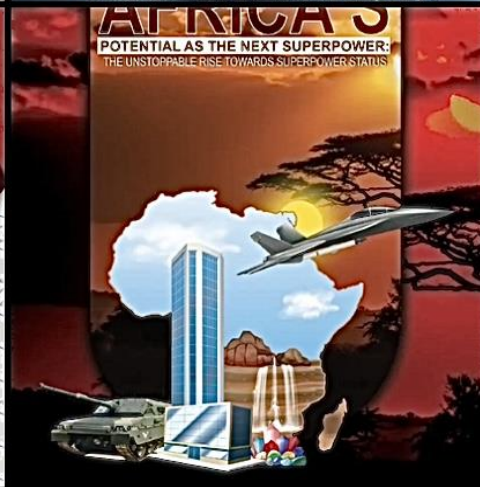


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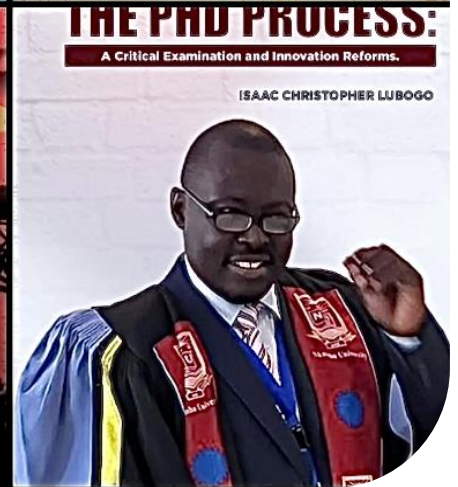


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ISAAC CHRISTOPHER LUBOGO

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OF DETERMINATION OF AN
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ACCORDING
TO
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WORLD
LESSONS FOR UGANDA

INDIGENOUS
LANGUAGES:
A THREAT AGAINST
EXTINCTION



DEDICATION

To The Lord Who Breathes Life And Spirit On Me ...

Be My Guide Oh Lord Of The Entire Universe.

"... Daniel was preferred above the presidents and princes, because an excellent spirit was in him, and the king thought to set him over the whole realm" _ Daniel Chapter six verse three

Vox Populi, Vox Dei (Latin, 'the voice of the people is the voice of God')



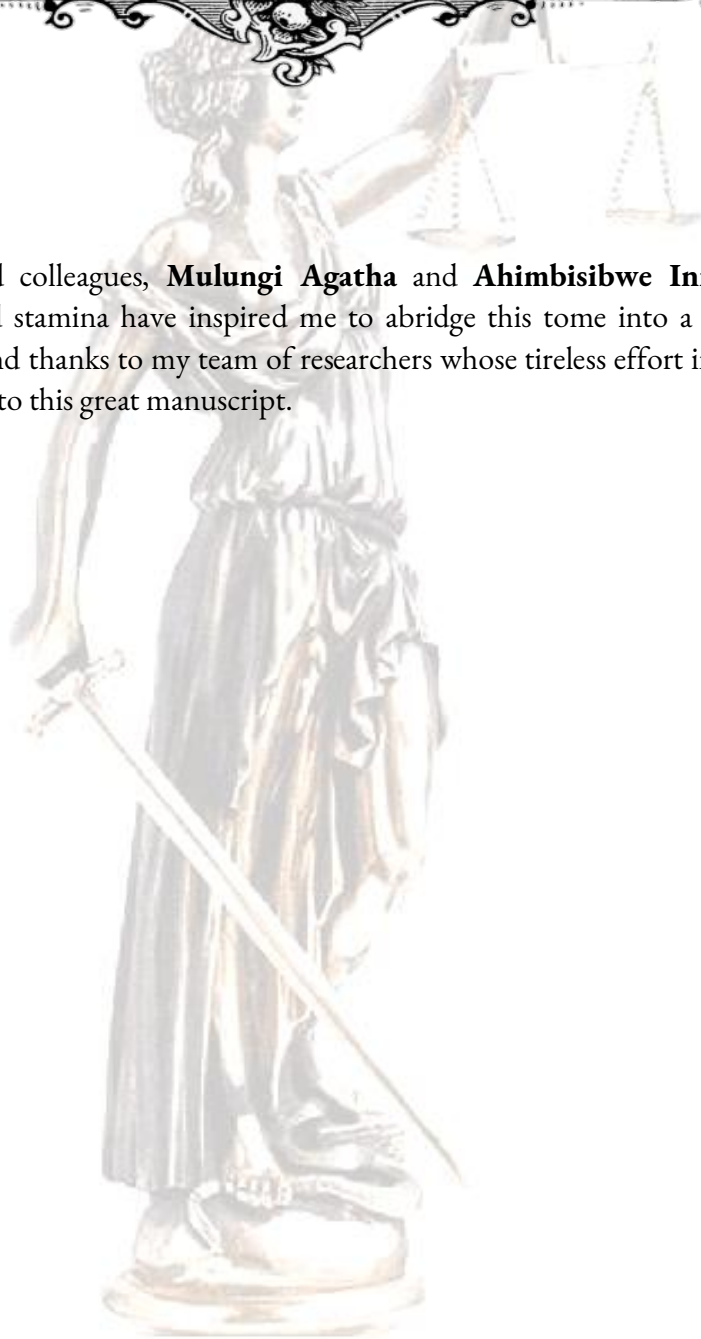
Salus populi suprema lex esto (Latin: "The health (welfare, good, salvation, felicity) of the people should be the supreme law", "Let the good (or safety) of the people be the supreme (or highest) law", or "The welfare of the people shall be the supreme law") is a maxim or principle found in Cicero's De Legibus (book III, part III, sub. VIII).



ACKNOWLEDGEMENT

Great thanks to learned colleagues, **Mulungi Agatha** and **Ahimbisibwe Innocent Benjamin** whose enormous turpitude and stamina have inspired me to abridge this tome into a formidable book. I offer distinctive recognition and thanks to my team of researchers whose tireless effort in gathering and adding up material has contributed to this great manuscript.

Blessings upon you.





REVIEW

"Objection My Lord" by Isaac Christopher Lubogo (Second Edition)

It is with profound admiration that I pen this review for the second edition of *Objection My Lord*, an extraordinary legal tome by the distinguished scholar Isaac Christopher Lubogo. Having made a resounding impact with its inaugural edition, this magnum opus has not only solidified its place in the annals of legal literature but has now ascended to even greater heights in its revised form. Lubogo has meticulously expanded the boundaries of legal discourse, presenting a work that is not merely an analysis but an intellectual journey through the complex architecture of trial advocacy.

The first edition of *Objection My Lord* already heralded the arrival of a formidable legal mind, one whose treatment of objections and courtroom dynamics was incisive and authoritative. However, this second edition exemplifies what can only be described as a tour de force in legal writing. With refined precision, the author delves into the intricacies of evidentiary objections, the art of courtroom persuasion, and the strategies that define masterful advocacy.

Isaac Christopher Lubogo has, with this edition, set an even higher bar for legal scholarship. His mastery of procedural and substantive law is evident as he navigates through both theoretical frameworks and practical applications with unparalleled fluency. His discourse on the law of evidence is especially noteworthy, as it demonstrates a rare combination of academic rigor and pragmatic insight—qualities that are essential for any advocate seeking to excel in litigation.

The author's treatment of objections in this edition goes beyond mere technicalities; it explores the psychological and rhetorical dimensions of legal practice, elevating the subject from a simple procedural necessity to a formidable weapon in the arsenal of courtroom strategy. Lubogo dissects the art of objecting with clinical precision, revealing the subtleties that differentiate the ordinary advocate from the truly exceptional.

||OBJECTION MY LORD..... ||

Moreover, this edition benefits from a deepened engagement with comparative jurisprudence. Lubogo draws from not only Ugandan and East African legal systems but also traverses global legal landscapes, enriching the text with international perspectives that offer fresh insights and broaden the scope of applicability for both budding and seasoned practitioners.

The author's style is replete with eloquence, yet never at the expense of clarity. His ability to marry dense legal principles with accessible explanations makes this book an invaluable resource for law students, practitioners, and even judges. The second edition is undeniably a magnum opus—an academic feast of legal wisdom served with eloquence, precision, and a deep understanding of the legal craft.

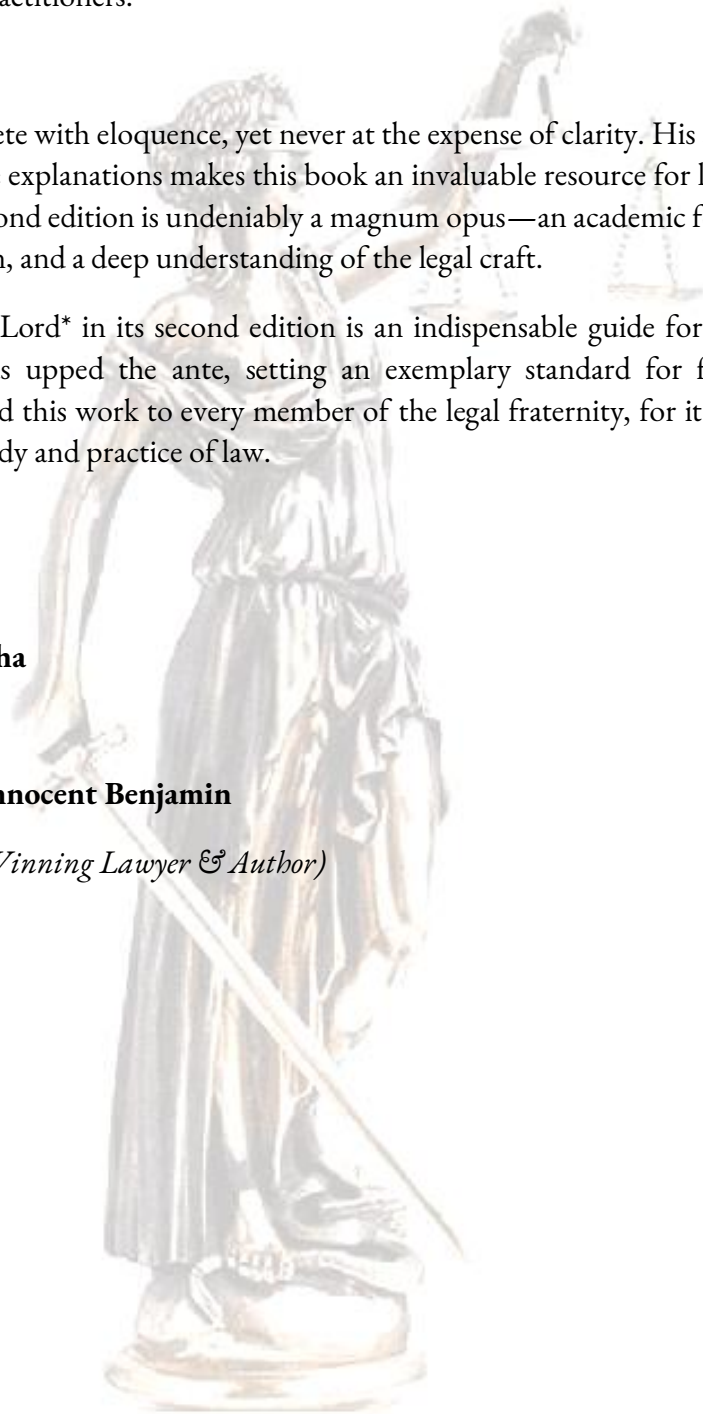
In sum, **Objection My Lord** in its second edition is an indispensable guide for the astute advocate. Isaac Christopher Lubogo has upped the ante, setting an exemplary standard for future legal scholarship. I wholeheartedly commend this work to every member of the legal fraternity, for it will undoubtedly leave an indelible mark on the study and practice of law.

Editors: **Mulungi Agatha**

(Advocate)

Ahimbisibwe Innocent Benjamin

(Africa Award Winning Lawyer & Author)



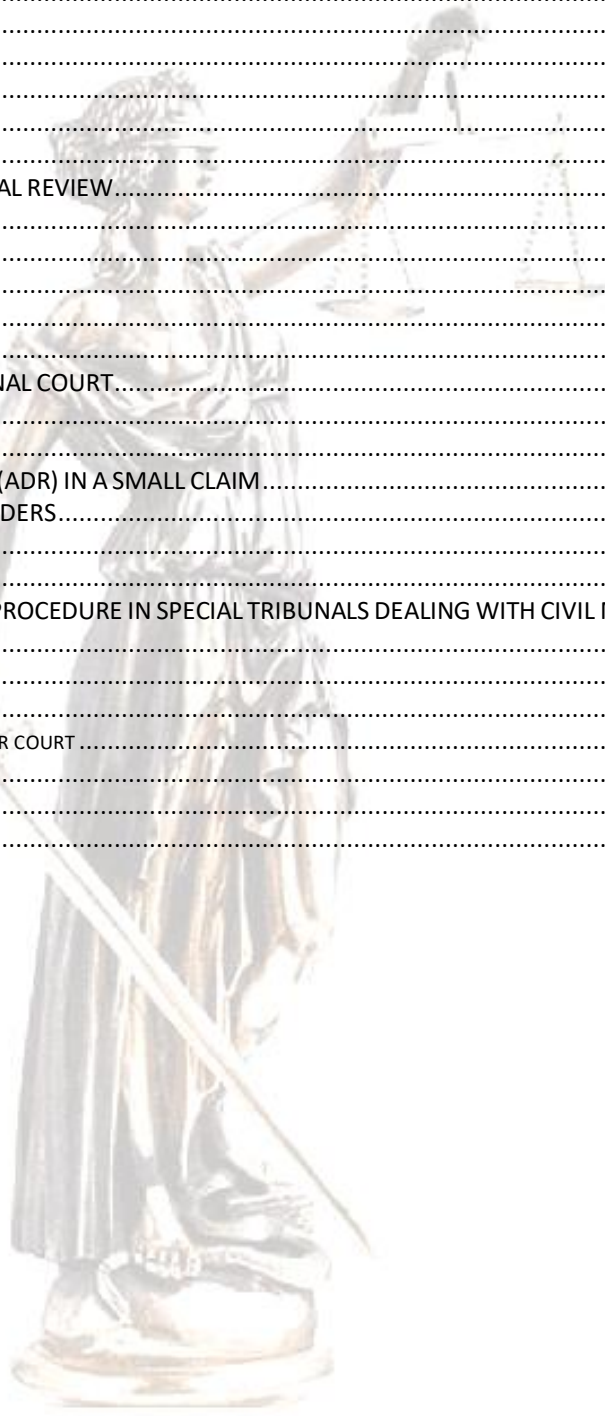


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PRE TRIAL PROCEEDINGS

TOPIC ONE

Interviewing of potential clients

Having received a brief of the client's case, and identified legal issues. You should develop a Checklist to enable you pick necessary legal information you would need to advise the client and also in case of court action, sufficient information to support the action and also the mode of Commencement.

In developing one you can be guided by the Substantive legislation on the matter, case law and even the CPR for example

Check list

No Standard template

Make sure it covers the details of the workshop question

There and general things in the personal details

O.7 R 1 is also a guiding factor

Formalizing instructions

The formalization of instructions is the reducing agreement stipulating that the named client has issued the advocate with instructions in a given matter and the forms of remuneration agreed upon by the client and the advocate in the agreement. Sometimes it is referred to as a letter of engagement. Regulation 2(1) of the Advocates (professional conduct) Regulations bars an Advocate from acting for any person unless he/she has received instructions from the said person

or his or her duty authorized agent.

Justice Kawesa in the case of Okodoi George and anor v okello opaire sam, hct-04-cv-ma-0143 of 2016 held that the practical meaning of the aforementioned provision is that the onus is on the advocate so instructed to take steps to make it known to all concerned that he/she has been duty instructed. The prudent advocate, in practice takes out a notice of instruction in forming the court and the opposite counsel of such instructions. The court further held that where, there is a change in instructions, again the prudent advocate files a "notice

||OBJECTION MY LORD..... ||

of change of advocates .” all this is aimed at avoiding a scenario where the advocates instructions end up being challenged.

Procedure.

- 1) inquire from advocate why client wants to change advocate and for any other relevant information
- 2) draft an engagement letter
- 3) draft and file a notice of change advocate in court and serve it on the former advocate.

Notice of change;

THE REPUBLIC OF UGANDA.
IN THE HIGH COURT OF UGANDA AT MBARARA
CIVIL SUIT NO. 233 Of 2022

PERFECT MUTORAWWE ----- PLANTIFF

VERSUS

KAKYE ELIFAZ ----- DEFENDANT

NOTICE OF CHANGE OF ADVOCATES

TAKE NOTICE that we at Mbabali and Co Advocates PLOT 12 Bombo,1st floor sure House,P.O BOX 55 ,Kampala have been instructed to take over the conduct of the above mentioned suit on behalf of the plaintiff.

TAKE FURTHER NOTICE that any correspondences concerning the matter should be served on us as counsel for the plaintiffs.

DATED AT KLA this.....day of.....2024

.....

M/S SUIGENERIS AND CO.ADVOCATES.

FOR SERVICE UPON:

M/S xyz and co. advocates

Plot 6, main street masaka

p.o box 111

masaka

Drawn and filed by:

M/s suigeneris and co. Advocates

Plot 12,bombo

1st floor sure house

Kampala

HOW TO PREPARE AN INTERVIEW GUIDE

M/S SUI GENERIS ADVOCATES

WILLSON STREET BUILDING

PLOT 5, P.O BOX 567,KAMPALA

Make the client comfortable; engage in small talk to make the client comfortable, ask about their family background and children.

Listen to the clients story. (conflict check) make eye contact,take notes, ask open ended questions

Attempt to create a timeline of events after the client has finished telling you what happened, attempt to create a timeline of events. Now when you need to take good notes ask questions and obtain pertinent details and bring the story back on to date.

Ask about any reports or other evidence in the clients possession

Sign directions and authorizations. It is important that clients often feel their personal information is represented so that they know from the outset.

Explain the legal process

Explain that there are no guarantees

Discuss your retainers

Obtain pertinent contact information

Maintain client satisfaction

ENGAGEMENT LETTER

M/S EKA ADVOCATES

WILSON STREET BUILDING

PLOT 5, P.O BOX 576, KAMPALA

19TH SEPTEMBER 2024

Our Ref: EKA/C/27/2024

Your Ref:

To: M/S MAY (U) LTD

Dear Sir/Madam

RE: TERMS OF ENGAGEMENT FOR LEGAL SERVICES

We refer to the correspondence and interactions with a member of our firm to whom you gave instructions for legal services in connotation with you seeking redress for the breach of contract.

We thank you for considering our services and in this letter we set out the scope of your instructions and the obligations attached on both sides.

Your instructions

You instruct us to obtain legal remedies for you. We pledge to handle your file in an appropriate manner and will proceed with legal activities to meet your interests.

Standard of services

The work assigned by the clients shall be carried out with due diligence within the stipulated time.

Scope of instructions

In a bid to ensure that you obtain the redress you seek, we shall perform our duties as advocates and follow all the necessary processes required by law.

Confidentiality

We observe the requirement not to disclose any information about the client unless consent has been given by the client or by law.

Conflict of interest

We shall not act for any new client whose interests conflict with those of the existing client.

Professional fees

We shall charge according to the advocates fees and remuneration rules where the instructions require additional fees, the same shall be communicated.

Disbursements

Any disbursement incurred in the execution of the instructions will be communicated and charged separately. Those must be paid in time to allow effective performance.

communication

in order to keep the client updated, all necessary steps taken and documents filed and issued will be communicated.

Termination of legal services

We sincerely hope that neither of us will find it necessary to end relationship early. However, if either of us decided to end our relationship, we will expect you to pay all outstanding bills before we release your file.

If this letter reflects your understanding of our relationship, please sign and return the enclosed copy. Thank you for the opportunity to be of service. Again, we look forward to working with you.

Yours sincerely;

.....

Counsel on this matter.

I have read the contents of this letter and fully consent to it

.....

George Israel

I certify that the contents and nature of this arrangement was explained to the client and he appeared to understand the agreement

.....

Notary public.

Demand notice

18TH September 2024

TO: XYZ

TENANT, WAIRAKA

JINJA.

DEAR SIR,

REF: DEMAND FOR UNPAID RENTAL FEES FOR SIX MONTHS /NOTICE OF INTENTION TO SUE

We act for and on behalf of MR.GERALD OKULLO our client upon whose instructions we write to you as hereunder.

As you are well aware, that you are a tenant on our client's houses, it was mutually agreed between yourselves that you would make a payment of one hundred thousand Ugandan shillings every month as your rent at the end of every month.

To date, despite the several pleas/demands by our client for the outstanding sums with total to the amount of six hundred thousand shillings for the months of March, April, May, June and July and August, you have not made any payment to our client.

The purpose of this letter therefore is to demand as we hereby do, for the payment of six hundred thousand Ugandan shillings being the accumulated monthly rental fees as of today 18th September 2024.

TAKE NOTICE that if you fail to heed to our clients demands herein within fourteen days (14 days) from the date of receipt of this letter, we have stern instructions to institute legal proceedings against you for recovery of the same, without further notice to you at your cost and peril.

Yours faithfully,

.....

SUIGENERIS AND ADVOCATES.

CC.

AREA LOCAL COUNCIL CHAIRPERSON



PARTIES TO A SUIT

Order 1 of the Civil Procedure Rules SI 71-1(hereinafter referred to as the CPR) provides generally for parties to suits. Order 1 rule 1of the CPR SI 71-1 provides that all persons may be joined in one suit as plaintiffs in whom any right to right to relief in respect of or arising out of the same transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if those persons brought separate suits, any common question of law or fact would arise.

In the same vein, Order 1 rule 3 of the CPR SI 71-1 provides that all persons may be joined in one suit as defendants against whom any right to right to relief in respect of or arising out of the same transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against those persons, any common question of law or fact would arise.

This part of the study, with due respect to the above, in strict sense tends to show how parties like minors, numerous persons, companies, clubs, inter alia deal with suits(thus sue or be sued), with particular regard to pleadings. The discussion below, therefore, is an attempt to look at the different parties as enunciated below.

SUITS BY OR AGAINST CORPORATIONS.

This is provided for in Order 29 of the CPR. Rule 1 provides that in a suit by or against a corporation, any pleading may be signed on behalf of the corporation by the secretary or by any secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act.

Procedure

This depend on the facts of each case; it is thus not imperative to limit oneself to a given procedure; however without prejudice to the foregoing, it can be by ordinary plaint, under Order 4, Specially Endorsed Plaint in summary procedure under Order 36, Miscellaneous applications and Miscellaneous Cause under various orders, or even originating summons, where the company falls within the ambit of Order 37 of the Civil Procedure Rules.

Documents

Can include any of the following:

Plaint,

Written statement of Defence

Specially endorsed plaint accompanied by an affidavit

Notice of Motion supported by affidavit,

Chamber summons supported by affidavit,

Originating Summons.

SUITS BY OR AGAINST FIRMS OR PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

This is provided for in Order 30 of the CPR. Rule 1 provides that any two or more persons claiming or being liable as partners and carrying on business in Uganda may sue or be sued in the name of the firm, if any of which those persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in the firm, to be furnished and verified in such manner as the court may direct.

It is a cardinal rule of law that where the suit is instituted by partners in the name of the firm, the plaintiffs or their advocates shall, on demand in writing by or on behalf of any defendant, immediately declare in writing the names and places of the residence of all persons constituting the firm on whose behalf the suit is instituted. Failure to comply with this provision may upon application result into a stay of the proceedings on such terms as the court deems fit. This application is by summons in chambers under O.30 r11.

It must be noted that the default mode of instituting the pleadings is by ordinary plaint under Order 4 Rule 1. If the suit being brought is for dissolution of the partnership (if it is still subsisting), or for the purpose of taking the accounts and winding up of the partnership, then the suit is brought by way of originating summons under O37 r5 of the CPR. For forum, procedure and documents, refer to corporations above.

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

This is provided for in Order 31 of the CPR. Rule 1 provides that in all suits concerning property vested in trustees, executors or administrators, where the contention is between the persons beneficially interested in the property and a third person, the trustee executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit; but the court may if it thinks fit, order them or any of them to be made parties to the suit.

Where an individual wishes to apply to court to add any other persons, not being trustees, executors or administrators; he or she may apply by chamber summons on the strength of order 31r4; the chamber summons is supported by an affidavit; wherein the applicant adduces facts as to why the individuals he wishes to be made parties should be added as parties to the suit.

It should be noted further that trustees, executors or administrators, or any other person claiming relief sought as a creditor, devisee, legatee, heir or legal representative may take out originating summons to determine questions dealing with rights or interests of the person claiming to be a creditor, devisee, legatee, heir, ascertainment of any class of creditors, devisees, legatees, heirs, inter alia . Thus this would mean institution of the suit by way of originating summons instead of the normal way by use of plaint. For forum, procedure and documents, refers to corporations above.

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND.

This is provided for in Order 32 of the CPR. Rule 1(1) provides that every suit by a minor shall be instituted in his or her name by a person who in the suit shall be called the next friend of the minor. This is qualified by sub rule (2) of Rule 1 if the person suing as next friend of the infant is an advocate. Thus, before the name of any such person is used as next friend of any infant, where the suit is instituted by an advocate, that person shall sign a written authority to the advocate for that purpose, and the authority shall be represented together with the plaint and shall be filed on record.'

It must be noted that the plaint will be taken off the file if the suit is brought without the next friend, upon application by the defendant. Notice of this application is given to the person, and court shall make an order as it deems fit.

This application is by way of notice of motion under O 32r16; unless it is otherwise provided for.

Where the defendant is a minor, rule 3, sub rule 1 provides that the court on being satisfied of his or her minority, shall appoint a proper person to be guardian ad litem of the minor. An order for the appointment of a guardian ad litem may be obtained upon application in the name of the and on behalf of the minor or by the Plaintiff under order 32 r3(2) and r (16). Capability to act as next friend or guardian is conversed in order 32r 4(1); thus one should be of sound mind and should have attained majority age.

In relation to persons of unsound mind, rule 15 of Order 32 provides rules 1-14 of the same order will apply to persons of unsound mind.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act. It is better to use the High Court because it has unlimited original jurisdiction in all matters and such appellate and other jurisdictions as may be conferred by the constitution 1995.

Procedure

This depend on the facts of each case; and as noted earlier, it is thus not imperative to limit oneself to a given procedure; however without prejudice to the foregoing, it can be by ordinary plaint, under Order 4, Specially Endorsed Plaint in summary procedure under Order 36, Miscellaneous applications and Miscellaneous Cause under various orders inter alia.

Documents

Can include any of the following:

Plaint,

Written statement of Defence

Specially endorsed plaint accompanied by an affidavit

Notice of Motion supported by affidavit,

Chamber summons supported by affidavit,

SUITS BY PAUPERS

This is referred to as suits instituted in forma pauperis. 033r1(1) provides that any suit may be instituted by a pauper. Sub rule 2 defines a pauper to mean a person not possessed of sufficient means to enable him or her pay the fee prescribed by law for the plaint in the suit.

Rule 2 provides that every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits, together with a statement that the pauper is unable to pay his or her fees, prescribed in the suit. Rule 8 provides that where the application is admitted, it shall be deemed the plaint in the suit and the suit shall proceed in all other aspects as a suit in the ordinary manner except that the plaintiff shall not be liable to pay any court fee. It must be noted further that where the pauper succeeds, court shall calculate the amount of court fees which would have been paid by the plaintiff if he was not permitted to sue as a pauper; and the amount shall be recoverable by the court from any party ordered by the decree to pay it, and shall be a first charge on the subject matter of the suit.

Procedure

Application for permission to institute a suit as a pauper by way of motion on notice under order 52 rule 1 of the CPR; and order 33 rule 16.

Major Documents

Notice of Motion supported by an affidavit.

Statement that the applicant is a pauper.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act. It is better to use the High Court because it has unlimited original jurisdiction in all matters and such appellate and other jurisdictions as may be conferred by the constitution 1995.

REPRESENTATIVE SUITS.

Order 1 rule 8(1) of the CPR provides that where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend in such suit, on behalf of or for the benefit of all persons so interested. The cardinal points to note about this provision are that;

The persons must be numerous. Numerous is defined in the Oxford Advanced Learner's Dictionary to mean a large number of people or things.

Secondly, there must be a common interest in the same suit.

One or few selected representatives have to apply to court for leave to be granted for them to institute the representative suit

The applications for leave is by summons in chamber. (0.1, 22)

Taremwa kamishani Thomas v the A. G. HCMC 38 of 2012

It is prudent to attain true national ids of each on the written consent as endorsee.

Amendment requires that you file the application with a consent from the parties to be represented and the intended /proposed plaintiff.

Upon application, the applicant should issue out notice disclosing the nature of the saint as well as the reliefs claimed so that the interested parties can go on record in the fast either to support the claim or to defend against it.

Ibrahim Buwembo, Emmanuel sserunjogi and zubairi muwanika 4 and on behalf of 800 others v UTODA Ltd HCCS no.664 of 2003 court held that notice must be issued by way of public advertisement to all persons so represented unless personal service is possible.

Editorial Note

Representative suits ought not to be confused with suits under order 1 rule 12. order 1 rule 12(1), provides that where there are more plaintiffs than one, any of them may be instituted by any one or more of them may be authorized by any one of them to appear, plead or act for that other in any proceeding, and in like manner, where of them the suit is already instituted

Administrators & executors

These can sue & be sued on behalf or representing the state of the deceased

An administrator cannot commence a suit or defend suit on behalf of the estate of deceased without letters of administration

Finnegan v Cementation co. (1953) 1 QB 68, court held that any proceedings take by an administrator before grant of the letters of admin are a nullity

Where a litigant is suing in a rep capacity 0.7 r 4 requires that he/she pleads that he he/she possess letters of administration.

Where a party dies intestate & administration of his estate is granted an ex parte application may be made to the court or judge to have the administrator joined as a party. (0.24 r 5)

Trustees

These can sue or be sued in a representative capacity in respect of the trust property. If they are more than 1 they all should be named a trustee under an express instrument or under the law of agency bailment or trusts by a statute. (public trustees Act Cap.16, trustees Act cap 164)

Unincorporated Associations.

Clubs

A representative action may be taken by or against the member of an unincorporated association. However it must be shown that the members are numerous involved in the action, that they have a common interest and that they will all represented enjoy some relief by the success of the suit albeit in different portions, the relief must be in a nature beneficial to all members of the class.

d) Partnerships

Partnerships may sue or be sued in the firm's name or alternatively in the names of the individual partners .0.30 r 1

Its good practice where the partners names are used to add trading as.

Gov't schools: for primary schools it's the management committee & for secondary schools it's the board of governors

Universities: universities S.23 of UOTIA

Procedure

The numerous people attend meetings, where they resolve to have representatives for them in the intended suit and this should be deduced to writing showing the resolution and the appointment of the representatives. All the people must append their signatures.

An application by way of summons in chambers supported by an affidavit; under order 1 rule 22(1). The application is by the representatives.

If the application is granted, then the suit is instituted by way of plaint; by the representatives on behalf of the other numerous persons.

Documents

Minutes of meetings resolving to appoint representatives.

Chamber summons supported by an affidavit.

Plaint, upon grant of leave to institute a representative suit.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act. It is better to use the High Court because it has unlimited original jurisdiction in all matters and such appellate and other jurisdictions as may be conferred by the constitution 1995.

SUITS AGAINST GOVERNMENT

Article 178 (6) of the 1995 constitution of Uganda as amended, a registered government shall be a body corporate with power to sue and be sued.

Section 6 of the local government act cap 138, every local government council shall be a body corporate with perpetual succession

Service on the local government is done on the chief administrative officer (CAO)

Service of summons as envisaged under O.5 CPR applies in the circumstances.

This is governed by the Government Proceedings Act section 10 of the Act provides that all suits where the Government is involved, suits are instituted by or against the Attorney General. This is further qualified by section 2 of the Civil Procedure (Miscellaneous Provisions) Act Cap 283 which provides that no suit shall lie against Government, a local authority or Scheduled corporation until the expiration of 45 days after a written notice has been delivered to or left at the office of the person specified in the first schedule to the Act.

Procedure

Write a statutory notice of intention to sue (of 45 days) to the Attorney General.

Institute the suit by plaint or other wise.

Basic Documents

Statutory notice of intention to sue

Plaint (if it is the mode envisaged by the Plaintiff)

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act. It is better to use the High Court because it has unlimited original jurisdiction in all matters and such appellate and other jurisdictions as may be conferred by the constitution 1995.

LEGAL REPRESENTATIVES.

Order 3 of the CPR provides for recognized agents and advocates. Rule 1 provides that any application to or appearance or act in any court required or authorised by the law to be made or done by a party in such court may, except otherwise expressly provided for by any law for the time being in force, be made or done by the party in person, or by his or her recognised agent, or by an advocate duly appointed to act on his behalf; except that any such appearance shall, if the court so directs, be made by the party in question. Other recognised agents are conversed in Rule 2 and they include; persons holding powers of attorney authorising them to make such appearance and application and do such acts on behalf of parties; and persons carrying on business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.

Elogu Gideon and Agudo Penninah vs. Ocen John. Miscellaneous Application No. 78 of 2022 (Arising from Civil Suit No. 003 of 2016), The court emphasized that an affidavit commissioned by an advocate without a valid practicing certificate can still be deemed valid under Section 14A of the Advocates (Amendment) Act, 2002. This section safeguards clients from the repercussions of an advocate's failure to renew their practicing certificate, ensuring that documents and actions by such advocates are not automatically nullified. The Court of Appeal in Hon. Lokeris Samson v. Komol Emmanuel and the Electoral Commission, CA Election Petition Appeal No. 009 of 2021, affirmed that a commission for oaths remains valid until revoked or the advocate ceases to practice. Additionally, Ochwa David v. Ogwari Polycarp & EC, Election Petition Appeal No. 16 of 2021, indicated that courts should not dismiss a plea due to such defects but should allow the party to correct the error. As a result, the court permitted the applicants to file a new affidavit that is properly commissioned within fifteen days from the date of the ruling.

THIRD PARTY PROCEEDINGS

A 3rd party proceeding is an action involving the plaintiffs claim taken by the defendant for contribution or indemnity against a 3rd person or a co-defendant as a 3rd party.(0.1,14)

In Sango bay v Dresdenor Bank; court held that the object of 3rd party proceedings is to present a multiplicity of suits.

They are only applicable where the defendant claims to be entitled to contribution or indemnity against a 3rd party.

For third party to be joined, the subject matter between the 3rd party and the defendant must be the same as the subject matter between the plaintiff and the defendant and the original cause of action must be the same. m/s new ocean transporters co ltd and m/s Sofitra Ltd . hct-oo-cc-0523- 2006.

Right to indemnity

It exists where the relationship between the parties is such that in law and in equality , there is an obligation upon one party to indemnify the other.

Right may also arise from contract where its either expressly or impliedly stated. 3rd party proceeding must be founded on the same cause of action as between the plaintiff and defendant.

In Transami (U) Ltd v trans ocean(U) Ltd (1994),Karl 175

The plaintiff /defendant aim was founded on trespass while the claim court held that it is settled that in 3rd party proceedings 4 indemnity to claimed, the cause of action as between the defendant and plaintiff must be the same as between defendant and 3rd party.

Application is by chamber summons heard ex parte upon which upon grant, the 3rd party is served with a 3rd party notice and a copy of the pleadings.

NBS v UBC (HMC; 3rd party must not be already a party to the sent.

Cause of action should be the same.

JOINDER OF PARTIES

Two or more parties may be joined to a suit as defendant or plaintiff. The following grounds govern joinder of parties:-

Relief in respect of the same or series of transactions

O.1 r 1 & Barclays Bank v Patel

common question of fact or law would arise

O.1 r 1 --- joinder of plaintiffs 0.1 r 3 defendants

leave of court obtained

joint claimants

joint and several liability: where parties are jointly &several liable for the sought

persons presence necessary to enable court effectively adjudicate upon the issues or is required by a statute

doubt against whom relief is sought 0.1 r 7 where a person is in doubt as to person against whom a plaintiff is entitled to relief notice is duly delivered & delivered to the defendant or his lawyer, they shall be required to endorse it. This is mandatory and non compliance means that service has not been effected.

Rules of court for joinder of parties Interest of co-plaintiff

A co-plaintiff need not be interested in every course of action or in the relief claimed in a proceeding.

Non joinder or misjoinder of a party

No proceeding shall be defeated by reason of the misjoinder or misjoinder of a party.(0.1 r 9)

Joinder cause delay

Where the joinder of parties may complicate or delay a trial or hearing the court:-

- a) Order separate trial or hearing
- b) Make such order as a just (0.1r 2)
- 4) Right of court to join a party. The court on any time, on application or its own motion may order

Any necessary or improper party cease to be party .

Any person, who is necessary to ensure that all matters may be effectively adjudicated upon in a proceeding to be added as a party. 0.1 r 10(2)

Any successor of a deceased or bankruptcy party or a corporate party that has been wound up or dissolved and its interest has not abated, to be made a party when interest has not abated or when the interest or liability is assigned or transferred or devolved.

Right of court to grant leave

The court at any stage of a proceeding may grant leave to add, delete a party upon such terms as the court may order.

Ponjo v Toro African Bus CO. (1980) HCB 57; non existing parties cannot be party to a suit.

Najeno v semwanga (1974) EA 332; an order for substituting a party after the limitation period is improper.



PRE TRIAL REMEDIES

Temporary injunctions and inter occupancy (orders cord 4CPR)

An injunction is an order of the court directing a party to the proceeding to refrain from doing a specified act. It is usually granted in cases where a monetary compensation will afford no adequate remedy to the injured party.

An interlocutory injunction is an injunction that is limited so as to apply only until or final determination by the court with the rights of the parties and accordingly it invests in a form that requires what in the absence is a subsequent order to the centrally it should continue up to but not beyond a final hearing with the proceedings.

Order 9 r 8 CPR, an interlocutory judgement maybe entered where a plaint is drawn for; pecuniary damages only or for detention of goods with or without a claim for pecuniary damages and where defendant fails to file a defence.

An interlocutory injunction is determined from a pending suit and likewise these must be a course action to sustain the suit from which the application will be delivered.

The above position was retreated in this case; sugar corporation of Uganda ltd v Mohammed Tijani H.CCS No.39 / 1993.

Accordingly, order 4, rule 7 CPR provides that

That any property in dispute in a suit is in danger to being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution to decree or

That the defendant threatens or intends to remove or dispose with his or her property with a view to defraud his or her creditors, the court may by order grant a temporary injunction to restrain such act, or make sure other order for the purpose of staying and preventing the working, damaging alienation sale removal or disposition of the property as a court that fit until the disposal is the suit or until further orders”

It is imperative to note that appending suit must be before the same court as it was noted in the case of Mwaine Nyakana and Company Advocates vs Departed Asians .

The application for the interlocutory relief is not itself a cause of action as the right to the interlocutory relief is also not a cause of action itself.

Lord Diplock noted in the case of *Siskina the (Cargo owners) v Dostos Campania Naviera CA (1979) AC 210* that a right to obtain an interlocutory injunction is not a cause of action against the defendant arising out an invasion, actual or threatened by him or her of legal or equitable right with the plaintiff for the enforcement to which the defendants in amendable to the jurisdiction to the court.

After core the injunctive relief is recognition that monetary damages cannot solve problems.

An injunction may be permanent or it may be temporary. A temporary or an interlocutory injunction is a provisional remedy granted to restrain activity on a temporary basis until the court can make a final decision after trial. It is usually necessary to prove the high likelihood of success upon the merits with one's case and a likelihood of irreparable harm in the absence of a preliminary injunction before such as injunction may be granted otherwise a party may be have to wait for trial to obtain a permanent injunction.

The right to obtain an interlocutory injunction is merely auxiliary and incidental to that the existing course of action. Therefore the right to an interlocutory injunction cannot exist in isolation but is always incidental and dependent on the enforcement of a substantive right which normally takes the shape of a cause of action.

In a case of *James Musisi Sentaaba v Ruth Kalyesubula HCMA 329 of 2001* Justice Lugayizi pointed out that:

“Be that as it may, it is now well settled law that before an applicant may be granted a temporary injunction he has to prove the following thing.

That a purpose with the temporary injunction is to preserve the status quo until the head suit is finally determined (see *Noor Mohammed Janmchamed v Cassand; Virjx (1953) 20 EACA 80*).

That is applicant has a prima facie case, which has the head possibility as cross (see *Cella V Cassmnan Brownco. Ltd .*

That is the temporary injunction is not granted, the applicant would suffer irreparable injury, which damages cannot atonic (see *Noar Mohammed Jannohamed V KassamiVivij (supra)*).

If court remains in doubt after considering the above three requirements of the law, it would decide the application on the balance of convenience (*E.A industries v. Troffords (1972) E.A. 420*).

An injunction will normally be granted to restrain the plaintiff at rights. When deciding as to whether or not to grant an application for an interlocutory injunction, the leading decision is the *carco. American Cyromide C. Ltd V Ethicon Ltd (1975) Ac 396*, which stipulates that a court should as a general role have regard only to a following criteria.

Is there a serious issue to be tried?

Are damages an adequate remedy?

Where does a balance the convenience lie?

Are these any special factors?

It should be noted however that this criteria shall be lead in the context with the principle that the discretion with the court should not be retired by laying down any rules which would have the effect is limiting the flexibility is a remedy.

Justice Odoki as he then was, noted in the case of Kiyimba Kaggwa V. HajjirKatende that the granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve matters in status quo until a question to be investigated in a suit is finally dispersedly court further noted conditions for the grant of interlocutory injunction as being first and foremost that the applicant must show a prima facie case is a probability with success.

Secondly such injunction will not normally be granted unless applicant might otherwise suffer irreparable injury which would not adequately be untested or atoned for by an a ward of damages.

Thirdly if the court is in doubt, it will decide an application on the balance to convenience. The applicant must show that he or she has a prima – facie case in the pending suit which a probability of success in that pending case.

However, the west term prima facie is contentious and confusing since a grant of a temporary injunction involves the exercise the judicial discretion. It is possible at the interlocutory state for the court to know prospects of success of either party and it would only be embarrassing to the court to ultimately try to case with a pre-conserved mind.

However, the courts have preferred give the term serious issue to be tried”. This seems a straight forward yards stick in determination such a case to allow a applicant to benefit from an interlocutory injunction.

Justice Byamugisha, as she then was, noted in Denial Mukwaaya V. Admin General that the applicant has to satisfy court that there is a serious question to be investigated and that he has a reasonable chance of succeeding in the main suit.

It is open to court to decide that there is a serious question to be investigated and that he has a reasonable chance of succeeding in the main suit.

||OBJECTION MY LORD..... ||

It is open to court to decide that there is a serious question to be tried if a material available at the interlocutory hearing fails to disclose that the plaintiff has any prospect the succeeding in his or her action for a permanent injunction at the trial. Therefore, a serious question to be tried can only a rise if there is evidential backing it.

The court at this stage should not try to resolve conflict is evidence of affidavits as to be the facts from which the claims of either party may ultimately depend, neither should it decide, default difficult questions is low which call 4 detailed arguments and mutual consideration.

There are matter that have to be dealt with at the trial.

According to Halsbury's laws the England 4thedn Vo. 24 para 855 it is stated that "855. Serious questions to be tried. On an application for an interlocutory injunction the court must be satisfied shall there are serious questions to be tried. The material available to court at the hearing of the application must disclose that the plaintiff how real prospects for succeeding in his the claim for a permanent injunction at the trial".

Read further: Napro industries Ltd v Five star industries Limited and Another. HEMA No. 773 of 20046 comm.

Lord Diplock in the American Synamid case stated that.

"My lords, when an application for an interlocutory injunction to restrain a dependent from doing acts alleged to be in violation with plaintiff legal right is made upon contested facts, decision whether pinot to grant on interlocutory injunction has to be taken out a time when ex hypothesis the existence of the right or the violation of or both, is uncertain and will remain uncertain until, not judgment is given action, it was mitigate risk is injustice to a plaintiff during a period before that uncertainty could be resolved that the practice or rose of granting him relief by way with interlocutory injunction but since the middle of the 19th century this has been made subject to his undertaking to pay damages to which dependent for any loss sustained by recession with the injunction it should be held at the trial that a plaintiff had not been entitled to restrain the dependent from doing what he was threatening to do the object is a interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately cooperated in damages revocable in action if a uncertainty were resolved in his favour at a trial but the plaintiff need for such protection must be weighed against the corresponding need to the dependent to be protected against need to be dependent to be protected against. Jury resulting from his having been prevented from exercising his own legal rights for which he couldn't be adequately compensated under the plaintiff undertaking in damage uncertainty were resolved in a defendantsfavour of the trial. The court must wright one need against another and determine where a balance with convenience" lies.

In these cases where a legal right of the parties depend upon facts that are in dispute between them i.e. evidence available to that the hearing of the application for an interlocutory injunction is incomplete. It is given an afflebrit and has not been tested by oral cross – examination.

The purposes sought to be achieved by giving to the court discretion to grant such injunctions will be stultified if or discretion were clogged by a technical role for biding its arouses it upon a that incomplete untested

evidence is court evaluated a changes of a plaintiff ultimate success the action at so percent or loss, but permitting its exercise if court evaluated his chances at more than 50 percent.

Unless or court undertakes a view that the claim has no prospects succeeding if should go on the consider the balance of convenience and nature injury for damages.

If the applicant is likely to suffer irreparable injury in an injunction ought to be granted irreparable injury does not mean physical impossibility of repairing to injury but for means that a lejury must be substantial or material, with one that cannot be adequately compensated for in damages in the case of American cynomide. Co v Ethican, Lord Diplock explained that

“your lordships in my view Taboth’s opportunity the declaring that there is no such rule. There are to such expression as “approvability” “a prima facie cave,” or “a strong prima facie case” the context so exercise of discretionary power to grant an interlocutory relief. The court no doubt must be satisfied that a claim is not frivolous or vexatious, in other words that there is a serious question to be tried.

It is no part of the courts function at this stage of the instigation to try to resolve conflicts of evidence only, development as to facts on which they claims of either party may ultimately depend nor to decide difficult question of low which call for detailed argument and mature considerations.

There are matters to be dealt without the trial one of the reasons for the introduction of the practice of requiring and undertaking as to damages upon grant of interlocutory injunction was that “it aided the court in doing that which was its great object, viz obtaining from expressing any opinion the merits of a case until hearing “Wakofied V Dute of Buccleough is unless the material available to which court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any red prospect of succeeding in his claim for a permanent injunction at a trial the court should go on the consider, whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought.

As to that, the governing principle is that the court should first consider whether, if the plaintiff were to succeed at a trial in establishing his right to a permanent injunction, he would be adequately compensated by an award, damages for the loss he would have sustained as a result of a defendants continuing to do what was sought to be rejoined between time and application and the time of the trial of damages in the measure covable at common law would be adequate remedy and the defendant would be in a financial position to pay time no interlocutory injunctions should normally be granted, however string a plaintiff claim appeared to be at that stage if one other hand, damages would not profile an adequate remind for the plaintiff in the event of his succeeding at a trial, the court should then consider whether , one contrary hypothesis that the dependent were to succeed at the trial in establishing his light to do that which was sought to be enjoined he would be adequately compensated under the plaintiffs undertaking as to damages for a loss he would have sustained by being prevented from being so between time age application and or time of trial if damages in the measure recoverable

under such an undertaking would be an adequate remedy and a plaintiff would be in a financial position to pay them, there would be no reason up, this ground to refuse an interlocutory injunction.

The court of appeal in the cases Grace Bamuranya Bororoza and others V. Dr. Kavinu Awoko & Others said that;

“In order A which applicants to succeed in this application they must satisfy us that if the order of injunction they are seeking is not granted, then they will suffer irreversible damage that cannot be addressed by payment of making cooperation”.

Every citizen of Uganda has a constitutional right to acquire any property anywhere in Uganda as long as he / she do as so lawfully in accordance with the laws and custom of the people of the area in this case, the Balado claim to have lived in Bulissa for varying periods between 2 to 6 years. They claim to loss properties there. Whether those claims are correct or not is not for the court of appeal to determine out this stage. The filled application for review to be able to establish that they were in Bulisa legally in accordance with the constitution headed by the 1st respondent refused to hear them. The high court dismissed their suit without giving them a hearing the fact that they are not ending a new people in Bulisa does not purse give anyone a right to avoid them without investigating them status supposes their claims turnout consideration of matters of alternative relocations and cooperation when? We must all be aware that article 42 of the constitution provides:

“Right instead for treatment in a administrating decisions. Any person appearing before any administration official or body has a right to be treated fully and fairly and shall have a right to apply to assault of law in respect of any administrative decision take against him or her”.

We have already achieved that a committee channel by the fact respondent were given judicial body and has a duty to act in a accordance with article 420 of the constitution it has no far failed to close. The high court had the duty in accord to the applicant the right guaranteed by article 25 of constitution. It did not accord them any hearing at all the right guaranteed by article 28 are stated to be non – derivable and inviolable under article 44 or the constitution once they are violated, the damage cannot be reversible and cannot be addressed by payment of any amount of money in our view, the second test of immovability of damage has been established before and any development.

The decision to grant or reformed in interlocutory injunction will course in whichever party is unsuccessful some disadvantages with his or her ultimate success out trial may show that he or her ought to have been spread.

The extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his or her success at the trial or always a significant face In assessing where the balance conveniences.

Another factor to consider before a great of an interlocutory injunction is a balance of convenience Sir John Donaldson explained in the Agoc of Francome V Mirror Group Newspaper that

“I stress once again that we are not at this state concerned to determine the rights of parties. Our duty is to make such order as it appropriate pending to trial of an action thought it is sometimes sold that this involves weighing of a balance of convenience that is an unfortunate expression”.

Our business is justice not convenience which can and must disregard faithful claims by either party subject to that, which must enterprises a possibility that either party may succeed and must do our best in order that nothing account pending as that which with prejudice or right which the parties are wisely assessing insistent claims, this is difficult but we have to do our best, in so doing, we are seeking a balance of justice and not governance.”

Status Quo

If other factors are usually balanced it is prudent to take such measures that are calculated to preserve the status quo.

Status quo means, simply the existing states of things before a particular point in time the movement crucial point in determining a status quo to ascertain a period a point in time which is to be preserved.

The status quo may mean the existing state of things that the date when the dependent as respondent did the act with which first act which is alleged to have been wrongful or the date when the plaintiff applicant first learned of the act as the date when the sum man were issued.

Therefore, the 10 bent point of time for purpose so the status quo vary in different cases in the cases Elisen Munko VA/Mada Kezealka , court noted the main purpose of granting a temporary injunctions is to maintained in the status quo, other circumstances had to be taken consideration where the status quo has changed then it doubtfully the interlocutory injunction will solve any purpose as it may mean preserving the legality as a breach of the wrongs and court can clearly reverse the wrong that has been done before hearing the matter which some cases may involve some hardship to innocent third parties.

The case of the Garden Cartoge Fonds Limited v Milk marketing Board 130 it was noted that for the purpose of deciding whether an interlocutory injunction shall be granted to preserve the status quo the court should consider the status quo as the state of affairs existing during the period immediately preceding the issues of summons and in respect of the motion before an interlocutory injunction the period immediately preceding the motion.

An order in the nature of an interim injunction rashalns to respondent only until after annual day or further order. This order is granted exporter pending to hearing of the main application. The rationale for this is to curve that the status quo does not change during the period before the application for temporary injunction is board. A registered judge to magistrate may grant this interim order.

An interim injunction is made by notice of motion a compound by an affidavit containing the following matters.

That the facts relied on government with application being made experts and should show that an injunction necessary and that the matter is urgent.

That details of any answer as voted to likely be avoided by the responded to be substance claim if the respondent learning the hearing of the expert application, he may approve the application and where an order he been made he may apply expert it's duchesse to pertain before the hearing inter-parties

An injunction is an equitable remedy in the forms of a court order, where by a party is required to do, or to reform from doing, adhere to injunction takes axi / or criminal panel has and many have to pay damage or accept junctions for failing to follow the courts order in some cases, broader of injunctions are considered serious criminal offences that most as result and possible prison sentence.

Rational behind injunction

This injunction power to response status quo another that is to make whole again where one where right have been violated, is eventual to the concept of fairness (equity) for example, monetary damages which will be of scant benefit in a cloud owner who wishes simply to prevent someone from repeatedly trespassing on his hand.

Injunction against government

As a general role, an injunction, temporary or permanent cannot have against government.

Under the lower of Uganda, the rationale is that government or that government machinery should not be brought to a halt and it should not be subjected to embarrassment. This was reiterated in the case of AG. V . Silver Springs Hotel.

Similarly, public authorities should not be restrained from exercising their statuary duties and power unless the plaintiff or applicant has been extremely strong cases on the movements.

However, it should be noted that under administrative law, an applicant for judicial review can seek an order of injunction against government or its officers in the case of Mvitome Office (1994) / AC 377. Court issued an injunction to a number of home offices stopping him from deporting an immigrant.

In addition, an injunction can issue to a government authority, or public body, if it is acting contrary to the law or without authority from the law authorizing it and every if it is in violation of a irritation Road).

However following the case of AG v Osotrain Ltd , there is doubt as to whether this general principles protecting the government is still valid. In that case the court issued an eviction under against the government contrary to clear statutory provision and referred to several cases out of the jurisdiction where injunctions had been issued against the government. The court of appeal concluded that.

“Since the 1995 constitution, the rights, powers and immunities of the state are not immutable anymore. Article 20(2) enjoins everybody including government agencies in protect and respect individual fundamental human rights. The constitution has primacy overall other laws and the historic common law doctrines restricting the liability of the state should not be allowed to stand in the way of constitutional protection of fundamental rights.

Discharge of temporary injunction

A person who seeks to discharge an interlocutory injunction must apply by notice of motion. To court which granted the injunction orders for rule for state that:

“ Any order for an injunction may be discharged, or varied, or set order by the court on application made to the court by any party dissatisfied with the order.

Discharge may be on any of the following grounds:-

Material non – disclosure on an expert application.

Applicant’s no abuse vance of a terms of a grant of the injunction.

Material changes in circumstance since the grant.

The plaintiff failure to prosecute the substance claim sufficiently and expeditiously.

That the effect of injunction is presume or interferes with the rights of third parties.

Mareva injunction

The Mareva Injunction (vicariously known also as a freezing order. Maccra order or Mareva regime in common wealth jurisdiction, is a court order which freezes asserts to that is dependent to an action cannot disparities their assets from beyond the jurisdiction of court so as to instate a judgment. It is named after the case of Mareva Campania Naverasavs International Bulk Carven SA . The Mareva injunctions are typically obtained cash out notice to the others sides (expert) as to top the dependent off would likely cause the prompt movement of the relevant assets before the court could issue it injunction, there by insulating the defendant from contempt.

In Aetna Financial Service Ltd. Vs Feigelman Canada’s Supreme Court state that:

“The government of the Mareva Getinni in freeze-able assets found with the jurisdiction, whoever the defendant may reside providing or course, there is a cause between the plan off and the dependent which justifiable in the court of England. Mareva injunctions help to prevent removal of assets from the jurisdiction and the subsequent defeat of a creditor’s claim.

However, unless erects a genuine rise of disappearance of assets, other inside or outside the jurisdiction, the injunction will not issue”

The Ontario court of appeal, in 1995 case RV Consolidated fast state transport in the 40 CPC 3rd, 60 provided this compliance summary.

A Mareva injunction often termed as “freezing injunction” is an exceptional form of interlocutory relief designed to freeze the assets of a defendant in appropriate circumstances, pending determination of the plaintiff claim.

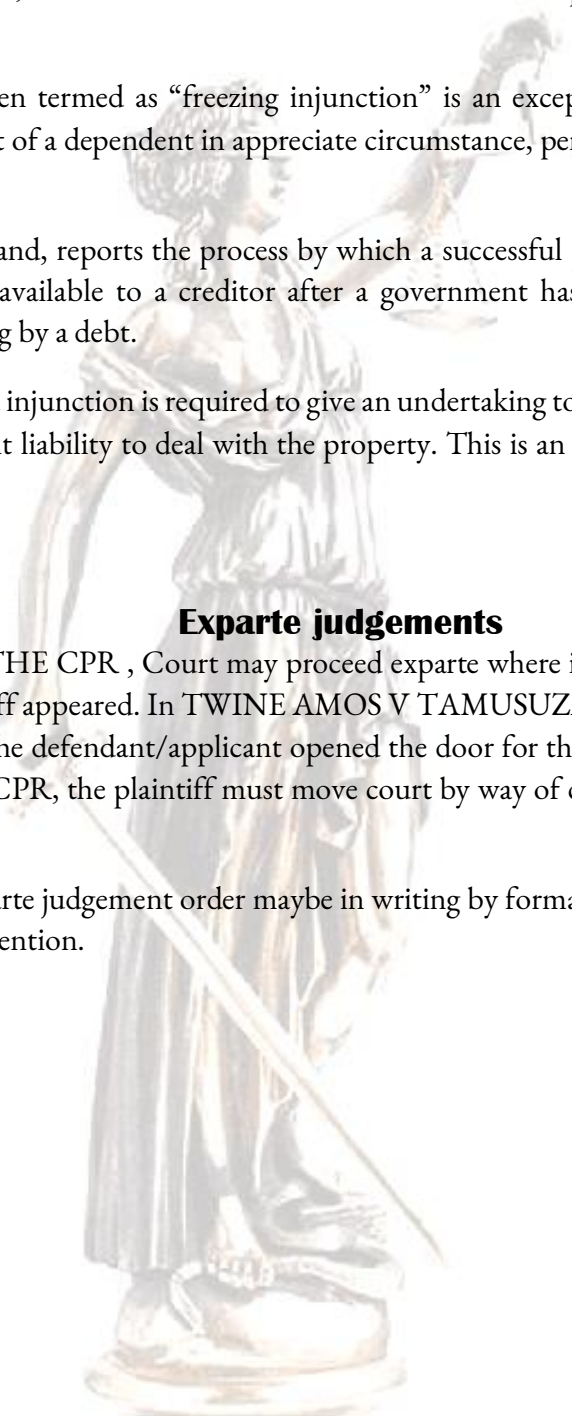
Execution, on the other hand, reports the process by which a successful plaintiff may enforce a judgment it empowers have remedies available to a creditor after a judgment has declared that a sum of money is immediately due and owing by a debtor.

A party obtaining a Mareva injunction is required to give an undertaking to pay damages, the event that any are suffered due to the defendant's liability to deal with the property. This is an irrelevant consideration, insofar, an execution is concerned.

Ex parte judgements

Order 9 R 20 (1)(A) OF THE CPR , Court may proceed ex parte where it is satisfied that the defendant was served and only the plaintiff appeared. In TWINE AMOS V TAMUSUZA JAMES, Court held that when he failed to file the defence, the defendant/applicant opened the door for the plaintiff to proceed ex parte in the suit. ORDER 9 R 11 (2) CPR, the plaintiff must move court by way of chamber summons to grant leave to proceed ex parte.

An application for an ex parte judgement order may be in writing by formal letter or informally in court when the matter comes up for mention.



TOPIC TWO



PLEADINGS GENERALLY

INSTITUTION AND FRAMING OF SUITS.

Order 2 rule 1 of the CPR provides that every suit shall include the whole claim which the Plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his or her claim in order to bring the suit within the jurisdiction of any court. It must be noted however, that where a plaintiff omits to sue in respect of or relinquishes any portion of his or her claim, he or she shall not afterwards sue in respect of the portion omitted or relinquished.

The general rule concerning institution of suits is provided for in order 4 rule 1(1), thus every suit shall be instituted by presenting a plaint to the court or such officer as it appoints for this purpose. A plaint has to comply with the rules in Order 6 and 7 of the CPR.

Order 6 has the following cardinal features to note about pleadings:

Order 6 rule 1(1) provides that every pleading shall contain a brief statement of the material facts on which the party pleading relies for a claim or defence, as the case may be. By virtue of order 6 rule 1(2), the pleadings shall where necessary be divided into paragraphs numbered consecutively; and dates, sums and numbers shall be expressed in figures. In relation to material facts, court held in *Bruce Vs Odhams Press Limited*, thus the word material means necessary for formulating the a complete cause of action and if one material fact is omitted, the statement of claim is bad.

Jessel MR in *Thorp vs Houldsworth* stated that the whole object of pleadings is to bring the parties to an issue and the meaning of the rules relating to pleadings was to prevent the issue being enlarged; the whole meaning is to narrow the parties to definite issues and thereby to diminish expense and especially as regards the amount of testimony required of either side at the hearing.

Secondly, order 6 rule 2 provides that every pleading shall be accompanied by a brief summary of evidence to be adduced, a list of witnesses, a list of documents and a list of authorities to be relied on; except that an additional list of authorities may be provided later with leave of court.

Thirdly, where a party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence, and in all other cases in which particulars may be necessary, the particulars with dates shall be stated in the pleadings. This is provided for in order 6 rule 3 of the CPR.

Fourthly, rule 6 of the same order provides that the defendant or plaintiff, as the case may be shall raise by his or her pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defense or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as, for instance, fraud, limitation act, release, payment, performance or facts, showing illegality either by statute or common law.

Fifthly, order 4 rule 7 restricts a departure from previous pleadings. It provides that no pleading shall, not being a petition or application, except by way of amendment, raise any new grounds of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading that pleading. In addition, rule 8 provides that the denial has to be specific. It is not sufficient for a defendant in his or her written statement to deny generally; the grounds alleged in a defense by way of counter claim, but each party must deal specifically with each allegation of fact of which he or she does not admit the truth, except damages.

It must be noted that amendment of pleadings is provided in Order 4 rule 19. The court may, at any stage of the proceedings, allow either party to alter or amend his or her pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real controversy between the parties. Rule 20 ought not to go unnoticed which provides that a plaintiff may, without leave of court amend his or her plaint once at any time within 21 days from the date of issue of a summons to a defendant or where a written statement of defense is filed, then within 14 days from the filing of the written statement of defense or the last of such written statements. A defendant right to amend without leave is provided for in order 4 rule 21; he or she can exercise this option if he has set up a counterclaim or setoff, at any time within 28 days from the date of filing the counter claim or setoff or where the plaintiff files a written statement in reply, then within 14 days from the date of service of the written statement in reply.

It must be noted that where a party has amended his pleading under 20 or 21, the opposite party has a discretion to apply to court under rule 22 of order 4 to disallow the amendment; and court may, if it is satisfied that the justice of the case requires, disallow the amendment or allow the amendment in part to such terms as may be just.

Procedure for application to court to disallow an amendment.

Application is by Chamber summons supported by an affidavit, under order 4 rule 22 and 31.

Documents needed

Chamber summons supported by an affidavit;

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act.

MODES OF INSTITUTNG A SUIT

- PLAINT
- SPECIALLY ENDORSED PLAINT; recovering a debt, actions for recovery of land.
- CHAMBER SUMMONS
- NOTICE OF MOTION
- PETITION; where the law provides for
- ORIGINATING SUMMONS; clam doesn't require proof by oral evidence.
- MEMORANDUM OF CLAIM
- STATEMENT OF CLAIM
- COMPLAINT ON OATH.

IN THE CASE OF KASOLO ROBINS ELLIS V JULIUS JOSEPH DELAHAIJE GEERTRUDE (CIVIL REFERENCE NO.03 OF 2023), The Supreme Court determined that a case is successfully filed once it is submitted on ECCMIS and assigned a draft number. It emphasized that confirming and approving case filings is the Registrar's responsibility. Therefore, any issues in allocating a final ECCMIS number should not be visited on the party who has duly filed their case and received a draft number. Background:



CAUSE OF ACTION

In the case of Auto Garage & Another v Motokov, case No.3 (1971) EA314 a cause of action was defined in the following terms;

That the plaintiff enjoyed a right

That the right has been violated

That the defendant is liable

In the case of Tororo cement CO. LTD v Frokina International co. Ltd, Tsekooko JSC held that it is not simply enough to show a cause of action, particulars must be given in the plaint showing precisely in what respect the defendant is liable and the relief frugal

Whether plaint does or does not disclose a cause of action is a matter of law which can be raised by the defendant as a Preliminary point at the commencement of the hearing of the action even if the point had not been pleaded in the WSD.

Particulars of a suit cannot be inferred from the evidence of the P/f, but must be disclosed in the plaint

The importance of this is to assist parties in financing Issues as well as avoiding Surprises which are bound to happen, if particulars are merely introduced as an intrusion during trial at the time evidence is adduced.

Whether plaint discloses a cause of action Okot Ayere Olwedo v .A.G

It is trite that in considering whether or not the plaint discloses a cause of action, the count only considers the pleading and anything attached there to. The court must only pursue through the plaint only and the amities for it .

Where the plaint discloses the cause of action but lacks material particulars.

Tororo cement; it is now established in jurisdiction that a plaint that discloses a cause of action i.e. that there was a right, the right was adulated and the defendant is liable, cannot be rejected for want of pleading other material particulars as the same can be cured by way of amendment under 0.6 r 19 or under 06 r 4.

Where the Claim or cause of action is founded on vicarious liability

The plaint must plead the facts that give rise to vicarious liability

Bamuwayire v A G. Was an application to have the suit rejected on ground that failing to allege that the servants who arrested the p/f were servants of the defendant, the plaintiff disclosed no cause of action against the defendant.

Held. The court had to look at only the plaintiff in deciding whether it discloses a cause of action against the defendant or not. This plaintiff did not disclose any cause of action against the def. as it did not allege the persons who arrested the p/f were servants of the defendant and that they were acting in the cause of their of

Brigadier Smith Opon Acak v. A.G court held that where the plaintiff admits that the acts complained of were committed by the servants of the defendant in the course of their employment, it does not mean that the plaintiff does not disclose a cause of action, where the servants have been described as servants of the defendant. This is because; whether a servant did or did not do the acts complained of in the course of employment was a fact peculiarly within the knowledge of the defendant to be pleaded in his defense.

Where the Cause Of action is in breach of contract

The plaintiff must plead all the prerequisites of valid contract.

In Yafeesi Katimbo v Grindclay Bank, the plaintiff sued the defendant for specific performance and its WSD, the defendant raised a P.O that the plaintiff disclosed no cause of action since no consideration had been pleaded. Issue was whether after acceptance and consideration had to be pleaded.

It was held that since the action was based on a contract consideration was a material fact and had to be pleaded except in negotiable instruments when its proved. There was nothing in the pleadings to show that there was a binding contract. None of them showed that the offer had been accepted, acceptance was the essence and had it be pleaded.

Where the cause of action is founded on deformations

The plaintiff must plead the alleged deformation words verbatim. In Erumiya Ebyatu v Gusbarital. The applicant sued the respondent for slander. The pleadings stated that the respondent was a wizard who used to bewitch people, the actual words used by the respondent.

Held that in action for slander, the precise words caused by must be set out in the plaintiff or statement of claim. The plaintiff must rely on the words set out in the plaintiff and not any other expression. Similarly the names of persons to whom the words were uttered must be set out in the plaintiff otherwise court will be relevant to consider any publication to person not named in the pleadings.

Where the plaintiff does not a cause of action, the court is mandated to reject the plaintiff. The objection or application rejecting the plaintiff. The objection or application rejecting the plaintiff may be raised orally before court or through an application; 07 r 11.

Suit may be dismissed for non-disclosure of cause of action under 0.6 r 30

Joinder of cause of action

A plaintiff may write the same plaint with several causes of action against the same defendant or the same defendants jointly 0.2 r 5

However 0.2 r 5 allows court the power to order for separate trials if necessary

Under 0.2 r 6, a defendant can object to joinder of any cause of action & the plaintiff has the duty to justify the joinder or else its upheld.

Grounds

The causes joined must raise from the same transaction or a series therefore against the same defendant or the same defendants jointly

May plaintiffs must have several causes of action in which they are jointly interested against the same defendant or the same defendants jointly

On the above grounds a plaintiff may write various causes of action in the same suit.

Osman v. Century Bottling Company Limited Civil Appeal 10 of 2020, A non-existent entity cannot maintain a cause of action as it lacks the legal standing to sue or be sued. Appellate courts generally refrain from overturning the concurrent findings of fact by lower courts unless there is a clear misapplication of legal principles or the findings are not supported by evidence. Article 126(2)(e) of the Ugandan Constitution requires that justice be administered without undue regard to technicalities, but this must still comply with the law. Special damages must be explicitly pleaded and strictly proven with clear evidence showing that the losses were incurred and directly resulted from the defendant's actions. Expert witnesses must provide objective, unbiased, and rational evidence based on their expertise, with their testimony being logical and credible.

Limitation of causes of Action

It is a requirement of law than an action should be commenced within the limitation period and any suit fired upon expiry of the limitation period is bad in law & liable to be dismissed

0.7 r 11

Iga v Makerere University, a plaint barred by limitation is barred by law and must be rejected

The limitation Act is the principle legislation on limitation of causes of action save that it does not apply to actions commenced under specific legislations which provide for limitations under that legislation

In F.X Miramago v AG; court held that the period of limitation started to run as against the p/f from the time the cause of action accrued until when the suit is actually filled

Once an action is time barred, it does not matter whether it is meritorious or otherwise and court has no option but to dismiss the suit

Muhammad B. Kasasa v Jasper Buyonga & silas Bwogi; the C.A held that statutes of limitation are not concerned with merits. They are by their nature strict & inflexible enactments. Once the axe falls, it falls & a defendant who is fortunate enough to have acquired the benefit of the statute of limitation is entitled of course to insist on his strict rights

Limitations in the Act

Contracts 6 years

Land issues 12 years (Recovery)

Torts 3 years

Fraud starts to only run when the plaintiff gets to know about the fraud or when they reasonably have done so (s.25 of limitation Act)

Where a suit is time barred, the plaintiff might plead disability as an exception. The disability as an exception. The disability must be expressly pleaded in the plaint.

Judgment 12 years

Arrean interest of judgement 6 years

Conversion & detention of good 6 years

Mortgage 12 years

Recovery of rent 6 years

Foreclosure & recovery of loans & mortgages 12 years

Fraudulent breach of trust no limitation

Fatal accidents actions 12 years

Claims for equitable relief no limitation period, bt subject to rule that discretionary remedies will not be granted if the result would be unfair and prejudicial

Action claiming personal estate of a deceased person. 12 years. Wilberforce John V sezi wako, s.21 of limitation Act does not limit an executer to apply for probate.

Limitations of causes of action against Gov't & corps

These are provided for by the civil procedure and limitations (miscellaneous provisions) Act.

s.3(1. Tort 2 years

s.3 (2). Contracts 3 years

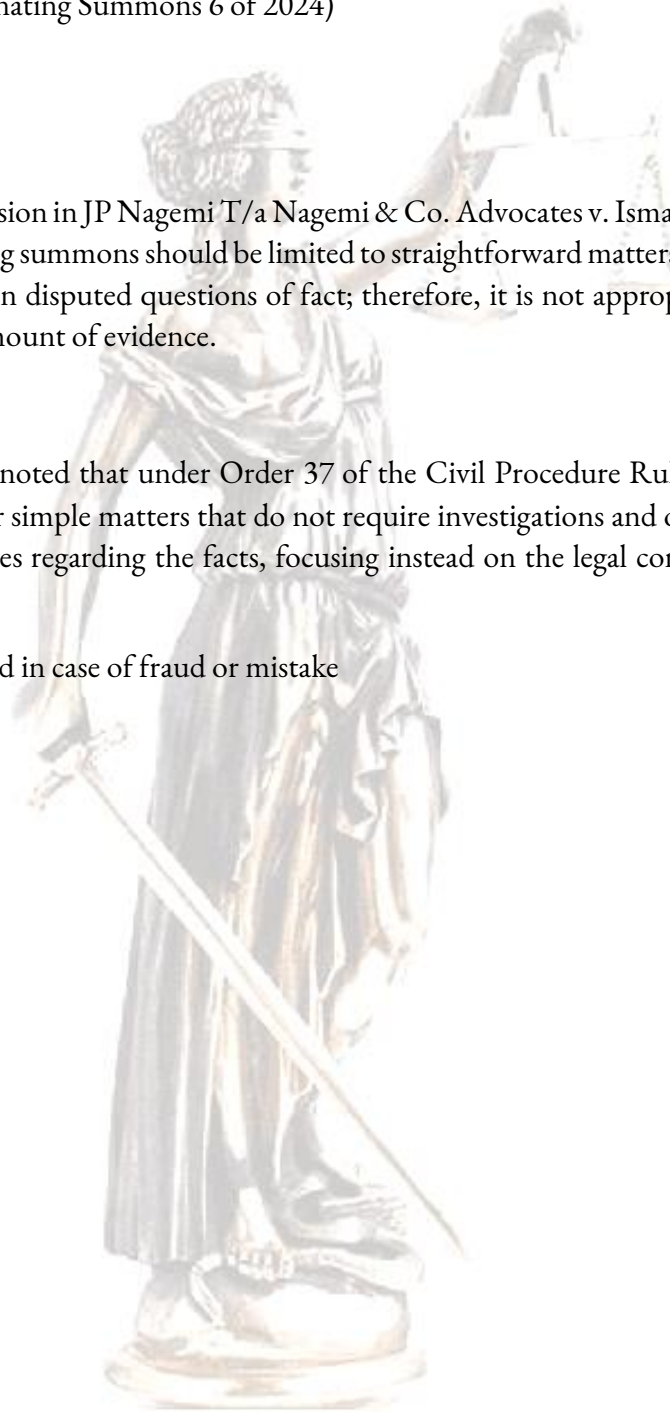
s.5, limitations is postponed in case of disability for 12 months from date of cessation

sMutezi v Aganya (Originating Summons 6 of 2024)

The Court, cited the decision in JP Nagemi T/a Nagemi & Co. Advocates v. Ismail Semakula (OS 8/13), where it was held that originating summons should be limited to straightforward matters and that it is not a procedure for obtaining decisions on disputed questions of fact; therefore, it is not appropriate in cases where disputes involve a considerable amount of evidence.

Additionally, the Court noted that under Order 37 of the Civil Procedure Rules, the originating summons procedure is intended for simple matters that do not require investigations and only in situations where there are no substantial disputes regarding the facts, focusing instead on the legal consequences of the established facts.

.6, limitation is postponed in case of fraud or mistake





ELECTION PETITIONS

Law Applicable

The 1995 constitution of Uganda as amended

The presidential election act 179

The PARLIAMENTARY ELECTION ACT CAP 177

The presidential election s selected on petitions rules 2001

The parliamentary elections (election petitions) (amendment) rules 2006.

The local governments act ss. 138 to 146.

Article 80 (1) of the 1995 of the constitution and section 4 of the parliamentary elections act, to be eligible to be a contestant or nominated in a parliamentary election a person must be;

A citizen of Uganda

A registered voter

Have completed minimum formal education of advanced level or equivalent.

The Education (pre-primary, primary and post primary) act, impose a requirement that formal education must be attained progressively without skipping any recognized or practiced level such as sitting PLE. Laws don't act retrospectively.

In BUTIME TOM V MUHUMUZA DAVID EPA 11/2011, is an authority for the proposition that failure to sit for PLE before attaining UCE and other qualifications does not taint academic qualifications. (only if it is prior to 2008).

DISCREPANCIES IN NAMES.

A statutory declaration is one made through which discrepancies in names in a document could be clarified.

MNDERA V BWOWE EPA 91/2016, the court held that the use of statutory declaration is sufficient to prove and explain a misspelling of a candidates name.

The burden of proof lies on the petitioner to prove to the satisfaction of the court that the respondent has a discrepancy in names or lacks the reuired academic qualifications.

||OBJECTION MY LORD..... ||

In NINSIIMA V AZAIRWE EPA NO.5 OF 2016, interchanging names i.e writing names in a different order cannot affect one's qualification.

As per section 1 of the parliamentary election act , conclusive proof of a registered voter was a person's name on the National Voter's register NOT a National ID.

Equating academic documents.

Equating of academic documents had to be done each time an election was conducted.(OKELLO P CHRALES AND EC V AYENA ODONGO EPA 26 AND 94/2006)

NCHE has no authority to verify qualifications obtained in Uganda.

In SEMATYA NDAWULA V MUWANGA EPA 34/2016, the court of appeal held that the appellants finance officer's diploma awarded by the UMI did not need to be equated by the NCHE. The court also held that it only UNEB with the mandate to equate any ward to UACE and not the NCHE.

FACTORS VITIATING NOMINATION PLACE AND TIME OF NOMINATION.

Section 30 of the parliamentary elections act cap 177, provides for factors to include;

The person's nomination paper was not signed or countersigned.

The nomination fee was not lodged with the nomination paper.

The person seeking nomination was not qualified for election

The person seeking nomination has been duly nominated for election for another constituency for which the poll has not taken place.

The person has not complied with the qualifications for MPs.

These are matters of great public interest and public importance and as such must be handled expeditiously. Rule 12(2)(a) of presidential elections (election petition) rules S I No.179/2001, S.63 (2) of The PARLIAMENTARY ELECTION ACT CAP 177 and section 142 (2) of the local government act cap 243, grant courts the mandate to hear election petitions expeditiously and where need arises, to suspend the other matters pending before them.

Presidential elections

The procedure for challenging a presidential election is provided for in article 104 of the constitution which provides that:

(1) subject the provisions of this article any aggrieved candidate may petition the supreme court for an order that a candidate declared by the electoral commission elected as president was not really elected.

A petition under clause (1) of this article shall be lodged in the supreme court regulatory within ten days after the declaration of the election result

The supreme courts shall inquire intend determine the petition expeditiously and shall declare its findings not later than thirty days from the date the petitions filed.

Where no petition filed within no time prescribed under clause (2) of this article or where a petition having been filed is dismissed by the Supreme Court, the candidate declared elected shall conclusively be taken to have been duly elected on president.

After clause inquiry under clause (3) of this article the supreme court may

Dismiss the petition

Declare which candidate was rapidly elected or

Annul the election

Where an election is annulled a fresh election shall be held within twenty days from date of the annulment.

If after a fresh election hold under clause (6) of this article there is another petition which succeeds then the presidential election shall be postponed and upon the expiry the term or the incumbent provident the specular shall perform the functions of the office of president until a new president is elected and assumes office.

For the purpose of the article, article 98(4) of the constitution shall not apply

Parliament shall make such laws as may be necessary for the purposes of this article, including laws upgrading of annulment and rules of procedure.

PARLIAMENTARY ELECTIONS PETITIONS.

Article 68 (1) of the constitution states that

The high court shall have jurisdiction to near and determine any question whether:-

A person has been variably elected a number of parliaments are seat of a number of parliament has become vacant or

A person has been validly elected as speaker or deputy speaker or having been so elected, has vacated that office

When they should be brought.

Section 79(3) of the parliamentary elections act CAP 177 requires that the election petition is filed within 30 days after the day on which the electrical commission gazette the results.

S.82 (9) of the PEA empowers the high court to determine the petition within 6 months after its lodgment in court.

2. Who may bring the petition

Under S.79 (2) of the PEA the petition may be brought by a losing candidate or a registered voter in the constituency concerned supported by the signatures of not less than 500 voters registered.

3. Grounds for setting aside a parliamentary election.

These are set out under section 80 of the PEA and must be proved to the satisfaction of court.

Non-compliance with the provisions of the provisions of the parliamentary election act. The court must be satisfied that there has been failure to conduct the election in accordance with the principles laid down in those provisions and that the non-compliance and failure affected the result of the election in a substantial manner. The principles which govern the conduct of elections are laid down in article 61(1)(a) of the constitution and in provisions of PEA are:

1. Conduct the election in freedom and
2. Fairness.

The issues of the non-observance affecting the election in a substantial manner was discussed in SARAH BIREETE V BOMADATTE AND EC, election petition no.13 of 2003, where Byamugisha J ,held that substantial effect means that the effect must be calculated to really influence the result in a significant manner. It is not sufficient that there are irregularities but the petitioner must say how they affected the results of the election. This means that the result of the votes a candidate obtained would have been different in a substantial manner that in fact the petitioner has to prove that non-compliance with the principles in the act helped its respondent to win the election when he or she would have therefore not won the election.

That a person other than the one elected won the election. This can arise where the candidate who has won an election is not pronounced sooner and instead the one who has lost is pronounced as the winner.

That an illegal practice or any other offence under the act was committed in connection with the election by the candidate personally or with his or her knowledge. The illegal practices and election offences are laid down in section 68 to 83 of PEA and they include bribery, procuring prohibited persons to vote, obstruction of voters etc. see Betty Namboze V Bakaluba Mukasa, Scepta No.4 Of 2009.

Bribery

Section 87 of PEA prohibits a candidate directly or indirectly through his/her agent to bribe a voter. The offence is serious and the following ingredients must be proved:

The candidate or his/her agent gave out a gift or money to a registered voter within the constituency

The notice must have been to influence such voter to cast his vote for the bribing candidate or such voter to refrain from voting for a candidate of his choice.

Gifts and bribes made through the candidates agents must have been given with the knowledge and or consent of the candidate. In E.C And Anor V Nambooze Bakireke, it was held that money given to an agreement to pass on to a group.

In Fred Badda And Ec V Prof Muyanda Mutebi Epa N0.21 Of 2007, court found that the award of the cow to a runner up team in an annual tournament was a bribe because:

Dates had been shifted for the tournament to coincide with campaigns.

The team was to receive a goat which was not available on feast day and rejected offer of UGX.100,0001 threatening not to vote for appellatant to which he offered the cow and asked them not to let him down on voting day.

The evidence of bribery made by a candidate's agent requires corroboration before it is accepted as true. The court in Moses Kabusu Wagaba V Tim Lwanga Ep No.15/2011 justified the requirement for corroboration on grounds that such supporters have a tendency to exaggerate facts of bribery.

Bribery is an offence committed by the giver and the receipt. Evidence of the receipt is accomplice evidence which requires to be corroborated.

In Hon Kirunda Kivejinja V Katuntu Abdu , the court stated that it is common knowledge that every village has registered voters because every village has a polling station. A donation to a village in a constituency by a candidate who is seeking voters would be targeting of registered voters in that village and those who can influence them to vote.

The case of COL.(RTD) DR.KIZZA BESIGYE V YOWERI KAGUTA MUSEVENI AND THE ELECTROL COMMISSION 1/2001,the offence of bribery has three ingredients.

A gift was given to a voter

The gift was given by a candidate or their agent

The gift was given with the intention of inducing the person to vote or refrain from voting.

PROOF OF BRIBERY

Mere suspicion is not sufficient and the confession of the person alleged to have been bribed is not conclusive. Bribery is a grave illegal practice and had to be given serious consideration. The standard of proof is required to be slightly higher than that of ordinary civil cases but doesnot require proof beyond reasonable doubt.

What is required is proof to the satisfaction of the court.

The evidence adduced with regard to the allegations of bribery must be to cogent if court is to consider it sufficient to annul an election.

Evidence of bribery made by a candidate's agent requires corroboration before it is accepted as true. Court has justified the requirement for corroboration that such supporters have a tendency to exaggerate facts of bribery. As per MOSES KABUSU WAGABA V TIM LWANGA MUTESASIRA AND EC EP 5/2011.

Once bribery is proved to the satisfaction of court, it is sufficient to cause an election to be set aside. This position is affirmed in the case of KIVEJINJA V ABDUL KATUNTU EPA 24 OF 2006.

Bribery is an offence committed by the giver and the recipient. evidence of the recipient is accomplice evidence which is required to be corroborated.

Use of government property.

Section 43 (1) of PEA bars the use of government resources during campaign. Section 43(2) postulates that a candidate has to use the resources assigned to their office having notified the electoral commission. In Darlington Sakwa And Anor V Ec And 44 Ors. the court stated that the essence of article .80(4) was to ensure a level ground so that candidates don't use their office resources to campaign.

Intimidating voters.

No candidate has a right to intimidate another, let alone any member of the electorate no matter his political shade or opinion. Article 1 of the constitution vests power in the people to express their free will in determining their political leaders through periodical elections. Threats or acts of intimidation interferes with a peaceful atmosphere and subverts the will of the electorate to choose leaders of their choice. The vice negatively affects the voter turn up

Section 61 of the parliamentary elections act cap 177, prohibits and criminalizes arms and ammunition at polling stations.

In the case of KASIRABO NINSIIMA BOAZ AND EC V MPUUGA DAVID EPA NO.55/2016, The provision was intended to provide an atmosphere of freedom at or near polling stations during polling and to ensure that voters are not threatened during the polling process.

The presence of police at a polling station is not necessarily evidence of intimidation as per MUGISHA VICENT V KAJARA ASTON PETERSON AND 2 ORS EP NO.4/2016. It must be established that there was generalized violence and intimidation.

Conniving with EC officials in the falsification of DR Forms.

In the case of JOY KAFURA KABATSI V HANIFA KAWOOYA SUPREME COURT EPA 25 OF 2011), The duty to safe guard the integrity of the electoral process vests on the electoral commission.

Under section 69 of the PEA CAP 177, each presiding officer must fill several declaration forms and of these;

One copy is attached to report book

One retained at the polling station for display

One sealed copy enclosed in an envelope sent to the returning officer

A copy given to each of the candidate's agents.

One copy deposited and sealed in the ballot box.

SIGNING OF DECLARATION FORMS.

SECTION 66(5) OF THE PEA CAP 177, it is trite law that the signing of declaration forms by the presiding officer is a mandatory requirement and failure to do so invalidates the result.

In KAKOOZA JOHN BAPTIST V EC AND ANOTHER SUPREME COURT EPA NO.11/2007, declaration forms which are not signed cannot be relied on in tallying results.

In BETTY MUZANIRA BAMUKWATSA V MASIKO WINNIFRED KOMUHANGI AND 2 OTHERS EPA 65/2016, It is important to note that declaration forms with glaring discrepancies cannot be relied upon.

Reliance on uncertified DR forms.

Declaration forms are public documents and a party who wishes to rely on them must have them certified in accordance with Section 75 and 76 of the Evidence act cap 8, without such certification, such documents cannot be prove any fact which they sought to prove.

The position of the law is that documents had to be proved by primary evidence except as provided in section 64 of the evidence act cap 8, which is to the effect that a party wishing to rely on uncertified documents is required to give notice to the party in possession of the original.

Declaration of results and falsification of results.

The declaration of results must be done in accordance with S.69 AND 78 of PEA. In Ec And Another V Nambooze Bakireke Epa 1 And 2 Of 2007, some D.R forms had been white washed. Some DR forms were not filled at the polling stations and filled at Sub County. Some results were filed on a piece of paper from exercise book and later transferred on DR forms with respondent leading.

||OBJECTION MY LORD..... ||

Conducting a defamatory campaign.

Every person is entitled to his/her good name. No candidate or his supporter has a right to make defamatory remarks intended to dent the image of another among the eyes and ears of the electorate. Doing so would be committing an electoral offence. The alleged statements must however not be mere political banter used by politicians to make the campaigns lively and enjoyable. Kizza Besigye And Ec And Y.K Museveni.

Illegible voters. (That is don't appear on register, do not hold voter's cards.)

no person is qualified to vote if they are not registered as a voter in accordance with article 59. Also section 29, 30 of Electoral commission act cap 176. In Ec And Another V Nambooze Bakireke, , students over 60 in number who had no voting cards were ferried to polling stations.

SECTION 92 OF THE PEA CAP 177, The following elements have to be proved;

There had to be words, either spoken or written

Those words had to be pleaded verbatim

The words complained of have been published

The words had to attack the personal character of the candidate knowing they were either false or true.

The words had to be uttered recklessly

The intention must have been to prevent the election of a candidate.

False statements to be pleaded

A petitioner must set out the statements alleged to be false, malicious or defamatory as per MAWANDA MICHAEL V EC AND ANDREW MARTIAL EPA NO.98 OF 2016.

IN IBAALE DANIEL JOSEPH V KATUNTU ABDUL AND E.C EPA NO.41/2016, The false statements complained of must be made about and shown to have affected the character of the victim by lowering their esteem in the eyes of voters or fair-minded persons.

Translation of statements.

A loose translation was not necessarily a translation. Such a translation is not perfect or completely accurate. It is accuracy which is required to prove a false and defamatory statement.

In MULIMBA V ONYANGO EC AND RETURNING OFFICER EC EPA 48 OF 2016, the court observed that the exact words used were never brought to the attention of the court instead there was a loose translation.

Other election offences include the following;

Misconduct at campaign meetings (SECTION 93 PEA CAP 177)

Failure by presiding officers to furnish election returns (SECTION 94 PEA CAP 177)

Unauthorized voting or voting more than once (SECTION 96 OF PEA)

Making wrong returns of an election (SECTION 97)

Personation (SECTION 98)

Undue influence (SECTION 99)

Prohibition of slogans, distributing pamphlets for or on behalf of any candidate, public singing or musical instrument or selling any intoxicating liquour within 280 meters of any polling station 100

Defacement of notice and posters (SECTION 101)

Obstruction of election officers. (SECTION 102)

Noncompliance.

Article 61 (a) and section 12(1) (e) of the electoral commission act cap 176 (ECA) enjoin the EC with a duty to conduct a free and fair election. In *KIRUNDA KIVEJINJA V ABDU KATUNTU*, court cited with approval the dicta in *KIZZA BESIGYE V EC AND Y. K MUSEVENI* on what's deemed as free and fair election. It stated that such an election is one held in an atmosphere of freedom and fairness that will permit the will of the electorate to prevail. That an election marred by wide spread violence, intimidation and torture of voters cannot be said to free and fair. That fairness should be demonstrated at all stages of the electoral process such as registration of voters, display of voters registrar, updating voters registrar, nomination of candidates, campaigns, polling date, delivery of voting materials, casting votes, counting of votes, verification of results, declaration of winners, gazetting of winners names, secure storage of election material even after voting to cater for evidential requirements of emerging disputes.

Disenfranchisement.

Article 59 and 61 of the constitution. *EC AND ANOR V NAMBOOZE BAKIREKE*, the removal of two gazette polling stations on voting day amounted to disenfranchisement which EC was liable for.

Qualifications and disqualifications.

Education qualifications.

Article. 80(1) (c) of the constitution and section 4 of PEA cap 177 set the academic qualifications for a prospective candidate for effective nomination and participation in an electoral process.

Failure to meet the requisite academic qualifications is ground for nullification of an election as was in PAUL MWIRU V IGEWWWE NABETA,

The academic qualifications set out under article 80(1) (c) of the constitution and section 4 of the PEA is advanced level certificate or its equivalent.

Before coming into force of the regulations, there was no requirement for one to follow and have all education certificates before acquiring UACE. A person could have UACE without UCE. However after the coming into force of the regulations, any person obtaining UACE after must have PLE, UCE AND UACE. Failure to have any automatically nullifies the UACE.

However candidates who obtained their UACE before the regulations came into force, their UACE ai'nt affected by failure to have UCE or PLE and thus meet the academic qualification. In BUTIME TOM V MUHUMUZA DAVID the failure of the candidate to sit for PLE before attaining UCE AND Dip in SD did not taint his academic qualifications having obtained before then regulations came into force and the law does not act retrospectively.

Should not be serving public officer.

Article 175(a) of the constitution defines a public officer to mean any person holding or acting in an office in the public service.

Article 175(b) of the constitution defines public service as service in any civil capacity of the government the emoluments for which are payable directly from consolidated fund. Article 257(2)(b) provides that a reference to an office in public service does not include a reference to the office of the president, the V.P, the speaker or D. speaker or minister, the A.G, a member of parliament of any commission, authority, council or committee established by this constitution.

Article 80(4) requires any serving public officer to resign their office at least 90 days before nomination day. Where the person chooses early retirement, they must satisfy the necessary pre-conditions or else their election may be nullified. In light of by –elections, it is 14 days from date of nomination as per section 4 (4b) of PEA.

These were set down in HON.SSASAGA ISIAS JONNY V WOBOYA. The court stated the conditions for early retirement by pensionable officer as in GEORGE MIKE MUKULA V UGANDA . Court held that ministers are not employees of government (public officers). Also in DARLINGTON SAKWA AND ANOTHER V THE EC AND 44 ORS

The qualifications are

He/she must be at least 45 years old.

He must have been in continuous service for a minimum of 10 years

He/she must have written the request for early retirement to the pension authority giving a 6 months' notice prior to the intended exist date.

The written request to the pension authority must be made through the responsible officer who should advice the pension authority of whether to accept the request for early retirement or not. Where the responsible officer is of the opinion that the officer should be retired, he must communicate his opinion to the pension authority with a computation of the officer's benefits.

Other qualifications and disqualifications are set out under Article 80 and section 4 of the PEA.

Burden and standard of proof in election petition.

Nakwedde Harriet v. Muwonge Andrew & Electoral Commission. Election Petition Appeal No. 001 of 2022 (Arising out of Election Petition No. 01 of 2022). The COA emphasized that the the 7-day timeframe under the Local Government Act for service is couched in mandatory terms confirming that failure to comply with it, renders the petition a nullity for being served out of time. The COA also averred that when a petition is a nullity for being served out of time, court has no Jurisdiction to enlarge time within which to serve the Petition because the Local Government Act under S. 138 & 141 doesn't provide for exceptions on service or extension of time to serve.

LOCAL COUNCIL ELECTIONS

These are covered in section 138 to 146 of the local governments act, section 138 states that

An aggrieved candidate / chairperson may petition the high court for an order, that a candidate declared elected as chairperson of a local government council was not validly elected.

A person qualified in petition under sub section (3) who is aggrieved by a declaration or the results of a councilor may petition the chief magistrate court having jurisdiction in the constitution

An election petition may be filed by any of the following persons.

A candidate who has been elected

A registered voter in a constituency concerned supplied by the signatures of not less than five hundred voters required the prudence

An election petition shall be filed within fourteen days after the day on which their results of the section has been notified by the electoral commission in the gazette.

Look at a contents and form of presentation of an election petition.

The petition.

Procedure.

Lodging 6 copies of the petition and notice of presentation of the petition to the high court within 30 days from date of gazetting. Rule 4(1) of the parliamentary elections(interim provisions) (elections petitions) rules S.I No.141-2

Paying the prescribed fees. Fee is UGX.150,000 as per rule 5(3) of the rules S.I. No.141-2

Depositing security on the petition.

Effecting service of the petition, affidavits in support of notice of presentation of the petition on the respondents within 7 days from the date of lodging the petition in court. Rule 6 of the rules S.I.141-2

Service must as much as possible be personal.

A respondent who has been served is required to file 6 copies of his answer to the petition accompanied by affidavits in support.

Pay filing fees on the answers.

Serve the petitioner within.

Documents.

Petition

Affidavits in support

Notice of presentation of the petition.

Remedies before gazetting of results by EC.

Lodging a complaint with the EC

According to Article 61(f) of the constitution, one of the functions of the electoral commission is to hear and determine election complaints arising before and during polling.

Under S.15 (1) of ECA cap 140 the commission has the mandate to examine and decide on any complaint relating to irregularities in the electoral process and take appropriate action.

Under S.15 (2), (3) and 4 of ECA, the decision of the EC is appealable to the H.C and it's a final appeal.

Application for a recount

As per S.73 of the PEA, one may apply for a recount within 7 days after the date on which the returning officer declared the winner. The application is made to the chief magistrate.

Procedure

The procedure was discussed in *Kasibante Moses V Katongole Singh M And Another* . The court stated that process involves a two-step court process.

The court hears the application for recount and the applicant must satisfy court that there is good cause to order a recount.

If the CM is satisfied there is good cause to order a recount, it must order so and set a date for the recount and the time.

The recount is done in the court premised with the CM presiding over the process and he/she has the power to decide which ballot is valid or invalid. The CM makes a usual court record in respect of each ballot box or polling station whose contents are recounted.

At the end of the process the CM will prepare and sign a certificate of recount. The certificate must shows any variation made if any from those earlier tallied by the returning officer.

Notice of petition.

||OBJECTION MY LORD..... ||

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
IN THE MATTER OF THE PARLIAMENTARY ELECTIONS
ACT CAP 177
AND
IN THE MATTER OF THE PARLIAMENTARY ELECTION HELD
ON THE 12TH OF FEBRUARY 2020 IN MADDUDU COUNTY
CONSTITUENCY, KABULASOKE DISTRICT
ELECTION PETITION NO.....2020.
SUI GENERIS A PETITIONER
VERSUS
SUIGENERIS b.....RESPONDENT
ELECTORAL COMMISSION.

NOTICE OF PRESENTATION OF PETITION.

TO: MUSISI ISMEAL AND EC.

WHERE THE PETITIONER has petitioned this Honorable court praying for a declaration that the election of the 1st respondent as a member of parliament for Maddudu county constituency should be nullified.

YOU ARE HEREBY summoned to appear in this Honorable court in person or through an advocate on theday of2022 ato'clock in the fore/afternoon or soon thereafter as the election petition shall be heard and disposed of.

You are also given 10 days from the date of service to file your reply to the petition.

TAKE NOTICE that default of your so doing, the petition shall be heard and determined in your absence.

GIVEN under my hand and seal of this Honorable court on this.....day of.....2022

||LUBOGO ISAAC CHRISTOPHER..... ||

.....

REGISTRAR.

Petition.

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
IN THE MATTER OF THE PARLIAMENTARY ELECTIONS
ACT CAP 177
AND
IN THE MATTER OF THE PARLIAMENTARY ELECTION HELD
ON THE 12TH OF FEBRUARY 2022 IN MADDUDU COUNTY
CONSTITUENCY, KABULASOKE DISTRICT
ELECTION PETITION NO.....2022.
SUI GENERIS A..... PETITIONER
VERSUS
SUI GENERIS B.....RESPONDENT
ELECTORAL COMMISSION.

PETITION

The humble petition of

SUI GENERIS A whose address for purposes of this petition shall be Sui Generis and co advocates, plot No.17 main street, Mpigi shows and state as follows;

Your petitioner is a male adult Ugandan of sound mind and a registered voter in Kinkiizi county constituency, Kanungu District (the constituency)

Your humble petitioner and the 1st respondent were among the candidates in the Member of Parliament elections in the constituency conducted on the 12th February 2020 where upon the 2nd respondent declared the 1st respondent as the winner.

||OBJECTION MY LORD..... ||

The 1st respondent was gazetted by the 2nd respondent as the winner of the constituency election on 17th August 2020.

Your humble petitioner states that during nomination and at the time of the election, the election process was not conducted in accordance with the provisions of the constitution and PEA No.17 of 2005 (as amended), ECA (as amended), the education (pre-primary, primary and post primary) act no.13 of 2008 and other laws and this non-compliance affected the results of the election in a substantial manner.

Your humble petitioner thus contends that illegal practices and offences contrary to Article 80 of constitution, section 40(4), 47(3) and (7), 50,68,73,78,80 of PEA, S.2 and 10 of the education (pre.....) were committed in connection with the election of the 1st respondent, personally or with their knowledgeable and consent or approval, against the petitioner his agents and supporters

Your humble petitioner contends therefore that the election of the 1st respondent as the M.P of the constituency was marred with irregularities and did not comply with the electrical laws.

Your humble petitioner contends that in the constituency, the election officials and in conspiracy with the 1st respondent grossly failed in its statutory duty to conduct a free and fair election to the detriment of the petitioner contrary to provisions of Article 61 of the constitution (as amended) and s.12 of the ECA (As amended)

Petitioner further contends that the 2nd respondent conducted the entire election process with incompetence, particularly, bias, malafide and prejudice against the petitioner.

As a result such non-compliance with the principles and provisions of the constitution PEA and ECA, the result of the election was affected in a substantial manner.

The impugned acts of non-compliance with the electoral laws, principles and practices were to such extent that they qualitatively and quantitatively affected the outcome of the results of the election in the constituency.

WHEREFORE your petitioner prays that:

The election of the 1st respondent as MP for the constituency be nullified

The 2nd respondent conduct fresh elections in the constituency.

Costs of this petition.

Dated at MPIGI this.....day of.....2020.

.....

PETITIONER

||LUBOGO ISAAC CHRISTOPHER..... ||

LODGED and filed at the court registry on this.....day of August 2020.

.....

REGISTRAR

TO BE SERVED ON:

E.C

SUI GENERIS B

Drawn and filed by:

Sui Generis & Co- advocates

Kampala.

Should be accompanied by an affidavit adducing evidence as to what is averred in the petition.

WITHDRAWAL OF ELECTION PETITION.

SECTION 84(1) OF THE PEA CAP 177, Provides that a petition shall not be withdrawn except with;

Leave of court

Notice of withdrawal as court may direct.

Section 84(2) of the PEA CAP 177, STATES that on hearing the application for withdrawal, any person may apply to court to be substituted for the petitioner.

The summary of the procedure and conditions to be undertaken to withdraw the petition are under RULE 22 Parliamentary Elections (Election Petitions) Rules S.I 177-2, and they include the following;

Withdrawal of petition is subject to leave of court and after such notice has been given.

Consent of other petitioners is needed where there is more than one petitioner.

An application for leave to withdraw shall be supported with an affidavit stating the reasons for the withdrawal, that no agreement has been made in relation to the petition or if any lawful agreement has been made stating the terms of the agreement.

While filing the application, the petitioner shall furnish sufficient copies for use by the court and service on the attorney general.

The petitioner shall serve a copy of the notice on the commission and on each respondent

||OBJECTION MY LORD..... ||

Upon receipt ,the register shall serve a copy of the application on the respondents and the attorney general and a notice in form B in the schedule shall be posted on the court notice board and published in the gazette.

The A.G or a representative may appear at the hearing and oppose the withdrawal.

If court grants the application it shall make a report to the commission stating the reasons for withdrawal.

The petitioner withdrawing the petition shall be liable to pay costs to the respondent.





PLEADINGS BY PLAINTIFF

Order 7 has the following cardinal features about a Plaintiff:

Order 7 rule 1 provides for particulars which need to be contained in a plaintiff and these include the following;

The name of the Court in which the suit is brought.

The name, description and place of residence of the plaintiff and his or her address for service.

A description of the plaintiff infers that in case of an artificial person, a legal entity like a company, the name of the company is followed by the fact that it is incorporated according to the laws of Uganda. In addition, where the plaintiff is suing in representative capacity, such a material fact ought to be stated. Court held in Otim vs Okuza that the judgement in the preceding case ought to be set aside since the plaintiff did not disclose that the plaintiff was suing in representative capacity.

It must be noted further that a description of the residence of the plaintiff is very necessary. A mere box number is insufficient for service. This was upheld in Ram Nath vs Mohamed Rawji

The name, description and place of residence of the defendant so far as can be ascertainable.

Whether the plaintiff or defendant is a minor or person of unsound mind, a statement to that effect.

The facts constituting the cause of action and when it arose.

A cause of action has been defined by several cases. In *AUTOGARAGE -VS- MOTOKOV* [1971] EA 514; it was held that there are three essential elements to support a cause of action namely; first and foremost, that the Plaintiff enjoyed a right; secondly, the right has been violated; and thirdly that the Defendant is liable. This was followed with modification in *attorney general vs major general david tinyefuza* supreme court ,where “a cause of action was defined as meaning every fact, which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the Plaintiff a right to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act; no cause of action can possibly accrue...

The facts showing that court has jurisdiction.

||OBJECTION MY LORD..... ||

This was followed in CAT Bisuti vs Buziga District Administration where Dickson J. held that a mere assertion in the plaint that the court has jurisdiction is not enough. What matters is not an assertion in the plaint that the court has jurisdiction but a statement of fact showing that the court has jurisdiction.

The relief which the plaintiff claims; inter alia

A plaintiff is enjoined to plead his damages. General damages need not be specifically pleaded, but there should be an averment that the Plaintiff claims damages for pain, suffering, inter alia. It must be noted however that special damages should be specifically pleaded. This has developed as a matter of legal practice.

Order 6 rule 26 provides that every pleading shall be signed by an advocate or by the party if he or she sues or defends in person. The effect of failure to sign was discussed in Transgem Trust vs Tanzania Zoisiten Corp. Ltd where court held that the signing of the plaint was a matter of procedure and failure to do so would not affect the merits of the case.

It must be noted that under order 7 rule 11, the plaint may be rejected in the following cases;

Where it does not disclose a cause of action.

Where the relief claimed is undervalued and the plaintiff, on being required by the court to correct the valuation within a time fixed by court, fails to do so.

Where the relief claimed is properly valued but an insufficient fee has been paid and the plaintiff on being required by the court fails to do so.

Where the suit appears from the statement in the plaint to be barred by any law.

Where the suit is shown by the Plaintiff to be frivolous or vexatious.

Frivolous and vexatious pleadings can be struck out at the discretion of court. This was fortified in Sarwan Singh v Micheal Notkin and the court of appeal noted that this power should only be exercised in plain and obvious cases.

Procedure for application for rejection of the Plaintiff

The application to court is made by way of summons in chambers under Order 7 rule 19. It must be noted that where a plaint is rejected, the judge shall record an order to the effect with the reasons for the order.

Documents needed

Chamber summons supported by an affidavit; where the applicant prays to court for a rejection of the plaint, relying on any of the grounds provided for in order 7 rule 11.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act.

PLEADINGS BY WAY OF DEFENCE

This is conversed by order 8 of the CPR. Rule 1(1) provides that the defendant may, if so required by court at the time of issue of the summons or at any time thereafter shall, at or before the first hearing or within such time as the court may prescribe, file his or her defense. Rule 3 provides that each allegation of fact in the plaint if not denied specifically or by necessary implication or stated not to be admitted in the pleadings of the opposite party, shall be taken to be admitted, except against a person under disability; inter alia.

It must be noted that where any defendant seeks to rely upon any grounds as supporting a right of counterclaim, he or she shall in his or her statement of defense, state or specifically that he or she does so by way of counterclaim.

Order 8 rule 11 provides that a reply to a counterclaim filed, shall be served on the defendant within 15 days from the date of filing the counterclaim.

FAILURE TO PLEAD AND CONSEQUENCES

As noted earlier, a Written Statement of Defense is filed in accordance with 08 r 1 of the Civil Procedure Rules. Filing of a written statement enables a person to gain locus standi in court. This was discussed in SENGENDO –VS- ATTORNEY GENERAL [1972] HCB at Pg. 356 where court formed an opinion to the effect that a Defendant who fails to file Written Statement of Defense puts himself out of the court and therefore can't be heard.

CONSEQUENCES OF DEFECTIVE PLEADINGS

The CPR [supra] lays down the consequences of defective pleadings in orders 6 and 7 of the CPR respectively, these are discussed herein below:

AMENDMENT OF PLEADINGS

Amendment of pleadings refers to correction of errors including curing of defects in pleadings. This is conversed by order 6 rule 19,20,21,31 and O 52 rule 1 and 2 of the CPR . Amendment of pleadings may be done with or without leave of court.

Amendment without leave of court.

This is covered in O6 rule 20 and 21 of the of the CPR thus; a plaintiff may, without leave amend his or her plaint once at any time within twenty one days from the date of issue of the summons to the defendant or where a written statement of defense has been filed, then within 14 days form the filing of the written statement of defense or the last of such written statements.

O6 rule 21 provides that a defendant who has set up any counterclaim or setoff may without leave amend the counterclaim or setoff at any time within twenty-eight days of the filing of the counterclaim or setoff, or, where

the plaintiff files a written statement in reply to the counterclaim or setoff, then within fourteen days from the filing of the written statement in reply.

It must be noted that the rationale for amendment is to have the necessity and the purpose of determining the real questions in controversy between the parties as laid out in rule 19.

Amendment with leave of court.

This is juxtaposed from the provisions of rule 2 and 21 of the rules. If the period is more than twenty-one days from the date of issue of the summons to the defendant or where a written statement of defense has been filed, then the plaintiff can only amend with leave.

If the period is more than twenty-eight days of the filing of the counterclaim or setoff, or, where the plaintiff files a written statement in reply to the counterclaim or setoff, then the defendant has to seek leave of court to amend.

Cardinal points to note about amendment of pleadings:

The amendment should not amount to a departure from the proceedings as fortified by *Kasolo Vs Nile Bus Service*.

Secondly, the amendment should be made within the limitation period as fortified by *UCB Vs Paineto Mubiru* wherein court held that the law does not allow statutes of limitation to be circumvented.

An application for a leave to amend cannot be allowed where it discloses a new cause of action which is inconsistent with the pleadings. This was held in *African Overseas Company Vs Acharya [1963]*.

IN THE CASE OF *Okello Lawrence v Gulu District Land Board and Acan Hilda*, Miscellaneous Application No. 53 of 2023 (arising from Miscellaneous Application No. 185 of 2021 and Miscellaneous Cause No. 001 of 2021), It was held that 'The court granted leave for the Applicant to amend his application in Misc. Application No. 185 of 2021 by adding the Gulu City Land Board as a Respondent. The court determined that the legal interests of the Gulu City Land Board would be affected by the contempt proceedings involving the Gulu District Land Board and Acan Hilda, necessitating their inclusion to prevent multiple lawsuits. Given that the land in question fell under the jurisdiction of the Gulu City Land Board following Gulu's elevation to city status, the court deemed their involvement crucial for enforcing its prior orders.

Procedure, Forum and Documents

One drafts chamber summons supported by an affidavit, [hereinafter referred to as the application] under O6 r. 19 and 31, wherein he swears or affirms that it will cause no injustice to the other party and that it will determine the real issues in dispute between the parties.

Upon completion, these are commissioned; and a commissioner for oaths certifies the annexures.

The application is then taken to the cash/revenue office of the High Court and its assessed for filing. The assessment is paid in the bank, whereupon a receipt is issued. Its at this stage that the application is filed.

Upon filing of the application, it is given a reference number and taken to the Registrar for signature, sealing and fixing of a date for hearing.

STRIKING OUT PLEADINGS

This is conversed by O 6 rule 30 of the CPR thus,(1) The court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment to be entered accordingly, as may be just. It must be noted that all orders made in pursuance of this rule shall be appealable as of right.

IN THE CASE OF NDEJJE UNIVERSITY V E-LIVE INTERNATIONAL SERVICES LIMITED (M.APP 1999 OF 2024) UG COMMC 317, it was held that an affidavit will be dismissed if the affidavit supporting the application is false in relation to some material fact.

DISMISSAL OF SUIT.

If, in the opinion of the court, the decision of the point of law substantially disposes of the whole suit, or of any distinct cause of action, ground of defence, setoff, counterclaim, or reply therein, the court may dismiss the suit or make such other order in the suit as may be just. This is conversed by O 6 rule 2 of the CPR SI 71-1

DISCONTINUANCE OF A SUIT.

This is provided for in order 8 rule 13 which is to the effect that discontinuance of suits occurs if in any case in which the defendant sets up a counterclaim, the suit of the plaintiff is stayed, discontinued or dismissed; the counterclaim may nevertheless be proceeded with.

SETTLEMENT OF PRELIMINARY OBJECTIONS

Order 15 rule 2 provides that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case may be disposed of on the issues of law only, it shall try those issues first and for that purpose may, if it thinks fit postpone the settlement of the issues of fact after the issues of law have been determined.

Case law is to the effect however, that if the issues of law to be disposed of raise triable issues, then court will not determine the case on those issues of law. This is due to the fact that it may necessitate adducing evidence.

Dr. Shadat Ssemakula Mutyaba Mohmeded vs. Gulu University Misc. Cause No. 001 of 2024, A preliminary objection involves a point of law pleaded or arising from pleadings, argued on the assumption that all facts pleaded by the other side are correct.

WITHDRAWAL OF SUITS

This is provided for in Order 25 of the CPR, and provides a mode of withdrawal of suits by either the defendant or the plaintiff.

Rule 1(1) provides that the Plaintiff may at any time before the delivery of the defendants' defence or after receipt of the defense, before taking any other proceedings in the suit (except any application in chambers) by notice in writing to wholly discontinue his or her suit against all or any of the defendants. We are fortified by *Mulondo Vs Semakula* [1982] where court held the principle laid out in O25r1(1).

Rule 1(2) provides that except as in this rule otherwise provided, it shall not be competent for the Plaintiff to withdraw or discontinue a suit without leave of court, but the court may before or at or after hearing upon such terms as to costs, and as to any other suit, and otherwise as may be just, order the action to be discontinued or any part of the alleged cause of the complaint to be struck out.

Three points should be noted about withdrawal of suits by a plaintiff, as follows

First and foremost, the withdrawal should be before delivery of the defendants' defence or after receipt of the defence, before taking any other proceedings in the suit.

Secondly, the notice should be given in writing wholly discontinuing the suit or withdrawing part of the suit.

Thirdly, the plaintiff undertakes to pay costs of the suit of the defendant.

Withdrawal of a suit by the defendant is not allowed without leave of court; it would still be in the same format; as provided for under order 25 rule 1(3).

It must be noted that withdrawal of a suit can also be done by consent. Order 25 rule 2 provides that when a suit has been set down for hearing, it may be withdrawn prior to the hearing by either the plaintiff or the defendant upon filing a consent signed by both parties.

Procedure for withdrawal of suit;

This is done by application vide summons in chambers under order 25 rule 1 and rule 7 of the CPR.

Documents needed

Chamber summons supported by an affidavit; where the applicant prays to court for withdrawal of the suit.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act.

REINSTATEMENT OF SUITS

O.9 r 23910 CPR, a plaintiff with a good cause for non-appearance at the time of dismissal of the suit can apply to the court to set aside such dismissal and reinstate the suit

IN NORAH NAKIRIDDE V HOTEL INTERNATIONAL LTD (1987) HCB 85, court held that the considerations for reinstatement were laid down to include whether the applicant honestly intended to be present at hearing and did his best to attend but was prevented by a sufficient cause from attending.

Order 52 r 1 and 3 CPR, the application for reinstatement of a suit is by way of notice of motion supported by a valid affidavit.

TOPIC THREE

ISSUE AND SERVICE OF SERMONS

What is a summons?

According to Ssekaana at page 127, a summons is an official order requiring a person to attend court either to answer a claim / charge or to give evidence

The summons must be signed and must contain a seal of court 0.5, 1

In *Kaur v City Auto mart* (1967) EA 108, court held that the requirements of signing and sealing are mandatory and failure to comply with them renders the summons a nullity.

Effect of irregularities in the court process

There are situations where for one reason or another court summons are not signed and sealed by the responsible officers. In *Tommy Otto v Uganda Wildlife Authority*, In this case the hearing notice was either signed nor dated

The court held that a hearing notice is issued by the court and the plaintiff cannot be held liable for the negligence of the staff in court registry to have issued an undated and unsigned hearing notice. The hearing notice indicated when the matter was due before the court and was sealed by a seal of court. That despite the said effects, the hearing notice served the purpose for which it was intended and both parties were before court. They said did not cause any injustices to any of the parties.

What must accompany the summons

0.5 r 2 mandates that the summons are accompanied by a copy of the plaint, a brief summary of evidence to be addressed, a list of witnesses, a list of documents and a list of authorities.

On whom are summons served

0.5 r 10 requires that summons are served personally on the defendant. This was buttressed in the case of *Kasirivu and 4 ORS v Bamurangye and 3 ORS*

Summons on agent / adult member

Under 0.5 r 13 of CPR, where it is not possible to personally access the defendant or defendant connect be found, summons can be served on his agent or an adult member of his family. In *Erukaria Karuma v Mehla* the process served his wife having been told the defendant was in India. The court held that where the defendant cannot be found, the process server must do due diligence to establish their whereabouts. Its upon such failure that an agent or adult member may be served. In this case court found that it was inadequate ground to say that the defendants could not be found in the absence of any enquiry as to the defendants address in the country he has gone to, the duration of his stay and the likely dates for his return. The judge said that without these one could not say that the defendant cannot be found. The ex parte decree was set aside.

Fixing of summons at a conspicuous place

Under 0.5 r 15, a process server upon carrying out all due and reasonable diligence cannot find the defendant or any person on whom service can be effected, the process server can affix a copy of the summons on the outer doors or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain and shall then return the original summons to court with a report annexed to it stating that he or she has affixed the copy.

Substituted service

Where the court is satisfied that for any reason the summons cannot be served in the ordinary way, the court shall order the summons to be served by a fixing a copy of it in some conspicuous place in the court house, if any, in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the courts thinks fit 0.5 r 18(1). E.g. news paper ads

The substituted service under order of the court shall be as effectual as if it had been made on the defendant personally 0.5 r 18(2).

In *Satuinder Singh v Sarinder Kaur* , substituted service is granted with a purpose or goal to achieve. It is granted when the court is satisfied that there exists a practical impossibility of actual service that the method of substituted service assured by the p/f/petitioner is one which will in all reasonable probability, if not certainty, be effective to bring knowledge of the plaint / petition to the respondent / defendant.

Substituted service should only be effected if the person is within the jurisdiction of the court. If the person to be served is outside the jurisdiction of court, the provisions of 0.5 rule22 CPR which govern service outside the jurisdiction apply .

Proof of service

The person served or who receives service on behalf of the defendant should sign on the original court process acknowledging receipt of the process. 0.5r 14. In *Kasirivu and 4 ORS v Bamurangye and 3 ORS* , it was held that where a duplicate or copy of the summons

NECESSITY OF ISSUE AND SERVICE OF SUMMONS

This is conversed in Order 5 of the CPR. Order 5 rule 1(1) provides that when a suit has been duly instituted a summons may be issued to the defendant ordering him or her to file a defence within a time specified in the summons; or ordering him or her to appear and answer the claim on a day to be specified in the summons.

Rule 2 provides that the summons has to be accompanied by a copy of the plaint, a brief summary of the evidence to be adduced, a list of witnesses, a list of authorities, a list of documents to be relied on except that an additional list of authorities may be provided later with the leave of court.

MODES OF EFFECTING SERVICE

Rule 8 provides that for the mode of service; it shall be made delivering or tendering a duplicate of the summons signed by the judge, or such officers the judge appoints for this purpose and sealed with the seal of court.

Rule 10 provides that whenever it is practicable, service shall be made on the defendant personally unless he or she has an agent empowered to accept service, in which case service on an agent shall be sufficient. To this end, rule 13 provides that where in any suit the defendant cannot be found, service may be made on an agent or an adult member of the family of the defendant who is residing with him or her.

The defendant is enjoined to endorse an acknowledgement on the original summons except that if court is satisfied that the defendant or his agent or other person on his or her behalf has refused to endorse, the court may declare the summons to have been duly served.

Rule 15 provides that the serving officer after using all due and reasonable diligence, cannot find the defendant, or any person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house where the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the court from which it was issued with a report endorsed on it or annexed to it stating that he or she has so affixed the copy; the circumstances under which he or she did so, and the name and address of the person, if any, by whom the house was identified and in whose presence the copy was affixed.

The serving officer has to make or cause to be made, under rule 16 an affidavit of service to be annexed if the service was made under rule 14; stating the time when and the manner under which the summons was served, and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the summons.

Service on a defendant in prison is effected by serving the officer in charge of the prison under rule 19. In addition, rule 20(1) provides that where the defendant is a public officer in civil employment, or is a servant of a railway company or local authority, summons may be most conveniently served on the defendant's head of office.

Rule 20(2) provides that where the defendant is a soldier, the court shall send the summons to his or her commanding officer, together with a copy to be retained by the defendant.

Rule 24 provides that every application for leave to serve summons or notice on a defendant out of jurisdiction shall be supported by an affidavit inter alia and showing in what place or country the defendant is or probably may be found. Rule 27 provides that where the defendant is neither a commonwealth citizen nor a British protected person and is not in a commonwealth country, notice of the summons and not the summons itself shall be served upon him or her.

In the case of DFCU BANK LIMITED VS. COLLINE HOTEL LTD AND MUKONO BOOKSHOP PRINTING & PUBLISHING LTD, MISCELLANEOUS APPLICATION NO. 0799 OF 2023 ARISING FROM MISCELLANEOUS APPLICATION NO. 743 OF 2019 ARISING FROM CIVIL SUIT NO. 404 OF 2019 , The Electronic Court Case Management Information System (ECCMIS) does not eliminate the existing Rules of procedure. The primary purpose of ECCMIS is to offer court users a convenient process for e-case filing and subsequent procedures, as well as to enable the courts to utilize technology for the effective and efficient management of cases. ECCMIS generates case documents using pre-defined templates with auto-populated case information and does not include a provision for sealing documents. In this digital era, the e-signature of the judicial officer is sufficient to authenticate documents. Therefore, the issue of unsealed summons does not arise, as the signing of the document by a judicial officer is adequate for authentication.

Procedure for application for leave to serve out of jurisdiction

Application is by chamber summons supported by an affidavit under order 5 rules 24 and 32.

When leave has been granted, rule 28 provides that the notice to be served shall be sealed with the seal of the High Court for use out of the jurisdiction and shall be forwarded by the Registrar to the Minister together with a copy of it translated into the language of the country in which service is to be effected. A request for further transmission of the notice through proper channels of the country in which service is to be effected shall be in form 10 of Appendix A to the Rules.

Another rule which ought to be noted thus service cannot be effected on Sunday. Rule 9 of order 51 provides that service of pleadings, notices and summons other than summonses on plaintiffs, orders rules and other proceedings shall be effected before the hours of six in the afternoon, except on Saturdays before the hour of one in the afternoon. It must be noted that for purposes of computing time service after six on a weekday or after the hour of one on a Saturday shall be deemed to have been service on the following day, and for Saturday it will be deemed service on Monday.

Substituted service is provided for under rule 18 thus, where the court is satisfied that for any reason the summons cannot be served by affixing a copy of it in some conspicuous place in the courthouse and also on some conspicuous part of the house, if any, in which the defendant was known to have last resided or carried on business or personally worked for gain, or in such manner as court thinks fit; and substituted service shall be taken to be as effectual as if it had been made on the defendant personally. Application for leave to serve

summons through use of substituted service is by chamber summons under order 5 rule 32, where the applicant should satisfy court he or she has used reasonable steps to effect service of summons on the defendant and failed.

SERVICE OF SUMMONS ON DIFFERENT KINDS OF PARTIES

Period Of Limitation Of Service

Summons have to be served within 21 days from the date of issue, as enunciated in order 5. It must be noted that where the summons issued under Order 5 have not been effected within 21 days from the date of issue, and there is no application for extension of time or the application for extension of time has been dismissed; the suit shall be dismissed without notice.

Procedure for application for extension of time to effect service

One makes an application by chamber summons under order 5 rules 1(2) and 32. The applicant has to show court sufficient reasons to court justifying the extension of time for service.

Documents

Chamber summons accompanied by an affidavit.

List of authorities, witnesses, documents and witnesses under order 6 rule 2

EFFECT OF EXPIRY OF PERIOD

This is covered in order 5 rule 1(3)(a) which provides that where summons have been issued and service has not been effected within 21 days from the date of issue or there is no application for extension of time, or the application for extension of time has been dismissed; the suit shall be dismissed without notice.

WHO CAN EFFECT SERVICE

It must be noted that order 5 rule 7 provides that where court has issued a summons to a defendant, it may be delivered for service to any person for the time being duly authorised by the court, or to an advocate or an advocate's clerk who may be approved by the court generally to effect service of the process. This means that a person has to be authorised by court to effect service. Failure of this requirement leads to improper service of the court process.

EFFECT OF PROCEEDING WITHOUT SERVICE OF SUMMONS;

In practice, the proceedings go on ex parte; but the defendant can apply to court to set aside the ex parte judgment, if it has been passed, under order 9 rule 12.

Procedure for application to set aside the ex parte judgment.

Application to court by summons in chambers under order 9 rule 29; supported by an affidavit, where the defendant avers that he or she was not served with the summons.

Documents

Summons in chambers.

List of authorities, witnesses, documents and witnesses under order 6 rule 2.

Forum

The forum is the High Court, since the CPR applies to the High Court by virtue of section 1 of the Civil Procedure Act.

PROCEEDING EXPARTE

Order 9 rule 10 provides that in all suits not by the rules of this otherwise specifically provided for, in a case where a defendant does not file a defence on or before the date mentioned in the therein , the suit may proceeds if the party had filed a defence. This means the proceedings go on ex parte.

Order 9 rule 20 provides that where the plaintiff appears and the defendant does not appear where the suit is called on for hearing; if court is satisfied that the summons or notice of hearing was duly served, it may proceed exparte.

TOPIC FOUR



FILING DEFENCE FOR DEFENDING

A defense is a written plea made against a plaintiff's statement of claim.

There are several defenses:

Non conditional defense:

Is one which is available under an express right to do so e.g when someone commences an ordinary suit, they have a right to write a WSD under 0.9 r 1(1) of CP rules.

Conditional defence:

Under 0.36 of CPR, a defendant does not have an automatic right to defense. They have to apply for leave 2 appear and defend the right of application once granted may order the defendant to satisfy certain conditions b4 filing the defence.

Technical and non- technical defence:

Is one premised on a point of law e.g if files the suit out of time, then limitation is a defence. Other technical defence is res judicata. 5.7 of the CPA. Non-technical defence is that intended to address facts raised by the adverse party's pleading. To traverse means to deny the allegations in the plaint as per Order 6 r 10, O.6 r 8

General defences.

These are intended to address facts raised by adverse parties .Not specific but evasive denials are not permissible under 0.6 r10.

A good defence must traverse each and every fact 0.6 r8 and 0.8 r 3.

0.6 r 8 provides that it shall not be sufficient for the defendant in his/her WSD to deny generally the grounds alleged by the statement of claim or for the p/f in his/her written statement in reply to deny generally the grounds alleged in a defense by way of counter claim but each party must deal specifically with each allegation of facts of that he/she does not admit the truth except damages.

0.8 r3 provides for specific denial of every allegation of fact in the plaintiff not denied specifically or by necessary implication or stated to be not admitted in the pleading of the opposite party, shall be taken as admitted except as against a person under disability but court may in its discretion require any facts so admitted to be proved otherwise than by that admission.

Plausible defences and sham defences.

Plausible defenses are defenses with merit or which on the face of it have merit by giving justifiable responses to every allegation of fact raised by the claim

Sham defences are those without merit filed in bad faith to buy time or filed out of dishonesty.

Defences containing admissions.

An admission rightly made shortens the trial/litigation process as it gives rise to an instant judgment s per Order 13 r 6

Defences containing setoff/counterclaims (O.8 R 2 CPR)

A setoff is a monetary claim setup by a defence, to a claim contained in a plaint. If the plaintiff's suit is terminated, the set-off abates.

Contents of the defence.

In the defence, tell us what allegations you deny.

What allegations you are unable to admit/deny but would require the p/f to prove.

State the allegation you admit.

Denials must be expressed and accompanied with a reason for denial not evasive through. 0.6 r10. If you intend to put forward your own version of facts then do so e.g "In respect to para 2, I deny the facts stated and over that".

If you raise limitation, give details of the dates.

FILING A DEFENCE OUT OF TIME

This is done through;

Consent of counsel for the plaintiff

Leave of court to enlarge time.

RES-JUDICATA

Where matters are terminated on technicalities, issues of res-judicata doesnot arise.

You prove resjudicata by attaching a certified copy of the earlier judgement

Part payments revise limitation timelines (smart lawyers engage the other party to enter into payment arrangements under a contract and as such the cause of action is revised.

WRITTEN STATEMENT OF DEFENCE.

0.5 r 1(a) requires a defendant served with summons to file a WSD with in the time prescribed in the summons. In the case of A.G and UCB v Westmont the court held that failure to file a defence excludes a party from participating in court proceedings.

Principles/ Guidelines.

Defense must be filed in the same court or division of the court where the suit is pending.

Pinnacle projects Ltd v Business in motion consultants.

Filing a defence must be done with in a period of 15 days from the date of service and is complete when the WSD and evidence of payment of court fees is filed in the relevant registry of the appropriate court.

0.8 r1(2)- A defence must be filed within 15 days after service of summons.

The defense must be endorsed by the registrar magistrate, stamped and sealed. Only then can the WSD be served. 0.9 r1.

Where the defendant is the attorney general, the defence is required to be filed within 30 days from the date of service. (r.6 of the government proceedings rules).

Contents of WSD

It should not contain a bare denial but must contain facts that constitute a reasonable defence otherwise 0.6 r 30 will be involved to strike out the defence on ground that it discloses no reasonable answer. The p/f must apply by notice of mention to have the defence struck off.

0.6 r 8 requires that denial should be specific and shall not be sufficient for the defendant in his /her words to deny generally the grounds alleged by the statement of claim.

In Nile Bank Ltd v Thomas kato Ors ,Justice Arach-Amoko held that the defence contained general demands to the p/fs allegations which offended 0.6r7(now 8) which requires each party to specifically deal with each allegation of fact denied. Here the p/f had by notice of motion applied to court to have the defendants defence struck off and it was granted.

A WSD is a pleading and must be accompanied by the summary of evidence , list of authorities ,list of witnesses and documents.(0.6r2).

Rule 5 of the judicature rules 2013 requires that the WSD is filed together with the dfts mediation case summary.

Extension of time to file a WSD.

Defendant may apply for extension of time with in which to file a defence or to file a defence out of time and apply for extension of time to validate it. 0.5 r6 and 7.

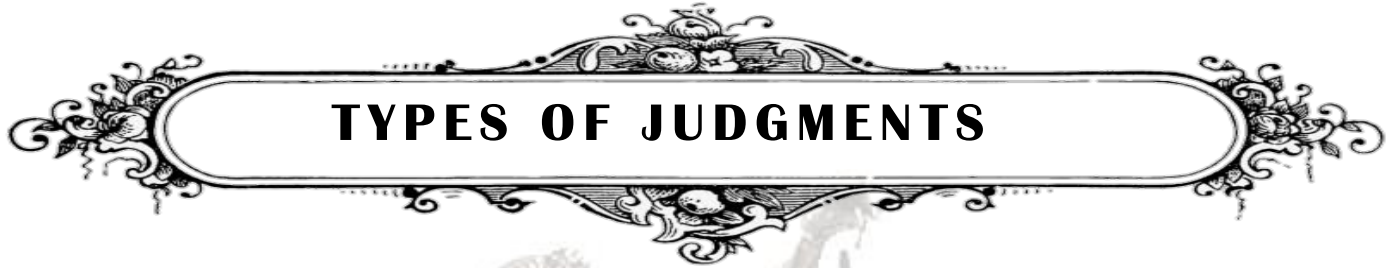
HOW DONE AND WHEN DONE

This is envisaged in Order 8 of the CPR. Rule 1 [2] provides that a defendant shall unless some other or further order is made by the court, file his or her defense within fifteen days after service of the summons.

It is advisable to have specific denials in a defence. This is laid out in Rule 3 which provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against a person under disability; but the court may in its discretion require any facts so admitted to be proved otherwise than by that admission.

CONSEQUENCES OF FAILURE TO FILE A DEFENCE

This is covered above under the sub heading “Proceeding ex parte”. In a nutshell, an ex parte judgment shall be entered against the defendant. Failure to file a defence ousts the Defendant’s locus before court. This was held in sengendo –vs- attorney general [1972] hcb at pg. 356 where court formed an opinion to the effect that a Defendant who fails to file Written Statement of Defence puts himself out of the court and therefore can’t be heard.



TYPES OF JUDGMENTS

The law relating to judgments is set out under 0.21 of CPR.

0.21 OR 3(1) mandates that the judgment be dated and signed by the judge issuing it in open court.

Under 0.21 or 3(3) judgment once signed shall not afterwards be altered to except as provided by section 99 of the act or on review.

Contents of judgment.

Under 0.21 or 4, judgments in defended suits must contain a concise statement of the case, the points for determinative decision on the case and the reasons for the decision.

R 5 requires that where issues have been framed, the court must state its finding or decision, with reasons for the finding or decision.

SUMMARY JUDGMENT

This is provided for in O 36 of the CPR. Rule 2 provides thus; all suits where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, expressed or implied, on a bond or contract written for payment of a liquidated amount of money; on a guaranty where the claim against the principal is in respect of a debt or liquidated amount only; on a trust; or upon a debt to the Government for income tax; or being actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or has become liable to forfeiture for nonpayment of rent, or against persons claiming under the tenant, may, at the option of the plaintiff, be instituted by presenting a plaint in the form prescribed endorsed "Summary Procedure Order XXXVI" and accompanied by an affidavit made by the plaintiff, or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed, if any, and stating that in his or her belief there is no defence to the suit.

CONSENT JUDGMENT

Governed by ordinary principles of contract law and can only be set aside through vitiating factors of a contract.

Section 67 (2) CPA, consent judgments not appealable.

BEUCO (U) LTD AND ANOR V BARCLAYS BANK (U) LTD AND OTHERS HCT 243/2009, the applicants applied to set aside a consent judgment on grounds that directors of the applicant were under mistake as to the true contents of the judgment.

A consent judgment can be recorded in the following ways;

The parties can appear before a presiding judge or magistrare to read out terms they have agreed upon which are recorded by a judicial officer and judgment is entered upon the agreed terms.

The parties can execute a formal written consent and present it for endorsement by a court and once it is signed and sealed by court and once it is signed and sealed by court, it constitutes a binding judgement and this endorsement maybe done by the registrar if the matter is before the high court.

Easily put, this is a type of judgment whereby the parties consent to it. The parties draft a consent judgment and file it in court for the judge to sign it.

COMPROMISE OF THE SUIT

Order 25 r 6 of the CPR, provides for compromise of suits by lawful agreements. Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, the court may on the application by a party order the agreement, compromise to be recorded and pass a decree in accordance with the agreement/compromise so far as it relates to the suit.

Order 52 r 1 and 3 CPR,application to court for endorsement of the compromise is by way of N.O.M supported by a valid affidavit. IN BANK OF BARODA (U) LTD V ALACO FREIGHT SERVICES LTD CA No.45/2007, court held that the agreement should be between two parties and valid i.e passed due to consent as instructed.

HIRAMI V KASSIM (1962) EACA 131, where a compromise is recorded under O.25 R 6 CPR, the decree is passed upon a new contract between the parties superceding the original cause of action.

STEPS;

Receive the money

Call the parties

Enter a formal consent

File it it court/submit it to court for endorsements.

Compromise Agreement.

||OBJECTION MY LORD..... ||

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL SUIT NO. 776 OF 2024

JAND MOSU PLAINTIFF

VERSUS

SHEILA GERTDURE DEFENDANT

COMPROMISE AGREEMENT

(UNDER 0.25 r 6 cpr)

By the consent of both parties made on this..... Day of2024, in the presence of the parties respective advocates namely.....for the plaintiff and in the further presence offor the defendant.

It is hereby agreed that consent judgment be entered for the plaintiff against the defendant on the following terms;

The defendant pays 15 miliion as general damages caused on the plaintiff

The defendant pays 5 million as reimbursement towards the plaintiffs lawyers

DATED at Kampala this day of2024

Signed by:

.....

PLAINTIFF

.....

DEFENDANT

.....

PLAINTIFF'S COUNSEL

.....

DEFENDANT'S COUNSEL

.....

REGISTRAR

DEFAULT JUDGMENT

This is provided for in Order 36 rule 3 which provides that Upon the filing of an endorsed plaint and an affidavit as is provided in rule 2 of the Order, the court shall cause to be served upon the defendant a summons and the defendant shall not appear and defend the suit except upon applying for and obtaining leave from the court. Sub rule (2) which is the gist of this type of judgment states that in default of the application by the defendant or by any of the defendants (if more than one) within the period fixed by the summons served upon him or her, the plaintiff shall be entitled to a decree for an amount not exceeding the sum claimed in the plaint, together with interest, if any, or for the recovery of the land (with or without mesne profits), as the case may be, and costs against the defendant or such of the defendants as have failed to apply for leave to appear and defend the suit.

It must be noted that where a defendant wishes to be given leave to appear and defend, he or she follows the principles laid down in rule 4 of the order to An application by a defendant served with a summons..... for leave to appear and defend the suit shall be supported by affidavit, which shall state whether the defense alleged goes to the whole or to part only, and if so, to what part of the plaintiff's claim...

A default judgment is also evident under Order 9 rule 6 to wit where the plaint is drawn claiming a liquidated demand and the defendant fails to file a defense, the court may , subject to rule 5 of this Order, pass judgment for any sum not exceeding the sum claimed in the plaint together with interest at the rate specified, if any, or if no rate is specified, at the rate of 8 percent per year to the date of judgment and costs.

INTERLOCUTORY JUDGMENT

This can be categorized into two and is discussed below:

First and foremost, under order 9 rule 8, where the plaint is drawn with a claim for pecuniary damages only or for detention of goods with or without a claim for pecuniary damages, and the defendant[s] fail[s] to file a defense on or before the day fixed in the summons, the plaintiff may, subject to rule 5 of the order, enter an interlocutory judgment against the defendant[s] and set down the suit for assessment of the value of the goods and/ or damages only, in respect of the amount found to be due in the course of the assessment.

Secondly, where an application is before court during the subsistence of a main suit or if the application is originating, the type of judgment passed is called an interlocutory judgment. Examples of such applications include applications for temporary injunctions under order 41, security for costs under order 26, stay of execution under order 22.

A defendant is at liberty under O9 rule 27 to apply to court to set aside a decree passed against him ex parte . Rule 27 provides thus, in any case in which a decree is passed ex parte against a defendant, he or she may apply to the court by which the decree was passed for an order to set it aside; on two grounds:

If he or she satisfies the court that the summons was not duly served;

||OBJECTION MY LORD..... ||

He or she was prevented by any sufficient cause from appearing when the suit was called on for hearing;

The court shall at its discretion make an order setting aside the decree passed against him or her upon such terms as to costs, payment into court, or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit; there is an exception to setting aside a decree passed ex parte; if the decree is of such a nature that it cannot be set aside as against such defendant only, it may be set aside as against all or any of the other defendants also. It must be noted further that on the strength of rule 28, no decree shall be set aside on any such application as aforesaid unless notice of the application has been served on the opposite party.

ORDINARY JUDGMENT

This is provided for under Order 21 of the CPR. This is the type of judgment pronounced at the close of a case. Rule 1 of the order provides that in suits where a hearing is necessary, the court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates.

A judgment pronounced by the judge who wrote it shall be dated and signed by him or her in open court at the time of pronouncing it.

It must be noted that judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision on the case and the reasons for the decision. In suits in which issues have been framed, the court shall state its finding or decision, with the reasons for the finding or decision, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

The decree shall agree with the judgment; it shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim, and it shall specify clearly the relief granted or other determination of the suit. The decree shall also state by whom or out of what property or in what proportion the costs incurred in the suit are to be paid.

MARY NYAMBURA MUKUHA & GRACE WANJIRU NYAMBURA V THREE WAY SHIPPING GROUP LIMITED (MISCELLANEOUS CAUSE NO. 120 OF 2023), foreign judgement from a competent commonwealth court can be registered in Uganda to have the same effect as a local judgement.

EX PARTE JUDGMENTS.

This kind of judgment arises when only the plaintiff is heard in the suit. Ex parte proceedings may be initiated under 0.9r11(2) where a defendant fails to file a defence within the prescribed time the p/f may set suit down 4 hearing ex parte.

They may also be initiated under 0.9 r 20(1)(a) where although a defendant filed a defence, he/she is absent on the day of the hearing have been served with summons / hearing notice.

During ex parte proceedings , the p/f has the burden to satisfy court that he/she is entitled to the remedies sought. Abedrrego Ongom v Amos Kaheru.

Setting Aside Interlocutory And Default Judgments Under 0.9r 6 and 0.9 r 8

0.5 r1(a) requires a defendant served with summon to file a WSD with in the time prescribed in the summons.

Under 0.8 r1(2) a defense must be filed within 15 days after service of summon

Where a defendant does not file a defense within the prescribed time the p/f pursuant to 0.9 r5 causes an affidavit of service to be filed on court record and then proceeds under 0.9 r6 to apply for a default judgment on if the claim is for a liquidated demand or apply for an interlocutory judgment under 0.9 r8 if the claim is for pecuniary damages

A party aggrieved by the insurance of the default or an interlocutory judgment under 0.9 r 6 or 0.9 r 8 can apply to have it set aside under 0.9 r 12 of CPR.

In Nicholas Rossous v Gulam Hussein Habib Viran and Anor , the supreme court held that 0.9 r 12 of CPR was the appropriate provision when setting aside any judgment issued under 0.9 r6 or 0.9 r8.

0.9 r12, doesnot specify the grounds for setting aside and any sufficient ground that gives cause to the court to exercise its discretion is sufficient.

Sufficient cause was defined.

PROCEDURE

Application is by notice of motion with an affidavit in support brought under 5.98 of CPA and 0.9 r12, 0.52 r 1 of CPR

However an omnibus application seeking an order for setting aside and enlargement of time within which to file the defence is brought.

This is brought under s.96,s.98 of CPA,0.9r12, o.15r6 and 0.52 r 1 of CPR.

DOCUMENTS.

Notice of motion

Affidavit in support.

WSD.

Setting Aside Exparte judgements.

These are set aside pursuant to 0.9 r27 of the CPR.

TEMPORARY INJUNCTIONS

Law applicable:

These are governed under Section 40 of the Judicature act cap 16 which gives court power to grant orders of a temporary injunction in all cases which it appears to the court to be just and convenient to do so to restrain any person from doing acts.

The grant of temporary injunctions is discretionary s.98 of the civil procedure act, SECTION.64(c) of CPA CAP 282.

Consideration for granting of a temporary injunction.

The general considerations are stipulated under 0.41 r(1)(2) of the CPR. They are:

That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit or wrongfully sold in execution of a decree or

That the defendant threatens or intends to remove or dispose of his/her property with a view to defraud his or creditors.

In a suit for restraining the defendant from committing a breach of contract or other injury of any kind whether compensation is claimed or not 0.41 r 2.

IN THE CASE OF Miscellaneous Application No. 0205 of 2024, arising from Miscellaneous Cause No. 0219 of 2023. CFAO Motors Uganda Limited & Ors. v. The Public Procurement and Disposal of Public Assets Authority & Ors. The grant of a mandatory injunction is exercised at the discretion of the court. It is not automatically granted as a matter of right but is considered based on various factors including the seriousness of the issue, the potential for irreparable harm, the public interest, and the likelihood of success at trial. Additionally, the court must exercise caution when granting injunctions against public bodies, ensuring that such actions do not unduly interfere with statutory powers or public projects. Overall, the court's decision to grant or refuse a mandatory injunction is guided by the principles of justice, fairness, and the public interest.

Purpose of an order of temporary injunction.

In the case of Makerere university v Omumbejja Namusisi, the court stated that the purpose of an order for a temporary injunction is primarily to preserve the status quo of the subject matter of the dispute pending final determination of the case and the order is granted in order to prevent the ends of justice from being defeated.

The court further defined the status quo as simply devoting the existing state of affairs existing before a given particular point in time. In case of land, status quo is purely a question of fact and the relevant consideration is the point in time at which the acts complained of as affecting or likely to affect or threatening to affect the existing state of things accrued.

Status quo may thus be in retrospect as in case of trespass or ex post facto as in case of a threatened action.

In *Koko construction Ltd v Finasi/ Roko construction SPV and Anor*. Status quo was defined simply to mean ‘existing state of things or existing condition before a particular point of time. When or before what time will normally on facts of each case. In all circumstances, however the existing state of things must be as at the date when the defendant did the acts or the first at which is alleged to have been wrongful or the date then the plaintiff learned of the act or the date when he/she issued summons.

Guiding principles when granting temporary injunctions.

These were laid down by lord Diplock in the case of *American Cyanamid CO. v Ethicon Ltd* and cited with approval in the case of *Kiyimba Kagwa v Katende*. They are :

Applicant will suffer irreparable injury.

In *KIYIMBA KAGA (SUPRA)*, It was held that irreparable damage means that the injury must be substantial or material one that cannot be adequately compensated for in damages.

Where court is in doubt in regard to the two above the balance of convenience of granting the application.

Prima facie case:

Applicant must show they have a prima facie case in the substantive suit. In the substantive suit, In *Daniel Mukwaya v Administrator General*, The court held that what is relevant is for court to determine whether there is a serious issue to be tried at trial. In *IMELDA GERTRUDE BASUDDE V TEREZA MWEWULIZE AND ANOR MISC APPLIC. NO.402/2003*, A prima facie case means that the evidence placed before court by way of an affidavit or otherwise must show that there exists a genuine triable issue in the main suit. The court must be satisfied that the dispute in the main suit not a sham and that the applicant has probabilities of succeeding in the main suit.

Irreparable injury:

In *Giella v Cassman University v Omumbeja Namusisi*, court defined irreparable injury to mean injury or damage which is so substantial or material that it cannot be adequately atoned for in damages.

In *America Cyanamid v Ethicon Limited*, court noted that the injunction would not be granted if damages in the measure recoverable at common law would be adequate remedy and the defendant would be in financial position to pay them no interlocutory injunction should normally be granted however strong the plaintiffs claim appeared to be at that stage. The damage is usually not reversible and cannot be quantified.

Balance of convenience.

Where the court is still in doubt having decided on the above two, it determines the application and a balance convenienc.

In Gapco(U) Ltd v Kaweesa Badru , Court defined balance of convenience as meaning that if the risk of doing an injustice is going to make the applicants suffer them probably the balance of convenience is favorable to him/her and court would most likely be inclined to grant to him/her the application for the temporary injunction.

Procedure.

Applications for temporary injunctions are by summons in chamber .0.41 r 9 of CPR.

Documents.

Summons in chamber.

Affidavit in support.

Temporary injunctions against government projects and public bodies.

In Alcohol association of Uganda and 39 ORS v The attorney General and URA , justice Musa Ssekaana stated that courts should be slow in granting injunctions against government projects which are meant for the interests of the public at large as against the private proprietary interest or other wise for a few individuals.

Public interests is one of the paramount and relevant considerations for granting or refusing to grant or discharge of an interim injunction.

He further noted that injunctions against public bodies can issue against a public body from acting in a way that is unlawful or abusing its statutory powers or to compel the performance of a duty created under the statue.

The courts should be reluctant to restrain the public body from doing what the law allows to do. In such circumstances, grant of the injunction may perpetrate breach of the law which they are mandated to uphold.

The rationale for banning courts from granting injunctions which will have the effect of suspending the operation of legislation was articulated in the case of shell petroleum Development company of Nigeria Limited and Anor v The Governor of lagos state & others where Rhodes –Vivour held that suspending the operation of law that has not been declared unconstitutional is a very serious matter. The grant of this application would amount to just that and this would be without leaving evidence. Laws are made for the good of the state and the power to tax quite rightly pointed out by the AG is a power upon which the entire fabric of society is based.

Courts should always consider and take into account the wider public interest. Public bodies should not be prevented from exercising the powers conferred under the statue unless the person seeking an injunction can establish a prima facie case that the authority is acting unlawfully. The public body is deemed to have taken the decision or adopted a measure in exercise of powers which it meant to use for the public good.

Temporary injunctions in defamation suits.

Damages to reputation can be atoned for in damages as was established in the case of *J.N Ntangoba v The editor in chief of the new vision* approved in *James Musinguzi and Anor v Chris Baryomusi and 3 Ors*,

An injunction can issue against a person defaming another where such is necessary. One cannot hide behind their constitutional rights ie the right to freedom of expression and right to engage in lawful occupation o win another persons reputation. The constitutional rights must be exercised in accordance within the maxim sic utere tuo ut alienum no laedas which translates into use your own as not to injure another’s property or rights.

A temporary injunction restraining the respondents, their servants against an applicant or make further slanderous, malicious statements or any further defamatory publications pending leaving an order to grant. It’s difficult to enforce and may curtail the right to information by the public. As a result, the balance of convenience often lies in not granting the injunction. Any further injurious publication is often considered in awarding damages in the main suit.

In *HON.JOHN KEN LUKYAMUZI AND SUZAN NAMPIJJA V THE EDITOR, HELLO UGANDA, THE CEO, PEPPER PUBLICATIONS LIMITED AND PEPPR PUBLICATIONS LIMITED (CIVIL SUIT 227 OF 2015)*, An apology, defined as an admission of error or discourtesy accompanied by an expression of regret, serves as a public plea for forgiveness. While an apology itself does not constitute a defense to a defamation claim, it can mitigate the damage caused by the original publication. However, despite the apology not absolving the defendant from defamation liability, it remains relevant in the assessment of damages

INTERIM ORDERS

They are sought by parties if there is a pending application before court and there is likelihood that the application will be rendered nugatory by the actions of the parties.

Law applicable.

S.98 of the civil procedure act which allows court to exercise its discretionary inherit powers.

Essence of interim injunctions/orders.

In *SOUNA COSMETICS LTD V THE COMMISSIONER CUSTOMS URA AND COMMISSIONER GENERAL URA*, Justice Madrama observed that an application for an interim injunction is not application on the merits but meant to preserve the right of appeal or the right of hearing on the merits which right may be curtailed if the status quo is changed.

In exercising the discretion to prevent an appeal or application from being rendered nugatory the court does not consider the merits of the application for a temporary injunction.

Considerations.

Not the merits of the application for a temporary injunction are considered but rather whether the applicant or appellant has to have it heard would be curtailed if an interim measure of injunction or stay of execution is not granted. *SOUNA COSMETICS LTD V THE COMMISSIONER CUSTOMS AND ANOR.*

O.50 R 3 cpr, a registrar shall handle interlocutory matters within 14 days of filing of the application.

There must be a pending substantive application with a likelihood of success. 0.50 r 3A(3).

An application for an ex parte interim application is made orally under 0.50 r 3A(4).

An application for an interim order/injunction shall be by way of notice of motion under Order 52 R 1 AND 3 CPR

Documents.

Notice of motion.

Affidant in support.

Ex parte interim order.

Under 0.50 r3A (1), an ex parte interim order can only be granted where it appears that the giving of such notice would cause undue delay and that the object of granting the interim relief would thereby be defeated

Under 0.50 r 3A(2) all applications for interim relief must be inter parties except for exceptional circumstances that may include:

Where the matter is urgent in nature

Where there is a real threat or danger.

Where the application is made in good faith

Period of ex parte interim order.

An ex parte interim order is granted for a period not exceeding 3 days from the date issue and upon hearing of the substantive application, the order shall lapse. 0.50 r 3A(5).

The applicant must within the 3 days present proof of effective service on the opposite party. 0.50 r 3A(6) and where the proof of effective service is not presented within the 3 days the order lapses. 0.50r3A(7).

Variation of interim and temporary injunctions.

Under 0.41 r 4, interim injunctions and temporary injunctions may be varied or vacated on application by a party.

Procedure.

Its by notice of motion with a valid affidant. 0.41 r 4 and s.98 of CPA.

COURSES OF ACTION FOR THE PRE-TRIAL REMEDIES

Draft an omni-bus application seeking an interim order and a temporary injunction. Through notice of motion and an affidavit under O.52 R 1 AND 3 OF THE CPR; chamber summons plus an affidavit in support

Payment of court fees; under rule 5 and 6 of the judicature (court fees, fines and deposits) rules s.i 13-3

Filing of court documents in the registry

The court will cause chamber summons to issue and they shall be served on the respondent as per O.5 R 1 CPR.

Upon service of summons, proof of service of summons, proof of service is to be filed with the court. Order 5 r 16 cpr

The respondent may file an affidavit in reply and the same must be served on the applicant

On the date mentioned in the chamber summons, court will hear both the parties or only the applicant



SECURITY FOR COSTS

Security for costs is governed by the following laws

1. Civil Procedure Act Cap.282
2. Civil Procedure Rules S.I No.71-1
3. Case Law

Security for costs and further security for cost. This is money paid into court of which unsuccessful plaintiff will be able to satisfy any eventual award of costs made against him.

In relation to the CPR, this is governed by Order 26 r 1,2 & 3 of Civil Procedure Rules. Rule 1 provides that the court may if it deems fit order a Plaintiff in any suit to give security for the payment of all costs incurred by the Defendant.

Rule 2 (i) provides; thus, in the event of such security not being furnished within the time fixed, the court shall take an order dismissing the suit unless the Plaintiff or Plaintiffs are permitted to withdraw therefrom.

Rule 2(ii) provides that where a suit is dismissed under this rule, the Plaintiff may apply for order to set the dismissal aside, and, if it is proved to the satisfaction of the court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

The case of JOHN MUKASA & LITHOPACK LTD –VS- M/S SRIJAYA LTD Misc. Applic. No. 215 OF 2004 arising from Misc. Applic. No.111 of 2004 and H.C.C.S No. 796 of 2000, it was clearly pointed out inter alia that the purpose of security for costs as provided under 0.26 r.1 CPR is to secure a defendant who may incur costs to defend a suit instituted by a plaintiff who cannot pay his costs.

Some of the reasons which might prompt a Defendant to apply for security for costs include;

Where the Plaintiff is resident abroad and does not have substantial property within jurisdiction of the court,

Where the Plaintiff is merely a nominal and impecunious Plaintiff suing for benefit of some other person,

Where the Plaintiff has with a view of avoiding the consequences of the litigation omitted to disclose his address or has changed such address without notice,

Where the Defendant is made to defend a frivolous and vexatious suit by the Plaintiff and,

In case where the Plaintiff is a company, is insolvent.

The purpose of this order is to secure a Defendant who may incur hefty costs of defending frivolous and vexatious suit instituted by the Plaintiff who cannot pay the costs of litigation. Court held in G.M Combined –Vs- A.K Detergents (U) Ltd SCCA 34/95 [1996] 1 Kalr 51 that a Plaintiff's impecuniosity and being under liquidation inter alia justifies an order for security for costs unless the Defendant has admitted liability, offers to settle the claim or that the defendant has no Reasonable defence.

It must be noted that the courts have overtime come up with conditions that have to be proved by a Defendant before an order for security for costs is made. To this end therefore, in ANTHONY NAMBORO & WABUROKO –VS- HENRY KAALA [1975] HCB 315 SEKANDI J. (as he then was) held that the main considerations to be taken into account in an application for costs are;-

Whether the applicant is being put in undue expense of defending a frivolous and vexatious action,

Whether the Defendant has a good defence to the suit, and

Whether such a defence is likely to succeed.

It must be noted that mere poverty is not itself a ground for ordering security for costs. Otherwise poor litigants would be deterred from enforcing their legitimate rights through the legal process. In this case, the court was convinced that the respondents had triable cause of action with a likelihood of success on that ground security for costs was not ordered.

In PHILLIPS KATABALWA –VS- NTEGE SSEBAGALA AND ANOTHER ELECTION PETITION 11/98 [1998] 1 KALR 110 court held:-

That insolvency of the litigant is not a ground for an order for security for costs.

That an order for security for costs would be granted if the petition is merely frivolous and vexatious. In the petition, the issues to be resolved by court were seen to be of great public importance and were neither frivolous and vexatious.

With regard to “frivolous action” it was observed in the case of JOHN MUKASA & LITHOPACK LTD – VS- M/S SRIJAYA LTD M.A NO. 215 OF 2004 arising from M.A No. 111 of 2004 and H.C.C.S No. 796 of 2000 that there is an inherent power in every court to stay and dismiss actions or applications, which are frivolous and vexatious and abusive of the process of the court.

In order to bring a case within the description it is not sufficient merely to say that the Plaintiff has no cause of action. It must appear that the alleged cause of action is one, which on the face of it is clearly one, which no reasonable person could properly treat as bonafide, and contend that he had a grievance, which was entitled to bring before the court. This position was stated by Lush J. in NORMAN –VS- MATHEWS [1916] 85 LJKB 857 AT 859.

It must be noted further that Plaintiff who seeks to avoid an order for security for costs must show to the satisfaction of the court that he / she has fixed assets within the jurisdiction to satisfy a possible order for costs in event of losing the case. This was the position in ROHINI SIDIPRA –VS- FRENY SIDIPRA AND OTHERS HCCS 591/90 [1995] V KALR 22 where an order for security for costs would not be vacated against the Plaintiff who did not ordinarily reside within jurisdiction of court. See also: RAMZANALI MOHAMEDALI MEGHANI –VS- KIBONA ENTERPRISES LTD C.A 27 / 2003.

Though non residence has been one of the strong grounds upon which court may order security for costs, the following should be observed;

Much as the general rule seems to be that where a plaintiff is non-resident, security for costs bearing in mind other factors will usually be granted to the applicant. This however is not without exception, that is, where such non-resident has property that may satisfy a possible claim, within the jurisdiction, security for costs may not be awarded (refer to JOHN MUKASA & LITHOPACK LTD –VS- M/S SRIJAYA LTD M.A NO. 215 OF 2004 arising from M.A No.111 of 2004 and HCCS No. 796 of 2000. Hence assets / property need to be fixed its as long as it is substantial. This case distinguishes Rohin case above.

2. Of recent the courts have held that non-residence per se does not give a Defendant a right to apply for security for costs where countries have a Reciprocal Arrangement for Enforcement of Foreign Judgments.

In KAKPDIA –VS- LAXIMIDAS [1960] E.A. 852 the Defendant applied for security for costs on the ground that the respondent / Plaintiff was not a resident in Kenya but in Zanzibar. Rejecting the application court held

that by S.3 of the Judgments Extension Decree Cap 23 Laws of Zanzibar a decree obtained in Kenya could be registered and enforced in Zanzibar.

In DEEPAK SHAH & ORS –VS- PAPARAMA & ORS MA 361 / 2001 from HCCS 354 / 2001 court observed that in light of East African Community the issue of security for costs should be reconsidered where the Plaintiff is resident in one of the member countries in East African Community. The court was convinced that a decree obtained in Uganda would be enforced in Kenya. Court quoted a number of authorities where it was held that court cannot order security for costs against a person who is a resident member of one of the Union Countries.

In relation to 0.26 R.2 of CPR which provides that where the Plaintiff does not furnish security for costs within the time set down by the court, then the suit shall be dismissed; the same rule gives court powers to enlarge such time if it is convinced that the Plaintiff was prevented by sufficient cause from depositing security within the time stipulated.

In NJEREGE NGUMI –VS- MUTHUI 22 EACA 43 court had ordered for security for costs and Counsel tendered a bond which was rejected and the suit dismissed. The Plaintiff applied successfully to set aside the dismissal order and the Judge held that he was convinced that the Plaintiff was prevented by sufficient cause from furnishing security within the time allowed. The Defendant appealed and it was held on appeal that the correct cause of action was for the Plaintiff to apply as soon as possible after obtaining the funds for extension of the time to furnish security; that there was no reason why court could not have allowed such an application.

Who may apply?

The application can't only be made by defendants to claim, defendants to counter claims, respondents to appeal and by appellants in respect of cross appeals. 0.26 r 1.

They can also be made by 3rd parties against the defendants who commenced 3rd party proceedings.

Grounds for application for security for costs.

In Bank of Uganda v Nsereko 2 ORS , court stated that in an application 4 costs, court has wide and virtually unfettered discretion, the only fetter is to exercise the discretion judicially. The applicant must satisfy court that the circumstances warrant an order for security for costs being made ie:

Prospect of success in the substantive suit.

In G.M Combined (U) Ltd v A.k. Detergents (U) Ltd SCCA NO.23/1994, court noted that it's a demand of justice to order a plaintiff to give security for costs of a defendant who has no defence to the claim.

Where the respondent is resident outside the jurisdiction of court. Residence is determined by the claimants habitual or normal residence as opposed to any temporary or occasional residency. In Re Little Olympian Bach Ways Ltd (1995), WLR 360, Lindsay J identified the following to be the key considerations in determining the

residency of a company the contents of the object clause its place of incorporation, where its real trade or business is carried on where its books are kept where its administrative keeps house where its chief office is situated and where its secretary resides.

Security for costs may well be ordered where the plaintiffs are joined for the purpose of defeating an application for security or where it's impossible to predict the likely outcome on costs, or here each claimant is likely to be liable for only a portion of the defendants costs.

Where there is reason to believe that the p/f will be unable to pay the applicants costs. In *Bank of Uganda v Nsereko and 2ORS*, SCCA NO.7 of 2002, court noted that the burden is on the applicant to prove this assertion with evidence. Mere lack of knowledge on part of the applicant's fact that a burden is on the applicant to prove this assertion with evidence. Mere lack of knowledge on part of the applicant's part about the assets of the respondent does not mount to evidence of the respondent's inability.

The respondent has changed his /her address since the claim / appeal was commenced with a view to evade the consequences of litigation or has failed to give his address in that form.

The respondent has taken steps in relation to his or her assets that would make it difficult to enforce an order against them.

The mere fact that the plaintiff is poor is not a ground for court to grant security for costs because justice shouldn't be restricted to the rich. Poor litigants would be deterred from enforcing their legitimate rights through the legal process .

The defendant who applies for security for costs must have filed a WSD or answer or reply as the case may be prescribed by the rules.

Where a respondent/ plaintiff is resident in a country with which Uganda has a reciprocal execution of judgments, security for costs may not be granted.

However, where execution is possible in a country where Uganda has a reciprocal agreement but likely to be expensive so as to render it not viable the court may grant security for costs.

Tests for granting an order for security.

In *G.M. combined (U) Ltd v A.K Detergents (U) Ltd*, SCCA NO.7 of 1998, court held that the power to order for security costs is purely a discretionary .It must always be exercised in very special circumstances of each case.

IN *PARKINSON (SIR LINDSAY) V TRIPLAN LTD* (1973) QB 315, Lord denning laid down the test applied in granting an order for security for costs and these are:

Claimants prospects of success.

Whether defendant has made any admissions to the claimants claim.

Whether the defendant has made any payments into court.

Whether the claimants detriment has been brought about by the defendants conduct.

The stage at which the application is being made oppressively and therefore designed to stifle a claim which has reasonable prospects of success.

Commentary

In relation to the mode and quantity of security for costs once the application has been made and in juxtaposition with G.M Combined (U) Ltdcase (supra), there is no hard and fast rule but that courts must do the best they can in the circumstances of each case. This means that there is no conventional approach in qualifying the magnitude of security for costs. Thus, the award is discretionary, which is always governed by the principle of reasonableness in acting.

Procedure;

The application is made under 0.26 Rule 3 of CPR i.e. by chamber summons accompanied by an affidavit. However in relation to other jurisdictions; in FARRAB –VS- BRAIN [1957] EA 441, Defendants in Kenya made an application for security for costs on the grounds that the Plaintiff was resident abroad. The application was not supported by an affidavit and was challenged as being defective. It was held that where the ground of the application is non-residence it needs not be supported by an affidavit.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUBENDE

MISC APPLICATION NO.24 OF 2020

(Arising from HCCS no.443 of 2022)

SUI GENERIS A -----APPLICANT

VERSUS

SUI GENERIS B -----RESPONDENT

CHAMBER SUMMONS

LET ALL PARTIES CONCERNED attend to the learned registrar in chambers on the 13th day of January 2020 at 9;00 O'clock in the forenoon or soon thereafter as counsel for the applicant can be heard on an application for orders that;

The respondent give security for the payment of all costs to be incurred by the applicant in HCCS No. 443 of 2022

The costs of their application.

This summons is extracted by SUI GENERIS ADVOCATES, on behalf of the applicant GIVEN under my hand and seal of this Honorable court on this 11th day of January 2020

.....

REGISTRAR

Extracted by;

SUI GENERIS ADVOCATES

UGANDA.

ARREST AND ATTACHMENT BEFORE JUDGEMENT.

The purpose is to secure the plaintiff against any attempt on the part of the defendant to defeat the execution of any decree that may be passed against him/her.

Under 0.40 r 1 where at any stage of a suit other than suit of the nature referred to in s.12(a) to (d) of CPA cap 282, the court is satisfied by affidavit that the defendant with intent to delay the plaintiff or to avoid of any decree that may be passed against them, the court may issue a warrant to arrest the defendant and bring him or her before the court to show cause why he or she should not furnish security for his or her appearance.

The decree under 0.40 r 1 may be issued where:

Defendant has absconded or left the local limits of the jurisdiction of the court.

Defendant is about to leave the local limits of the jurisdiction of the court of his property or any part thereof.

Under 0.40 r2, the defendant is about to leave Uganda in circumstances affording a reasonable probability that the plaintiff will or may thereby be delayed in the execution of any decree that may be passed against the defendant in the suit, the court may issue a warrant to arrest the defendant and bring him or her before the court to show cause why he or she should not furnish security 4 their appearance.

Suits excluded by virtual of s.12(a)-(d) of the CPA.

For the recovery of immovable property with or without rent or profits.

For the position of immovable property.

For the foreclosure, sale or redemption in the case of a mortgage of on charge upon immovable property

For the determination of any other right to or interest in immovable property.

For compensation for wrong to immovable property

For the recovery of movable property actually under distress or attachment.

Requirement for a prima facie case.

In *Pyarali Datardini v Anglo Amusement Park* , the court emphasized the fact that the order for arrest and attachment before judgement only issues where the p/f is able to make out a prima facie case. Failure to comply with an order 4 attachment. Under 0.40 r 4 where the defendants fail to comply with the order, court may commit him or her to prison until the decision of the suit or where the decree is passed against a defendant, until the decree has been satisfied.

However the person cannot be detained in prison for a period longer than 6 months nor for a longer period than six weeks when the amount or value of the subject matter of the suit does not exceed 100 hundred shillings.

Procedure.

Application is by chamber summons pursuant to 0.40r 12.

The court can order under 0.40 that:

Security e.g articles

Making an order 2 attach the property of the def. Procedure 4 attaching property under 0.40 is the same as that under 0.22.

Arrest and detention in civil prison 4 not more than 6 months.

FREEZING ORDERS

Under 0.40 r 5, where at any stage of a suit the court is satisfied by affidavit evidence that the defendant with the intent to obstruct or delay the execution of any decree that may be passed against him/her:

Is about to dispose of the whole or any part of his/her property.

Is about to remove the whole or any part of his/her property from the local limits of the jurisdiction of the court.

Has quit the jurisdiction of the court leaving in that jurisdiction property belonging to him/her.

The court may order the def. within a time fixed by it to either furnish security in order to produce and place at the disposal of the court when required the property or the value of the property or such portion of it as may be sufficient to satisfy the decree or to appear and show cause why he/she should not furnish security.

Procedure.

Application is by chamber summons pursuant to 0.40 r 12

Relevant test to be satisfied.

Prima facie case.

Existence of assets.

Real risk of dissipation.

The dissipation must not be in the ordinary course of business. The test is whether they are real risks as opposed to a financial risk. There must be solid evidence of dissipation and not mere expressions of opinion or assertions of the likelihood of dissipation.

Where the respondent is moving property that is evidence of a real risk of dissipation. In *Abe Mugimu v Luciano Basabusa*, Karokora J held that freezing injunctions are evoked where the property is at risk of being taken out of the country or sold to obstruct or delay justice.

Just and convenient.

Court will consider all the circumstances in describing whether it's just and convenient to make the order. Usually where there is an arguable case and applicant has proved a real risk of dissipation, it will normally follow that the order sought is just convenient.

CONSOLIDATION OF SUITS AND TEST SUITS.

Consolidation:

The power of the court to consolidate suits is granted under 0.11 r1 of the CPR. The power is involved where:

Suits are pending in same court wen if before different judicial officers. For the HC, the various divisions and currants are considered as one.

The questions of law or fact arising from the said suits are the same and therefore capable of being disposed off in one hearing of the consolidated suits.

That it's in the interest of the justice that court avoids a multiplicity of suits and a possibility of conflicting decisions arising from separate hearings.

When to consolidate

The court allowed to stay are of proceeding under 0.11 r1 (b) for purpose of bring e other suit up to speed for purpose of consolidation. However the supreme court in Yowana Ankodu Firipo Malinga , court held that consolidation should usually be agreed upon at the beginning or earlier stage of the trial, with the issues evenly drown up.

Who may apply?

Either party or on courts motion.

Procedure

Application is summons in Chamber.0.11r2. Or by oral application in court.

TEST SUITS

These are provided for under 0.39of CPR. The under applies where 2 or more persons have instituted suits against e same defendant and those people would number e provision of 0.1r1 have been joined as co-plaintiff or where a plaintiff has instituted two or more suits where the defendants could pursuant to 0.1 r3 have been properly joined as co-defendants in one suit.

Who applies?

Either party to the suit may apply that one of the suits is stayed and court order that one is tried as a test suit

When to apply.

Where any right or relief in respect of arising out of the same act alleged to exist whether jointly, severally or in the alternative.

Common Questions of law or fact are arising in the suits.

Application of test suit to stayed suits.

In Amos v Chadwick (1876), Malins vc, held that in principle the judgement in the test suit will apply to and bind the suits which have been stayed where there has been a bonafide trial on the merits in the test suit.

Justice Madrama in Mars Tours and Travel Ltd v Stanbic Bank Ltd , held that even if a test suit has been tried under 0.39r1 of CPR, it's not automatic that the outcome of the suit would apply to the suits which have been stayed. The completed suit should qualify to be a trial of the real issues in the suit which has been stayed before its application therein.

BURDEN AND STANDARD OF PROOF

||OBJECTION MY LORD..... ||

Section 101 of the Evidence act cap 8, the burden lies on the who alleges. In UGAND PETROLEUM CO.LTD V K.CC CIVIL SUIT NO.250/2005, it was stated that it is trite law that the standard of proof in civil cases is on balance of probabilities. In MILLER V MINISTER OF PENSIONS (1947) 2 ALL ER 372, the general rule is that civil cases are proved on a balance of probabilities/propondarence of evidence. However , the standard of proof required of fraud is higher than the ordinary standard required of civil suits but not as high as that of criminal cases.

In KAMPALA BOTTLERS U LTD V DAMANICO (U) LTD CIVIL APPEAL NO.22/1992, Justice Wambuzi stated that fraud must be strictly proved, the burdern being heavier than on a balance of probabilities generally applied in civil matters.



TOPIC FOUR



Scheduling conference

This is provided for under ORDER 12 R 1 CPR provides that the court shall hold a scheduling conference to sort out points of agreement and disagreement, the possibility of mediation, arbitration and any other form of settlement. . The rationale of a scheduling conference is to narrow down a case between parties. It must be noted that a scheduling conference is done in the presence of a Judge; where parties:-

Agree on facts

Agree on points of contention

Agree on documents

Agree on witnesses

It must be noted that under Order 12, parties can use a scheduling conference to have an out of court settlement through ;

1) Conciliation

Negotiation

Mediation and

Arbitration

IN TORORO CEMENT CO.LTD V FROKINA INETR-NATIONAL LTD S.C.C.A NO.2 OF 2001, the holding of a scheduling conference is mandatory.

ORDER 10 R 19 (1)(A) CPR, a scheduling conference should be held within 7 days after an order on delivery of interrogatories and discoveries has been made.

Order 10 r 19 (1)(b) CPR, where no application for interrogatories and discoveries has been made, then within 28 days from the date of the last reply or rejoinder except after extending time.

OBJECTIVES;

Identify issues at an early stage and assess the possibility of mediation

Disposing of hopeless cases

Encourage co-operation among parties

Fixing timetables and controlling the progress of the case.

PROCEDURE:

Parties introduce themselves through counsel.

Court explains purpose of the scheduling conference

Plaintiff's lawyer presents case in brief

Defendant's lawyer presents case in brief

Court establishes efforts made towards settlement

Court assists parties to narrow down triable issues

Parties are given an opportunity to settle or to consider ADR

Court gives the litigants themselves an opportunity to contribute to the discussion.

Court assists parties to frame issues, exchange documents, agree on number of witnesses

Fixing timetable for trial of case.

IN TOMMY OTTO V UGANDA WILDLIFE AUTHORITY H.C.C.S NO 208 OF 2012, COURT found that a scheduling conference does not in itself dispose of a suit but is a preliminary step towards the disposal.

It must be noted that before parties resort to this method, there has to be a provision for arbitration. We are fortified by Agip Vs Shell (SCCA 49 OF 1995) where court held that where parties have a clause showing arbitration; they have to use arbitration before they go to Court.

The procedure for registering an arbitral award is laid out in the Arbitration and Conciliation Act, wherein;

Upon grant of the award; it has to be registered with the Registrar in the Civil courts. It must be noted that the award is as effectual as a Judgment.

Upon registration of the award, one extracts a decree from the award, and applies for execution following the procedural rules of execution of judgements.

According to sec 35 of in the Arbitration and Conciliation Act , the application has to be made in writing.

Before registration; the person presenting the award avails the certified copy of the award of certified copy, a copy of the agreement, and the application. The award is then enforced if no appeal is preferred.

The grounds for challenging an Arbitral award include some of the following:

- If the arbitration agreement was not valid in law
- Unique influence
- Bias of Arbitrators
- If made out of terms of reference (e.g. out of prescribed time)
- If made out without giving notice of appointment of Arbitration.
- If the composition of the arbitration tribunal is not in accordance with the agreement.
- Incapacity on the part of one of the parties or was under inability to appear.
- corruption.

Procedure for challenging the award

The procedure for challenging the award is by chamber summons supported by affidavit, according to rule 1 & 13 of Arbitration and Conciliation Rules.

Procedure for setting down suit for hearing.

This is conversed under Order 9 of the CPR SI7-1 thus;

The plaintiff takes out hearing notices, which are duly signed by the registrar and seal of court, to set down Suit for hearing. The date of hearing is got from the clerk assigned such Judge.

This hearing notice, once signed by Registrar and sealed with the seal of court is then served the defendant.

MEDIATION HEARING

Rule 3 of the Judicature (mediation) rules 2013,mediation is the process by which a neutral third person facilitates communication between parties to a dispute and assists them in reaching a mutually agreed resolution of the dispute.

||OBJECTION MY LORD..... ||

Rule 8, mediation shall be conducted by a judge, a registrar, a magistrate, a person accredited as a mediator by the court, a person certified by CADER or a person with relevant qualifications and experience chosen by the parties

Rule 2, it shall be the role of the parties to pay the fees of that mediator.

Rule 11 provides for the role of a mediator

Set dates for mediation hearings

Organize a suitable venue for mediation session

Organize exchange of case summaries and documents by parties

Assisting with the general administration of the mediation

ROLE OF PARTIES

Each party to mediation shall bear its own costs of participation unless the parties agree otherwise as per rule 20

Disclose information to the mediator in confidence

File case summaries

To enter into an agreement.

INTERROGATORIES

The questions of importance which a prudent lawyer ought to have in his mind are;

What are the prerequisites of the interrogatories;

What is the procedure for obtaining the interrogatories;

What are the consequences of non compliance

Discussion

Interrogatories are provided for in order 10 of the CPR SI 71-1, wherein, in any suit the plaintiff or defendant may apply to the court within twenty-one days from the date of the last reply or rejoinder for leave to deliver interrogatories and discoveries in writing for the examination of the opposite parties. It must be noted that

those interrogatories when delivered shall have a note at the foot of them stating which persons are required to answer which interrogatories each;

The exception to this principle [Order 10 r1[a]and [b] is evident thus; first and foremost no party shall deliver more than one set of interrogatories to the same party without an order for that purpose; and secondly, the interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding their admissibility on the oral cross-examination of a witness.

An interrogatory is grossly defined a form of questions by one party to another to find out the nature of the case; narrow done the issues and promote an expeditious trial.

In *Gribart v Morris* (1920) 1 KB 659, the court stated that the aim of interrogatories is to obtain an admission, support the interrogating party’s case and thus destroy the opponent’s case.

In *D’soviza v Ferrao* , The Court Held that interrogations must meet the following requirement:-

Must relate to a matter in question between the parties

Must be necessary for saving costs

Where there are various respondents to the interrogatories, there should be a note at foot stating which parties are required to answer which interrogatories

Guidelines for determining the grant of leave to administer interrogatories

Relevance

Interrogatories should relate to matter in issue. Lord Esther in *marriot v chamberlain* (1886) 17 QBD 154 noted that, the right to interrogate is not confined to facts directly in issues, but extends to any facts the existence or non-existence of facts directly in issue.

However, there are restrictions to the rule above:

Interrogations relevant only to the credibility of witness will be disallowed

Interrogatories may be sought only as to matters relevant to the present action questions that are relevant not to the present action but to other or future actions should be disallowed

Fishing interrogatories are not allowed. Fishing was defined in *Hennesey v Wright* as the moment it appears that questions are asked and answers insisted upon in order to enable the party to see if he can find a case, either complaint or defense of which at the present he knows nothing and which will be a different case from that which he now makes, rule against fishing “interrogatories applies:

Fishing interrogatories include interrogatories designed to try to establish a cause of action or defense not pleaded or a new cause of action against a 3rd party

Facts

Interrogatories are for facts and so will only be disallowed where:-

They call upon the interrogated party to express an opinion on something

Where they are aimed at discovering the evidence available to the other side, they are not intended to provide a substitute for evidence

Where they are aimed at discovering the contents of an existing document or as to what documents a party has or had on his possession or control

Necessity

Interrogations are necessary only to dispose fairly or more expeditiously of the action, or saving costs. They are therefore not normally necessary if witnesses are likely to be called at trial to give evidence on the same matter

Aggarwal v Official Receiver

Interrogatories which support the case of the opponent & not that of the interrogating party will generally be disallowed

Oppressive interrogations such as those which exceed the legitimate requirements of a particular occasion or are not formulated with precision & clarity or are prolix, place on the interrogated party's secret manufacturing processes, seek to obtain admissions seriatim of all the statements in the pleading of the interrogated party are disallowed

Answers to interrogatories

These are answered by affidavit and are binding on the interrogated party in the sense that an answer is intended to be an admission by the party who makes it, or at any rate a statement by which in ordinary circumstances he or she will be bound

In most cases, the answers must be simple and where are included, they must be unambiguous, precise and reasonable.

If answers provided are insufficient, the interrogating party may seek an order that the opponent should file a further & better answer & the court may order the latter to answer further, either by way of affidavit or upon and examination

Insufficiency of an answer is determined by court

A party may object to answering on the ground of privilege, such objection is conclusive unless the contrary is shown

Failure to answer

Court may dismiss the action or order the defense to be struck out

Court can also commit the defaulting party to prison for contempt

Procedure

The Plaintiff/Defendant applies for leave to deliver the questions under order 10 as discussed herein above. Under rule 24 of the said order, the application is by chamber summons supported by an affidavit. Rule 2 [1] provides that on an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the court.

Court is enjoined, in deciding upon the application to take into account any offer, which may be made by the party sought to be interrogated, to deliver particulars or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court shall consider necessary either for disposing fairly of the suit or for saving costs.

Interrogatories take the format laid out in Form 2 of Appendix B to the CPR SI 71-1 Rules, with such variations as circumstances may require.

It must be noted, that where a party to the suit is a corporation or a body of persons, empowered by the law to sue or be sued, under rule 5 of the order, any opposite party may apply for an order allowing him or her to deliver interrogatories to any member or officer of the corporation or body, and an order may be made accordingly

Rule 6 of order 10 provides that where any objection to answering any interrogatories on the ground that they are scandalous or irrelevant, or that they are not exhibited bona fide for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer which is filed by the party to whom an order for delivery of interrogatories is served. To this end therefore, any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatious, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous ;

The party to whom an order for delivery of interrogatories is served is enjoined by law under order 10 rule 8 to answer the interrogatories by filing an affidavit in answer or reply within ten days, or within such other time as the court may allow from the date of service of the application for delivery of interrogatories. The affidavit in answer to interrogatories shall be in Form 3 of Appendix B to these Rules, with such variations as circumstances may require.

DISCOVERY OF DOCUMENTS

Is a process by which the parties to litigation obtain information of the existence and the contents of all relevant documents relating to the matters in question between them.

The intent of discovery is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their respective cases & thus to provide the basis for the fair disposal of proceeding before trial

This is provided for under Order 10 rule 12 wherein under sub rule [1] any party may, without filing any affidavit, apply to the court for an order directing any other party to the suit to make discovery on oath of the documents, which are or have been in his or her possession or power, relating to any matter in question in the suit.

Document must be relevant

They must relate to any matter in question between the parties in the action. In *Campagmie Financiere v. Peruviam guano company* . Court held that “every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which it is reasonable to suppose contains information which may not.....

Improper use of discovered documents.

This involves using discovered materials to start new causes of action . a party is thus required to give an undertaking not to use the discovered material for any purpose other than in furtherance of the present action.

Privileged documents

A party may object to producing privileged documents. Where the privilege is claimed, court may itself inspect the documents to satisfy itself as to claim.

Privileged documents may include;

Communication between an advocate and the client.

Documents prepared with a view to litigation.

Privilege against self-incrimination.

Procedure

This application is by chamber summons on the strength of rule 24 of order 10. The distinction between discovery and interrogatories is that discovery needs not an affidavit in support unlike interrogatories.

It must be noted that on the hearing of the application the court may either refuse or adjourn the hearing, if satisfied that the discovery is not necessary, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit;

It must be noted further that that discovery shall not be ordered when and so far as the court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Where a party against whom such order as is mentioned above has an objection, he or she shall swear or affirm an affidavit specifying which if any of the documents mentioned in the affidavit he or she objects to produce . The format of this affidavit takes Form 5 of Appendix B to these Rules, with such variation as the case may require.

Where other party does not disclose.

0.10 Or 12

The aggrieved party may, without filing any affiant by summons in chamber apply to the court for an order directing any other party to suit to make discovery on oath of the documents, which are or have been in his or her possession or power , relating to any matter in the suit

Objections to production of documents

0.10r13

The party ordered to disclose documents under rule 12, may by affidavits specify which if any document mentioned in the affidavit that he/she objects to procedure

PRODUCTION OF DOCUMENTS.

During the pendency of any suit, the court may under order 10 rule 14 order the production by any party to the suit, upon oath, of such of the documents in his or her possession or power, relating to any matter in question in the suit, as the court shall think right; and the court may deal with the documents, when produced, in such manner as shall appear just.

Procedure

Given the noble fact that each party is supposed to exercise vigilance, a party which wants court to exercise this power has to make the application by way of chamber summons supported by an affidavit under order 10 rule 24.

INSPECTION OF DOCUMENTS.

This is provided for in order 10 rule 15 and it deals with inspection of documents referred to in pleadings or affidavits. Every party to a suit is entitled under this rule, at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce the document for the inspection of the party giving the notice, or of his or her advocate, and to permit him or her or them to take copies of the document;

The court in *Grant v southwestern and country properties* stated that inspection means examination and is not confined to mere ocular inspection

If the party with whom notice is served does not comply with the notice, he or she shall not afterwards be at liberty to put any such document in evidence in respect of the said suit unless he or she satisfies the court that

The document relates only to his or her own title, he or she being a defendant to the suit; or

That he or she had some other cause or excuse which the court shall deem sufficient for not complying with the notice.

Where the party served with notice of inspection of documents omits to do any of the following; thus ;

Give the notice of a time for inspection, or

Objects to give inspection, or

Offers inspection elsewhere than at the office of his or her advocate,

The court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit;

It must be noted further that an application to inspect documents, except such as are referred to in the pleadings, particulars, or affidavits of the party against whom the application is made, or disclosed in his or her affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

Procedure and document

Under rule 16 the notice to any party to produce for inspection any documents referred to in his or her pleading or affidavits shall take the Format of Form 7 of Appendix B to the Rules, with such variations as circumstances may require.

It must be noted further that of the order, the party to whom the notice is given shall, within ten days from the receipt of the notice, deliver to the party giving a notice, stating a time within three days from the delivery of the notice at which the documents ... may be inspected at the office of his or her advocate, or, in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business,

at their usual place of custody. The party to whom the notice is given shall also state which if any of the documents he or she objects to produce, and on what ground he or she does so. The notice under rule 17[2] shall be in Form 8 of Appendix B to the Rules with such variations as the case may require.

A party who wishes to inspect a document must notify the other party in his /her pleadings or affidavits.0.10 r15

The notice must be in writing in form 7 of the appendix B to the rules

The party to whom the notice is served shall within 10 days from the receipt of notice deliver to the party giving it notice stating a time [within 3 days from the delivery of the notice at which the document may be inspected 0.10 r17]

The notice is as per n form of appendix b to the rules

Inspection may be declined on grounds or;

Legal professional privilege

Privilege against self incrimination

The grounds may be challenged under 0.10 r 18

NONCOMPLIANCE WITH ORDER FOR INTERROGATORIES, INSPECTION AND DISCOVERY.

Under rule 21, where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he or she shall, if

A plaintiff, be liable to have his or her suit dismissed for want of prosecution, and,

If a defendant, be liable to have his or her defence, if any, struck out;

and as a result shall be placed in the same position as if he or she had not defended; and the party interrogating or seeking discovery or inspection may apply to the court for an order to that effect, and an order may be made accordingly.

POWERS OF REGISTRARS

It must be noted that whereby any act or thing may be done by such officer as the court may appoint under the Civil Procedure Act and Rules thereunder, that act or thing may be done by registrars. The powers of registrars are laid out in order 50 of the CPR SI 71-1 and Practice Directions 1of 2000 and are streamlined below thus;

Judgment may be entered by the registrar in uncontested cases and cases in which the parties consent to judgment being entered in agreed terms, .

All formal steps preliminary to the trial, and all interlocutory applications, may be made and taken before the registrar .Formal orders for attachment and sale of property and for the issue of notices to show cause on applications for arrest and imprisonment in execution of a decree of the High Court may be made by the registrar .

Any act, undertaking, inspection, proceeding or thing under the law to be carried out to the satisfaction of or in accordance with the directions of a judge or the High Court or a commissioner appointed to examine and adjust accounts, then such things may be carried out or done before or by the registrar or such other officer of the court as the judge or the High Court, shall generally or specially direct .

A registrar has power to refer any matter which to him or her to be proper for the decision of the High Court to a judge.

Okwera v Okello (MiscellaneousApplication 39 of 2023)The court, presided over by Acting Judge Philip W.Mwaka, determined whether the Deputy Registrar had the jurisdiction to stay the execution of a High Court judgment in Civil Appeal No. 096/2022. The court found that the Registrar acted without jurisdiction in granting the stay, and exceeding the powers conferred by the Civil Procedure (Amendment) Rules, 2019.Citing precedents such as Desai Vs. Warsama (1967)and Macfoy Vs. United Africa Co. Ltd (1961), the court affirmed that decisions made without jurisdiction are nullities, requiring an appeal rather than a review. Consequently, the application for review was dismissed as procedurally flawed, with both parties ordered to bear their own costs.

DAMAGES

GENERAL AND SPECIAL DAMAGES,

General damages, in the case of *Stroms v Hutchinson* (1950) AC 515 are such as the law will presume to be the direct natural or probable consequence of the act complained of.

Special damages are as such as the law will not infer from the nature of the act. They do not act. They do not follow in the ordinary course. They are exceptional in their character, and therefore, they must be claimed especially and proved strictly.

Special damages relate to past pecuniary loss calculate-able at the date of trial.

General damages relate to all other items of damages whether pecuniary or not pecuniary. Thus in personal injuries claim, special damages encompass past expenses and loss of earning's whilst general damages will include anticipated future loss as well as damage for pain and suffering and loss of majority.

Nominal damages. *Beaumont v Great Head* 91846) 2 CB494 Nominal damages means a sum of money that may be spoken of but has no existence in point of quantity e.g a seller brings an action for the non- acceptance of goods, the price of which has risen since the contract was made. In practice, a small sum of money is awarded, say one dollar or its equivalent.

Exemplary damages

Means damages for example save as case of *Butterworth v Butterworth* (1920) p126

These damages are positive in nature or exemplary in nature. They represent a sum of money of a penal nature in addition to the compensatory damages given for the pecuniary v physical and mental suffering.

The award of exemplary damages was considered by the house of lord in the land mark case of *Reokes v Bernard* lord Devlin stated that in his view there are only three categories of cases in which exemplary damages are awarded namely;

Where there has been oppressive, arbitrary, a unconstitutional action by the servants of the government.

Where the defendant's conduct has been calculated by him to make a profit which may well exceed the compensation payable to the plaintiff or.

Where some law for the time being in force authorizes the award of exemplary damages.

The rationale for exemplary damages should not be used to enrich the plaintiff but to punish the defendant and deter him from repeating his conduct but it should not be excessive.

Fredrick J.K Zaabwe v Orient bank & others

Aggravated damages

According to the case of *Fredrick Zaabwe*, aggravated damages are extra compensation to the plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted.

Liquidated damages

Liquidated damages are unique to claims for breach of contract. The parties may agree by contract that a particular sum is payable on default of one of them and if the agreement is not nonobvious as a penalty such a sum constitutes liquidated damages and is payable by the party in default.

TOPIC



EXECUTION OF JUDGMENTS, DECREES AND COURT ORDERS

Introduction

Under order 21 rule 1, judgment when pronounced, where a hearing is necessary, in open court, either at once or on some future day after due notice to the parties or their advocates.

Under rule 3 of order 21, a judgment pronounced by the judge who wrote it shall be dated and signed by him or her in open court at the time of pronouncing it. If the judgment is pronounced by a judge who did not write it, it shall be dated and countersigned by the judge reading it in open court at the time of pronouncing it. rule 3 (3) of order 21 gives a rule of cardinal importance; thus a judgment once signed shall not afterwards be altered or added to except as provided by section 99 the Civil Procedure Act or on Review.

A Judgment in a defended suit shall contain a concise statement of the case,

the issues, the decision on the case and the reasons for the decision. Court has a duty under rule 5 to state its decision on each issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

A decree on the other order is extracted from a judgment for the sole purpose of execution or effecting other court application or procedures where it is needed. Under rule 6 of order 21, the decree shall agree with the judgment; shall contain the number of the suit, the names and descriptions of the parties and particulars of the claim, and it shall specify clearly the relief granted or other determination of the suit.

Under rule 7[1] of order 21, it's the duty of the successful party in a suit to prepare a draft decree and submit it for the approval of the other parties to the suit, who shall approve it with or without amendment, or reject it, without undue delay.

If the draft is approved by the parties, it shall be submitted to the registrar who, if he or she is satisfied that it is drawn up in accordance with the judgment, shall sign and seal the decree accordingly. If all the parties and the registrar do not agree upon the terms of the decree within such time as the registrar shall fix, it shall be settled

by the judge who pronounced the judgment, and the parties shall be entitled to be heard on the terms of the decree if they so desire.

It must be noted further that under rule 7 (3) if it is a magistrate's court, the decree shall be drawn up and signed by the magistrate who pronounced it or by his or her successor.

EXECUTION OF DECREE AND ORDERS

Ssekaana defines execution as the process of releasing the fruits of judgement by enforcing the decree against the unsuccessful party through any one or more of the various modes of execution as by law prescribed.

The Uganda civil justice Bench book at pg.236 defines execution as the act of carrying out or putting into effect a court order by the successful party.

Which court executes the decree?

S.30 of the CPA states that the decree is executed by the court which passed it or by the court to which the decree is sent by the former execution.

Time 4 execution of a decree.

Under s.35 (1) (a) of the CPA, the decree must be executed within 12 yrs from its date. There are however exceptions where the time may be extended if the judgement creditor has been prevented either by fraud or by force under s.35 (1)(b) of the CPA.

Transfer assignment of decree.

A decree is capable of being transferred under s.36 CPA. The transfer holds the decree subject to the equities which the judgement debtor may have enforced against the original decree holder.

Enforcement of decree against legal representatives.

Pursuant to s.37 of the CPA the judgement debtor does not cease being liable on a decree merely by reason of death. The decree remains enforceable to its full extent against the deceased's legal representative i.e. executor or administrator of the estate or against an intermeddle.

Modes of execution

In *Madavia v Rattan singh* (1968) EA 149 court stated that it's the decree holder to select the appropriate means of execution of his decree subject to the discretion of the court. 0.22 r 27 emphasizes that there is nothing to prevent a plaintiff from applying for several modes of execution. In *Rajimpex v National textiles board* , the

court stated that it may in its discretion refuse execution at the same time against the person and property of the judgement debtor.

The modes of execution include:

By delivery of any property specifically decreed.

By attachment and sale or by sale without attachment of any property.

By attachment of debts.

By arrest and detention in prison of any person.

By appointing a receiver. 0.22.

In such other manner as the nature of the relief granted may require.

Application for execution.

Under 0.22 r 7, a holder of a decree if he/she desires to execute it may apply to the court that passed the decree or to the court where it has been sent for execution.

0.22 r 8 requires that the application for execution be in writing. The only execution being for decree for payment of money and judgement debtor is in the precincts of the court when the decree is Passed, where court will order the decree by arrest of the judgement debtor before preparation of the warrant on the oral application of the decree holder at the time of passing the decree.

The application must conform to the requirements as provided in rule 8(2), failure to do so court may reject the application or allow the defect to be remedied then & there or within time fixed by court as per 0.22 r 14(1).

Where an application is remedied, it should be deemed to have been an application in accordance with law and presented on the date when it was first presented as per 0.22 r 14(2). The amendment made by the decree holder must be signed by the judge. 0.22 r 14(3).

Upon admitting the application for execution, court directs execution to issue according to the nature of the execution except that in the case of a decree for payment of money the value of the property shall as nearly as may be correspond with the amount due under the decree.

Notice before ordering execution.

Whereas, generally the CPR do not provide for any notice to be issued to the party against when the execution is made, 0.22 r 19 provides 4 exceptions and these are:

Against the legal representative of a party to the decree

Where the decree is for payment of money. 0.22 r 34.

Where the application 4 execution is made 1 yr. after the date of the decree.

Where the person to whom notice is issued does not appear or does not show cause to the satisfaction of court why the decree should not be executed, the court shall order the decree to be executed.

Where person offers any objection to the execution of the decree, the court shall consider the objection and make such order as it thinks fit.

Parties of execution.

The judgement creditor who is named or ascertained in a judgement or order is entitled to the benefit thereof and may issue execution against the person called a judgement debtor.

Execution cant issue against a non-party to the suit as was stated in Rajimpex v National textiles Board .

However under s.93 of the CPA, where a person has become liable as a surety, then the decree or order may issue be executed against him/her to the extent to which he/she has rendered himself/herself personally liable.

Under s.37 of the CPA, every transfer of a decree holds the same subject to the equities, if any which the judgement debtor might have enforced against the original decree holder.

Procedure.

Before an execution can issue a decree must be extracted, signed and issued. Narshidas M.Meinta & CO.Ltd v Baron verheyen (1956) 2 TLR 300. 0.21.

Draft the application as described by 0.22 r 8(2).

File the application accompanied with a certificate copy of the decree.0.22 r8(3).

Issuance of the directions to execute according to the nature of the execution.

Application for execution.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

EXECUTION & BAILIFFS DIVISION.

(Arising from civil suit No. 554 of 2016).

SUI GENERIS A - APPLICANT.

VERSUS

SUI GENERIS B- RESPONDENT

APPLICATION FOR EXECUTION OF DECREE.

We SUI GENERIS & CO. Advocates for decree holder hereby apply for execution of the decree here in below set forth.

NO. of suit High court civil suit NO.554

Date of decree 7/12/2017

Whether any appeal performed from the decree NONE

Payment or adjustment made if any NIL

Previous application if any with date and result N/A

Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross-decree

Amount of costs, awarded is Shs./Amount as awarded in the decree Shs.

Against whom to be executed SUI GENERIS B.

Discussion

The law applicable to execution is basically the CPR and CPA

Under section 38 (d) of the CPA Cap. 71 court is enjoined with powers to enforce execution interalia by arrest and detention in civil prison of any person.

The method of arrest is laid out in section 40 of the CPA thus;

Under section 43 of the CPA, a person detained may be released on ground of illness. Under order 19 Rule 36, a judgment debtor is not supposed to be arrested until the until the decree holder has paid into court sufficient subsistence allowance for the Judgment/Debtor's upkeep depending on the judgment debtor's class.

Under Rule 37 of the same order if the judgment debtor in obedience appears in obedience to the warrant of arrest and show sufficient cause why he should not be arrested, he may be released and allowed to pay by installments.

Order absolute

The court has discretion as to whether the order should be made absolute and in exercising its discretion, however in rainbow v mouregate properties Ltd (1975) 1 WLR 788 the court must have regard to the positions of the other creditors so far as they are known to the court. In Bains v Halmibibi (1957) EA 13, court stated that the court granting the order must be satisfied before it makes an order absolute that there is a debt in praesenti.

Attachment of movable property other than agricultural produce

The attachment is by seizure of the attaching officer keeps the property in his own custody or in the custody of one of his subordinates and is responsible of the due custody. 0.22 r 40(1) of CPR

Execution against local government

s.7 of local government act cap. 243, executions proceedings against an LG can be commenced after 6 months from date of judgement.

Under s.7, the following properties cannot be attached;

Fixed assets and stationary transfers or grants are immune from attachments

Stationary transfers or grants are provided for under S 83 of LGA and that is money periodically approved by government and they are not debts therefore there is no debtor creditor relationship as per Soroti Municipal Council ULC and AG(1999) KALR 832

Other movable properties can be attached after the 6 months periods

Execution against A.G(governed by S.19-21 of GPA, Cap 7. (parties 14-17 of the GPL civil proce) Rules)

Act 119 Est. A.G

No attachment of government property

Government count suffer liability on a suit brought by summary.

Procedure

Laid down in Bro Peter v A.G (1980) HCB 107

Extract decree 0.21 r 7(2). Asadi v Livingstone of (1985) HCB SO

Taxation

Apply for a court of order from the registrar of the executing court upon lapse of 21 days from the day of judgement as per s.19(1) of government proceedings Act. Application is by formal letter.

Serve the copy to A.G(copy of order) S.19(2). By formal letter with the accounts of beneficiary stated.

A.G advises secretary to treasury to pay

Failure to comply

J/debtor can apply for the writ of Mandamus under S.36 and 37 of Judicature Act requiring the officer in question to do that for which he is under public duty to do.

In *Shah v A.G* (1970) EA 543 the court held that a mandamus could issue to the treasury officer of accounts to compel them to carry out the duty upon him to pay.

Where they do comply with mandamus order you commence contempt of court proceedings.

Attachment.

Property liable to attachment.

Pursuant to s.44(1) of the CPA, the following is liable to attachment and sale in execution of a decree namely: lands, houses, other buildings, goods, money, banknotes, cheques, bills of exchange, promissory notes, government securities, bonds or other securities of money, debt, shares of corporation & all other saleable property movable or immovable belonging to the judgment debtor or over which the profits which he has a disposing power, which he may exercise for his own benefit, whether the same be held in the name of the judgment debtor by another person in trust or on his behalf.

Section further gives the exceptions of such goods not liable to attachment.

In *Imelda Nassanga v Stanbic Bank & Anor*, the court held that only property belonging to the judgment debtor should be attached.

The court held that the property to be attached in execution of a court decree must be those saleable property which belongs to the judgment debtor or over which he/she has a disposing power for his benefit whether the property is held in his or her name or in the name of other person in trust for him or on his behalf. In this case, the name of the property the appellant purported to buy belonged to the judgment debtor in the court decree under which the warrant of attachment and sale was issued. The judgment debtor cannot be allowed to offer for attachment or a.

Attachment of Debts.

Under 0.23 r1 of the CPR, attachment of debts is a process by means of which a judgment creditor is enabled to reach money due to the judgment debtor which is in the hands of a 3rd person.

The order to attach a debt is called a garnishee order and the 3rd party having the money, garnishee.

The garnishee order once made absolute changes the obligation of the 3rd party to pay the judgment debtor into an obligation to pay the judgment creditor.

When to institute garnishee proceedings.

They may be instituted by any person who has obtained a judgment or order for recovery of payment of money.

In *Abdul Wahib & sons v Mushiramu & Co.* (1932) 14 the court stated that in order to support a garnishee, there must be a debt due or accruing due, its not sufficient to show a contingent liability.

In *Sunder Das v Municipal council of Nairobi* , the court stated that the test as to whether a debt attachable is whether it owning by the garnishee and it's the type of debt which the judgement debtor can enforce if he desires.

In *Webb v Stenton* (1883) 11 QBD 518, and *Lucas v Lucas & high commissioner 4 India* (1943) 2 ALLER 110, the court held that such debt capable of attachment must be in existence at the date when the attachment becomes operative & something that the law recognises as a debt & not something which may or may not become a debt.

In *Howell v Metropolitan District Rail CO.* (1881)10 CH 508, court noted that when the existence of a debt depends upon the performance of a condition, there is no attachable debt until the condition has been duly performed.

Money in the hands of a bank is always attachable by garnishee and the bank has to show why the decree should not be made absolutely by claiming a claim over the money in its possession. In *U.C.B v Ziritwawula*, court stated that until the garnishee admits his indebtedness to the judgement debtor, the garnishee order cannot meaningfully be made absolute. The existence and availability of funds belonging to a judgement debtor has to be conclusively established as a condition precedent to making the order absolute.

Procedure.

Under 0.23 r 10 of the CPR, an application for an order of attachment of a debt is made. Ex parte by chamber summons with a supporting affidavit.

The affidavit must state:

The name of the address of the judgement debtor.

Identify the judgement to be enforced giving the amount remaining unpaid.

Whether deponent is within the courts jurisdiction and is indebted to a judgement debtor.

Whether the garnishee is a deposit taking institution having more than one place of business & give the name & address of the branch at which the judgement debtors account is believe d to be held 4 account number.

Under 0.21 r 1 of the CPR, if the order is granted, it must be served on the garnishee and judgement debtor unless otherwise ordered within 7 days.

Effects of the order.

Until service of the order, there is no attachment of the debt. If the garnishee bona fide pays to the judgement debtor the amount of debt b4 service, the order is obsolete as there is no longer any debt to which it can attach.

||OBJECTION MY LORD..... ||

Court stated that the service of order creates an equitable.

Setting aside a garnish order

In *Moure v Peachay*, a garnishee order can be set aside where there is a mistake of fact.

Objector proceedings

Application is brought under 0.22 r 55(1), S6 and 57 and 0.52 r 1 and 3 of CPR.

Order sought

That the property be released

In *Trans Africa Assurance CO Ltd v NSSF* (1999)1 EA 352, court held that where any objection is made to attachment of property, it is taken on the trial court to investigate the objection as provided by 0.19 (now 0.22). It was further held that the trial judge has power to examine whether the objector was in possession. It was further held that the trial judge has power to examine whether the objector was in possession of that property.

A decree
THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO.541 OF 2013

XXX-----PLAINTIFF

VERSUS

YYY-----DEFENDANT

DECREE

This suit is coming up for final disposal on the 21st day of February 2020 before Your Lordship SUI GENERIS, Judge of the high court civil division in the presence of counsel for the plaintiff and counsel for the defendant.

It is hereby decreed and ordered that the judgement be entered for the plaintiff against the defendant for the following orders

Given under my hand and seal of this honorable court on this 21st day of February 2020

Judge

Extracted by;

SUI GENERIS Advocates

Notice to show cause

TITLE

Notice to show cause why execution should not issue.(under 0.22 and 19 of CPR)

TO;-----

Whereas -----has applied to this court for execution of a decree in sent No -----of -----on the allegation that the decree has been transferred to him or her by assignment, this is to give you notice that you are to appear before this court at -----on the -----day of -----2020

REGISTRAR



JUDICIAL REVIEW

The process by which the high court exercises its supervisory jurisdiction over the proceedings and decisions of subordinate courts, tribunals and other bodies or persons carrying out quasi-judicial powers or are charged with the performance of public acts or duties.

R.3 of the judicature (judicial review) (amendment) rules SI 32/2022.

Object of JR

In chief constable of NORTH WALES V EVAN (1982) 3 ALL ER 141, the purposes of JUDICIAL REVIEW include:

To ensure that individuals receive fair treatment by authorities to whom they have been subjected.

To ensure that public powers are exercised in accordance with basic standards of legality, fairness and rationality and that the opinion of an individual judge/public officer is not construed as that of the authority where the serve.

To adhere to the constitutional right of fair and expeditious hearing.

IN KOLUE JOSEPH AND 2 ORS V AG MISC CAUSE No.106 OF 2010, court stated that JUDICIAL REVIEW is not concerned with the decision in issue per se but with the decision making process.

In Greater Busoga Sugarcane Growers Co-operatives Union vs. Uganda Development Corporation & Ors. (Miscellaneous Application No. 129 of 2024), Judicial review is not available to enforce private law rights, such as those arising from a loan agreement. Judicial review is intended to address issues of public law, ensuring that public bodies act within the law and their statutory mandates. Matters involving the enforcement of private contractual rights, even when one of the parties is a public body, should be pursued through ordinary legal actions and not through judicial review.

What is a public body.

R.3 of JUDICIAL REVIEW rules states that a public body to include the government, department, services or undertakings of government. The test for what is a public body is laid down in YASIN OMARI V EC AND 2 ORS HCMC No.374 of 2022. Court stated that a body is a public body if it is defined as such or exercises/performs public functions. Rule 2 (as amended by judicature (JR) (Amendment) Rules, 2022, gives a list of public bodies.

What must be satisfied in an application for JR

These are listed in Rule 7A:

Application is amenable for JR

Aggrieved person has exhausted all remedies available within the public body or under the laws

Matter involves an admin public or official.

Rule 7A (2):

Court must grant an order for JUDICIAL REVIEW where it is satisfied that the decision making body or officer did not follow due process in reaching a decision and that as a result there was unfair and unjust treatment.

In YASIN OMARI V EC AND 2ORS, justice Ssekaana stated that a person seeking a remedy under judicial review must satisfy to requirements:

That the body under challenge must be a public authority/body performing public function.

The subject matter of the challenge must involve claims based on public law principles not enforcement of private rights.

Who can apply

Rule 3 A states that any person who has a direct interest or sufficient interest in the matter may apply for JR.

GROUNDS FOR JUDICIAL REVIEW

Lord Diplock in Council of civil service union's minister for civil service (1985) ac 314, categorized the grounds of JUDICIAL REVIEW under three broad heads. These are: illegality, irrationality and unfairness. In PASTORI V KABALE DISTRICT court stated that proof of one ground is sufficient.

Illegality

Arises when a public body, officer or tribunal acts ultra vires or use public power for an improper purpose. In O'REILLEY V MACK MAN (1982) 3 ALL ER 1129, court held that all errors of law by administrative bodies are reviewable under the ground of illegality. Further in HAMMERSMITH AND FULLHAM LONDON BOROUGH COUNCIL V SECRETARY OF STATE FOR THE ENVIRONMENT (1990)3 ALL ER 589, court held that illegality also includes the fettering of a discretion by a rigid rule or policy or because of an

undertaking or agreement, failing to take relevant factors into account, acting for a purpose outside the scope of the governing legislation and acting in bad faith.

Irrationality

In ASSOCIATED PROVINCIAL PICTURE HOUSES LTD V WEDNESBURY CORP (1947) 2 ALL ER 680, an unreasonable decision according to Lord Greene is one that no reasonable body could have come to. It is not what the court considers reasonable. In Pastori Kabale District Localgovernment Council And Ors, the court held that irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards. In MAREN DOROTHY, court laid down a four part test to determine irrationality and the burden is on the public body to prove them. The part test entails:

Is the public body's objective legitimate

Is the measure taken by that body suitable for achieving that objective

Is it necessary in the sense of being the least instructive means of achieving the aim.

Does the end justify the means.

In Amuron Dorothy V. Law Development Centre, court stated that there is procedural impropriety when there is a failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness maybe in non-observance of rules of natural justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere to and observe procedural rules expressly laid down in a statute or legislative instrument by which such authority exercises jurisdiction to make a decision.

3.Procedural impropriety/unfairness

It ought to be noted that in the process of decision making, fairness and rules of natural justice must have been followed and failure of which gives rise to an application for JR.

Time lines for filing an application for JR

Rule 5 (1) of JUDICIAL REVIEW rules provide that an application for JUDICIAL REVIEW review must be made promptly and in any event within 3 months from the date when the grounds of the application first arose unless the court considers that there is good reason for extending the period within which an application for JUDICIAL REVIEW maybe made.

There can only be claimed by way of judicial review and include: certiorari, prohibition, mandamus, declarations, injunctions and habeas corpus.

These remedies are conversed by the following laws:

The Constitution [under articles 28, 42 and 50].

Judicature Act Cap 16 [under section 36

The Civil Procedure (Amendment) Judicial -Review Rules SI 75/2003.

Public Service Regulations [under regulations 36, 43]

PREROGATIVE REMEDIES

CERTIORARI

The function of certiorari is to quash an invalid decision. IN RIDGE V BALDWIN (1964) AC AND In ENG. WILLIAM KAYA KIZITO V AG , both cited with approval in AMURON DOROTHY court held that where a prejudicial decision has been made by a public authority in the course of exercise of its statutory authority without according the affected party a right to be heard, then a writ of certiorari should often be freely granted by the court. Rule 2(as amended) define certiorari to mean order of court to quash a decision which is ultra vires.

Section 37 the Judicature Act Cap 16 provides that the High Court may make an order, as the case may be, of certiorari removing any proceedings or matter to the High Court. In Cheborion Barishaki Vs. A.G. on all fours where Katutsi held that the remedy of certiorari only lies to bring up to court and quash something which is a determination or a decision. He added that it lies to quash decisions which are ultra vires or nullities in law or intra vires but show error on the face and are merely voidable.

Another important decision to look at is Denis Bereije Vs. AG . wherein court held that an administrative action will be subject to judicial control for illegal irrationality, procedural impropriety. It must be noted that the application is not time barred as it concerns enforcement of fundamental rights and courts have adopted a liberal approach as regards limitation.

This remedy was applied in Pius Niwagaba Vs. LDC , Justice Okumu Wengi quashed decision of LDC refusing to admit him for the Post Graduate Bar Course under the pretext that he had obtained a degree from a University that had not been recognized by the Law Council.

RULE 3 (1)(a) S.I 11/2009,

Forum Procedure and Documents

The Forum is the High Court by virtue of section 14[1] of the Judicature Act.

MANDAMUS

Section 40 (1)(a)) of the Judicature Act Cap 16 provides that the High Court may make an order, as the case may be, of mandamus requiring an act to be done. Sub section [2] provides that no order of ... certiorari shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order having the like effect as the order applied for or where the order applied for would be rendered unnecessary.

The writ is issued to compel a public body that has failed to perform its function or duty to execute such function/duty. Rule 2 (as amended) defines mandamus as an order issued to compel performance by public officers of statutory duty imposed on them.

JOHN JET TAMWEBAZE V ATTORNEY GENERAL AND TREASURY OFFICER OF ACCOUNTS , court held that the remedy can only be given if the applicant can show a clear legal right to have the thing sought by it done. A demand for performance must precede an application for mandamus and the demand must have been unequivocally refused.

Mandamus can lie in respect of an ultra vires decision and can take the form of an order to a tribunal or authority to make a new decision in accordance with the law.

Read: Goodman Agencies V Attorney General on grant of the order in execution against government.

Before one makes an application to court for an order of mandamus under section 36, the leave shall not be granted unless the application for leave is made within a period of less than six months from the date of the proceedings or much shorter period provided for by law.

The High Court is entitled under section 40 of the Judicature Act, to grant an order of mandamus ... in all cases where it appears just or convenient to do so.

PROHIBITION

Section 40 [1][b] of the Judicature Act Cap 16 provides that the High Court may make an order, as the case may be, of prohibition, prohibiting any proceedings or matter. Sub section [2] provides that no order of ... prohibition shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order having the like effect as the order applied for or where the order applied for would be rendered unnecessary.

It serves to prohibit the happening of some act or the taking of some decision which would be ultravires. It looks at the future as a prohibitive remedy and it's discretionary like all other units. STREAM AVIATION V CAA (2008) HCB 156.

Before one makes an application to court for an order of prohibition under section 36, the leave shall not be granted unless the application for leave is made within a period of less than six months from the date of the proceedings or much shorter period provided for by law.

DECLARATIONS

A declaration is a statement of legal relationship between the parties. A declaration records only existing legal rights and cannot change the legal position in any way

In *Opoloto V Attorney General*, the appellant sought a declaration that his discharge from the army was invalid and that he was still a member of the armed forces and chief of the defense staff. The court of appeal held that the court has a wide power to make a binding declaration of right, but it is a discretionary power and should be exercised only with care where the effect would be to create a relationship between persons which has an essential element of mutual confidence. This discretion should not be exercised where the result would be seriously to embarrass and prejudice the security of the state.

Originally a declaration had to be linked to another cause of action e.g. a claim for damages and was thus not a suitable public law remedy. However in *Pyx Gramite Co. Ltd V Ministry Of Housing And Local Government*, the House of Lords allowed a declaration to lie in a case where certiorari might have served the same purpose and where a statutory remedy was also provided.

HABEAS CORPUS

This is defined in *Re Henry Sempira* as a prerogative writ directed to a person who is detaining another in custody commanding him to produce that person before court to test the legality of such detention. The remedy of Habeas corpus is provided for in section 34 of the Judicature Act and it has three types namely;

Habeas Corpus ad subjiciendum, which is directed to the person in whose custody the person deprived of liberty is;

Habeas Corpus ad testificandum and Habeas Corpus ad respondendum; which are for bringing up any prisoner detained in any prison before any court, court martial, an official or special referee, an arbitrator or any commissioners acting under any powers of the commission from the president for trial or as the case may be.

If any person is aggrieved by an order made by court under section 34, he or she may appeal to the court of appeal within 30 days after making of the order appealed from.

The Law Applicable includes the following:

The Constitution of the Republic of Uganda 1995

The Judicature Act Cap. 16

The Police Act cap. S.24 (4)

The Judicature [Habeas corpus] Rules SI

The Procedure for application of a writ of Habeas Corpus is as follows;

One makes an application ex parte in the prescribed form to the rules

Upon making of the application, a writ is issued to the person in whose custody the person deprived of liberty is.

The writ is then returned

CLAIM FOR DAMAGES UNDER JUDICIAL REVIEW

In *Stream Aviation Limited V The Civil Aviation Authority (2008) HCB*, the applicant brought an application by way of motion seeking for the prerogative writ certiorari, prohibition, mandamus together with an injunction, special damages and general damages and costs. On whether the court could award damages in an application JR, the court held that damages are available as remedy in judicial review in limited circumstances. Compensation is not available merely because a public authority has acted unlawfully. For damages to be available, there must be either a recognized 'private law' cause of action such as negligence or breach of statutory duty or a claim under express written law or human rights statute.

Dr. Shadat Ssemakula Mutyaba Mohamed versus Gulu University Misc. Cause No. 002 of 2024, The court indicated that judicial review, which ensures administrative decisions adhere to principles of legality and fairness, necessitates involvement in public law issues rather than enforcing private rights. This is outlined in sections 36(1) and (2) of the Judicature Act Cap 13 and rule 7A of the Judicature (Judicial Review) Rules, 2009. Additionally, the court highlighted the requirement for applicants to exhaust internal remedies before

seeking judicial review, referencing section 57(3) of the University and Other Tertiary Institutions Act No. 7 of 2001. The court upheld the respondent's objection, noting that the applicant had not first appealed to the University Staff Tribunal. This decision reinforced the significance of adhering to procedural requirements and utilizing all available remedies before resorting to judicial review.

Further in *American Dorothy V Law Development Centre* the court dealt with a similar issue on award of damages in an application for Judicial Review. The court held that damages are available as a remedy in JUDICIAL REVIEW in limited circumstances. Compensation is not available merely because a public authority has acted unlawfully. For damages to be available, there must be either a recognized private law cause of action such as negligence or breach of statutory duty or a claim under express written law or human rights statute.

Rule 8(1), damages will be awarded if:

Applicant included in motion a claim for damages arising from any matter to which the application relates. Court is satisfied that if the claim had been made in an action begun by the applicant at the time of inhaling the app they could have been awarded damages.

IN THE CASE OF *Okello Lawrence v Gulu District Land Board and Acan Hilda*, Miscellaneous Application No. 53 of 2023 (arising from Miscellaneous Application No. 185 of 2021 and Miscellaneous Cause No. 001 of 2021). IT LAYS OUT KEY POINTS ON JUDICIAL REVIEW, Judicial review, as delineated in Rule 3 of the Judicature (Judicial Review) (Amendment) Rules, empowers the High Court to supervise the decisions and actions of public bodies and officials responsible for public duties. This process focuses on scrutinizing the decision-making process rather than merely the outcomes. Applications must adhere to Rule 5(1) of the Judicature (Judicial Review) Rules, 2009, requiring them to be filed promptly within three months from the occurrence of grounds, with possible extensions, as clarified by the principles established in *Dawson Kadope v Uganda Revenue Authority*, HCMA No. 40 of 2019.

Rule 7A of the Judicature (Judicial Review) (Amendment) Rules, No. 32 of 2019,

requires that applications for judicial review meet certain criteria, including the exhaustion of remedies within the public body or under the law, and the involvement of an administrative public body or official. It mandates that the matter must concern a public body and be classified under public law, ensuring the rights at issue are of a public rather than private nature, as noted by Ssekaana Musa in his book "Public Law in East Africa" (2009) published by Law Africa, Nairobi, on page 37.

Judicial review encompasses the assessment of legality, irrationality, and

procedural fairness in decision-making. Illegality arises when decisions are made without legal authority or exceed statutory powers, as seen in *Dr. Lam-Lagoro James v Muni University*. Irrationality pertains to decisions so irrational that no reasonable person could have reached them, as exemplified in *Council for Civil Service Unions v Minister for Civil Service (1985) AC 375*. Procedural impropriety concerns breaches of natural justice, including fair hearings and unbiased decision-making, as outlined in *Byrne v Kinematograph Renters Society Ltd [1958] 1 WLR 762*. These principles underscore the court's role in ensuring accountability and fairness in public administration

Application for Judicial Review (JR)

Document

As per rule 6 (1) of the JUDICIAL REVIEW rules, the application is by notice of motion

Should be accompanied by an affidavit in support

Procedure

Drafting of documents

Payment of fees

Lodgment of documents

Service of documents on respondent (rule 6(2))

Rule 6 (4) of JUDICIAL REVIEW rules requires that the application be fixed for hearing within 14 days from date of service.

Forum

Private bodies are amenable to JUDICIAL REVIEW if exercising public power. In this case, respondent offers tertiary education as a private entity but in compliance with general education policy and national standards. It is important to note that private matters aren't amenable to JUDICIAL REVIEW

In *Arua Kubala Park Operations And Market Vendors Cooperative Society Ltd V Arua Municipal Council*, it was stated that public body wasn't amenable to JUDICIAL REVIEW because of circumstances at hand showed that the matter was of private law.

||OBJECTION MY LORD..... ||

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT
KAMPALA (CIVIL DIVISION)
IN THE MATTER OF AN APPLICATION FOR JR
AND
IN THE MATTER OF JUDICATURE (JR) RULES,

XYZAPPLICANT

VERSUS

ABCRESPONDENT.

NOTICE OF MOTION

TAKE NOTICE that the court will be moved on theday of.....2020 or as soon as counsel for the applicant can be heard on the applicants behalf for orders that:

Certiorari/mandamus/prohibition/injunction/damages/costs.

TAKE FURTHER NOTICE that the grounds for the application are

.....

AND TAKE NOTICE that on hearing this motion, the applicant will rely on the affidavit ofand the exhibits, copies of which a company this motion.

COUNSEL FOR THE APPLICANT

TO: the respondent

Given under my hand and the seal of this court this.....day of2020.

.....

REGISTRAR.



POST JUDGEMENT REMEDIES

Delivery of a judgment does not necessarily mark the end of the litigation process. There are certain post judgment remedies whose purpose is mainly to clarify the judgment or correct the judgment where there is an error.

The substantive post judgment remedy is an appeal. However there are other remedies such as: the rule, preview and revision.

The slip rule remedy

S.99 of the Civil Procedure Act, provides that clerical or mathematical errors in judgment, decrees, or rulings arising from any accidental slip or omission may at any time be corrected by the court either on its own motion or on application by either party.

The rule is thus an exception to the *functus officio* rule when courts deliver their judgements.

The slip rule remedy deals with only clerical or mathematical errors arising from accidental slips or omissions.

The errors can be corrected at any time and the correction is done by the court which issued the judgement.

It is prudent that the correction is by the actual judicial officer who issued the judgement but where it is not possible, any judge in that court may remedy the mistake.

Other provisions providing for the slip rule include Rule 36(1) & (2) of the Judicature (Court of Appeal Rules) Direction and Rule 35(1) & (2) of the supreme court Rules.

In *Orient Bank Limited v Fredrick Zaabwe & Anor.* The supreme court held that the courts have power to amend their judgements, decrees and orders for achieving the ends of justice for the purpose of giving effect to the intention of the courts at the time when judgement was given.

The court also held that the powers under the slip rule are not open ended. The application should not be brought to have the court reverse its decision on any issue or law.

In *Muhenda v Mirembe* the court defined “the phrase at any time” appearing in S.99 & Rule 35(1) & (2) of the supreme court rules. The court held that the phrase should not be interpreted to mean that inordinately delayed applications without justification will be permitted the court. In this case the application had been brought 6 years later and no sufficient reason given for the delay. Court declined to apply the slip rule remedy.

In Vallabhadas Karsandas Ramiga v Mansuklal Jivaj & Ors , the court laid down the principles applicable under the slip rule and these are;

ii) Slip orders may be made to rectify omissions resulting from the failure of counsel to make some particular application.

ii) A slip rule order will only be made where the court is fully satisfied that is giving effect to the intentions of the court at the time when judgement was given, or in the case of matter which was over looked, where the it is satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention.

The above two considerations have been adopted by the court in Orient Bank Limited v Fredrick Zaabwe in which the court stated that “the above position still holds good. It is therefore, now fairly well settled that there are two circumstances in which the slip rule applies. Namely;

Where the court is satisfied that it is giving effect to the intention of the court at the time when the judgement was given.

In the case of a matter which was overlooked, where it was satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention

In Ahmed Kawooya Kaugu v Bangu Aggrey Fred , the applicant filed an application seeking an order that the COA correct its judgement under the slip rule by listing what the applicant called the right laws. The court held that rule 36(1) & 2 of the CAR entitles the court to correct its judgement where there are found clerical or mathematical mistakes or accidental slips. The error or omission must be an error in expressing the manifest intention of the court. Court cannot correct a mistake of its own law or otherwise even where apparent on the face of the record. Under the slip rule, court cannot correct a mistake arising from its own misunderstanding of the law. The present application deals with what is alleged to be the misunderstanding by court of the law and its alleged application or misconstruction. The Application was thus unutterable under the slip rule.

Application

Application is by notice of motion under 0.52 and an affidavit in support.

Documents

Notice of motion

Affidavit

REVIEW

S.82 of the CPA postulates that any person considering himself or herself aggrieved by a decision / decree or order that has not been applied or by a decision / decree or order which is not appealable may apply 4 review of that judgement and make orders as may be necessary.

Who is an aggrieved person

In Re Nakivubo Chemists (u) Ltd (1979) HCB 12 an aggrieved person was defined as a person who has suffered a legal grievance. In Ladak Abdallah Mohmmmed Hussein v Isingoma Kakiiza , court held that any person means a person who has suffered a legal grievance which has wrongly deprived him of something. A third party cannot, generally apply 4 review of an order or a decree in which he or she was not a party.

However, as the court held in Mohammed Alibbani v W.E Bukenya & Anor , a third party who can prove that he or she is an aggrieved person and has suffered a legal grievance may apply 4 review. Review may be invoked by any person who considers himself or herself aggrieved by a decree or order.

The person must be legally aggrieved in the sense that the decree affects the applicant’s legal equitable interest in the subject matter of the suit.

Busoga Growers Cooperative Union Ltd v Nsamba & Sons Ltd.

For an Application from review to succeed, the party applying must show that test he/she has suffered a legal grievance and that the decision pronounced against him/her by court was wrong depriving him or her of something or has wrongful effect in title to something. The right to appeal is a creature of the statute.

Section 82 of the CPA provides that “any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed but not preferred apply for a review of judgment to the court which passed the decree or made the order and the court may rule such order as it thinks fit.

Dr. Sheikh Ahmed Mohammed Kisuule v M/S Greenland Bank Ltd in liquidation under 0.44 R.1(2) &(3) applicant to get leave to appeal also that test under 0.46 R.3 (20 an application to strictly prove new evidence.

Mubuuke v. UEB , the appellant was seeking review and contended that an award interest on special damages from the date of judgement was or not on the face of the record. It was held that the right to review can not be inferred.

Review is an exception to the general rule that once a court passes a judgment it can not afterward be altered or added to it by the same court that pronounced.

Margret Senkute v Musa Nakirya

||OBJECTION MY LORD..... ||

Power to review is a creature of the statute and courts have to inherent power to review therefore special jurisdiction to review must be done according to provisions of the enabling law and according to the law, an application for review is to be placed before the court which passed the decree or made the order.

Under section 82 CPA, it is exercised both where no right of appeal has been provided and if provided where it has been preferred.

In FX Mubuure, Review is different from an appeal in that a review is reconsideration of the subject of the suit by the same court under special conditions set by law while an appeal is a hearing by the appellate court.

A review does not open Questions decided upon between parties except under specific instances accorded by law while an appeal reopens all issues subject to the appeal.

Reveal is available to any person who has suffered legal grievance i.e. a person against when a judgment has been passed or where interest has been affected by the court's decision and order.

Mohammed Apibjai v E.W. Bukonya & DAPCB . The issue was whether the Applicant who was not a party to the original proceedings hence a 3rd party is aggrieved party to apply for review. It was held that there is no statutory definition of legal grievance. In reference to section 83 and 100 and 0.42 as relevant provisions any person who considers himself /herself aggrieved by a decision of the High Court can seek review can be sought. Any person who has been legally a aggrieved is free to pursue their legal rights in the courts of law and must have the right in the current application for review as long as he has had locus standi even though he was not a party to the original suit.

See Gordon Sentiba v IGG CACA NO.14 OF 2007,

According to section 82 and 0.45 R.1 CPR, any aggrieved party may move court to review a judgment. That may be done by an aggrieved party who may not necessarily be a party to the proceedings giving rise to the order.

Section 82 & 0.46 are to an aggrieved party and not necessary a party to the original suit

Kibira Lilian Patricia vs. Kiryowa Sanyu, M.A. No. 3763 of 2023 (Arising from M.A. No. 84 of 2022, which in turn arises from Civil Suit No. 0132 of 2018) , Court has the authority to review its own decisions under Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules, especially when there is an error apparent on the face of the record

Circumstances under which Review may be adopted

0.46 R.1 CPR sets out the grounds upon which an application for review may be sustained Section 82 provides the circumstances.

The application is made where the order/ Decree is appealable as of right but not preferred Section 82 (2) & 0.46 (1) (a) CPR.

Where there is no right of appeal from the decree or order S.82 (1) (b) & 0.46 R.1 (1) (b)

In Eng. Yorokamu Katwirene v Elijah Mustenza it was held that 0.46 R.1 (1) (b) an application for review may be made where the order of the court sought to be reviewed is not appealable but falling within the circumstances prescribed in (b) which category does not include an election petition. S.67 of the CPA provides that no appeal shall lie from a convert decree. The proper remedy is review under S.82 (b).

John Genda & Ors v Coffee Marketing Board (1997) KACR 15;

It was held that 0.46 R.1 (1) of the CPR and 82 of the CPA for review provides that a person considering himself aggrieved by judgment or order while is not appealed from may apply to have such an order reviewed by the court that passed it upon proof of discovery of new and material evidence not available after due diligence of the party before the judgment/ order is made. However, the person must be aggrieved.

Conditions

Must be an aggrieved person

No appeal has been preferred .(s.82(a) (b) & 0.46 r 1(1)(a))

Grounds

The grounds are set out under 0.46 r 1 (1)(6) of the CPR and these are;

There was a mistake manifest error apparent on the face of the record. In FX Mubuuke v UEB, HCMA No. 98 of 2005. It was held that for review to succeed on the basis of an error on the face of record, the error must be so manifest & clear that no court would permit such an error to remain on the record, A wrong application of the law or failure to apply the appropriate law is not an error on the face of record.

Discovery of new and important matter. In Busoga Growers Co-operative Union Ltd v Nsamba & sons Ltd, the P/f instituted a summary suit against the defendant for recovery of money. The defendant filed an application for leave to appear and defend the suit which was disallowed. He then made an application for review of the decision and sought to set aside the orders. It was held that; the applicant did not claim that he had discovered some new and important matter of evidence which in spite of exercise of due diligence was not within knowledge at the time of judgement was entered and did not swear any affidavit indicating what

grievances he had against the decree passed against him. The grounds stated were not grounds which called for review the applicant had a right of appeal not the right of review.

Sufficient Cause

In *Re Nakivubo Chemists (u) Ltd (1979) HCB 12*, it was held that the expression sufficient should be read as meaning sufficiently of a kind analogous to the discovery of new and important matter of evidence previously overlooked by excusable misfortune and some mistake or error apparent on the face record

In *Buladina Nankya v Bulasio Kande*, counsel for the plaintiff and defendant before the registrar and got the suit disposed off in of a compromise

The applicant applied for review; the court held that the words any other sufficient reasons mean a reason sufficient on grounds at least analogous to those specified immediately previously, the ground that counsel had entered into a compromise without instructions of his client did not fall within the meaning of those words. But as told the justice of the case demanded that the consent judgement should be set aside the court would exercise its irrelevant powers to set aside the compromise

Margret Senkuute v Musa Nakirya

It was held that for an application for review to succeed, the applicant must satisfy court by providing one of the following

(i) discovery of new and important matter of evidence which was not in the knowledge of the applicant, (ii) an error or mistake apparent on the face of record, (iii) some other sufficient

(ii) Where there is an error or mistake apparent on the face of the record for example judgment is entered where there is no affidavit of services.

In *Edison Kanyabwera v Pastor Tumwebaze SCCA No. 61*. It was held that in order for an error to be apparent on the face of the record, it must be an error so manifest or clear that no court would permit such an error to remain on court's record.

It may be one of fact and of law e.g.

The absence of an affidavit of service was an error justifying review.

(iii) The application may also be so grounded on any other sufficient cause which means "cause" analog as to the other 2 grounds.

Yusuf v Nokranti, Any other sufficient reason means a sufficient reason of a kind analogous to those set out in the rule.

Levei Outa v Uganda Transport Corporate [1975] HCB 340, there were 3 suit against the defendant and he applied to have the two suits of 2 firms of advocates be struck out a they were based on the same facts. The judge dismissed the advocates themselves instead of suits he applied for review.

The court held this was a sufficient application that justified an order striking out the suit to be substituted it was patently abused.

Review of a consent judgement

In Muhammed Allibhai & W.E Bukenya Mukasa & Anor , the main compliant in the suit was that the appellant had failed to show that he was entitled to review of the consent judgement between the 1st and 2nd respondents in a suit of which he was not a party. It was held that a consent judgement may be set aside for fraud, collusion or for any other reason which would enable the court to set aside an agreement

Hearing of the application

The application should be heard by the same judge or judges who heard the matter from which it arose & no matter other judge 0.46 r 4 of r the CPR

Application

The Application as per 0.46r 8 of the CPR is by notice of motion with an affidarit

Documents Procedure

Notice of motion 1) Lodging the Application

2) affidavit 2) payment of court fees

3) service of a copy of the application on the respondent

REVISION

Revision is provided 4 under S.83 of the CPA cap 282. It is only exercised by the High Court in relation to the exercise of power by the lower court

The grounds upon which revision is exercised include;

Exercised a jurisdiction not rested in it by law

Failed to exercise a jurisdiction vested in that court

Acted in the exercise of its jurisdiction illegally or with material irregularity

Here the court must have jurisdiction but exercise it wrongly through some procedural or evidential defect.

In *Mubiru v Kayiwa*, it was held that where there has been a procedural irregularity in proceedings leading to the judgement or order which is a judgement such order ought to be treated as a nullity or set aside

On time

As per S. 83(d)(e) of the CPA, no revision will be ordered where, from lapse of time or other cause the exercise of that power would involve serious lordship to any person

When an application 4 revision may be brought

In *Bwambale Byasaki v Shaka Augustine*, the application 4 review was brought when the applicant's list was struck out the c/m court. The court stated revisions can only be filed against final orders in a matter conclusively determined.

In this case there was room 4 the applicant to apply 4 revision after the final judgement of the court when the cm finally determines the suit. A case pending formal proof in court is not envisaged as fit for revision orders owing to the phrase "any case which has been determined" in S.83.

Duty of the Court in Revision cases

These were summarized in *Mumoba Mohamed v Uganda Muslim Supreme Council* in which court held that high court in exercising its revision power, its duty entails examination by the court of the record of any proceedings be4 the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regulating of any proceeding be4 it

The law on revision is set out in Section 83 of the CPA it provides that; the High Court may call for the record of any case which has been determined under the Act by any Magistrates Court, and if that court appears to have

Exercised a jurisdiction so vested; in it in law

Failed to exercise of its jurisdiction so vested;

Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice.

The high Court may revise the case and may make sure order in ot as it thinks fit, but no such power of revision shall be exercised.

Unless the parties shall first be given the opportunity of being heard: or

Where from lapse of time or other cause the exercise of that power would invoke serious hardships to any person.

This section confess jurisdiction on the High Court and no other court to call for any file of a lower Magistrate’s Court for purposes of revising the same.

In *Muhabwe Mohammed v Uganda Muslim Supreme Council* Revision No. 1/2006:

It was held that the powers of the High Court in revision are not limited. These powers are not precluded in cases where an appeal could not be preferred.

Twine Amos v Timusuzon Jamas. Herein it was stated that according to Black’s law dictionary, revision means Re-Examination or a careful review for correction or improvement or an alternative of worth; that the court while exercising its revisional jurisdiction examines the records of any proceeding for the purpose of satisfying itself as to the correctness, legally or propriety of any finding or order or another decision the High Court can revise a decision under section 83 of CPA even when an appeal would lie in its power of revision, the High Court can use its wide powers in any proceedings. It appears that an error material to the merits of the case or involving a miscarriage of justice has occurred.

The High Court is also vested with the powers of revision under Section 17 of the Judicature Act under section 4(1). The High Court shall exercise general powers of supervision over Magistrate’s Courts

Under section 17(2) the High Court shall exercise its internal powers to prevent abuse of the process of the court by curtailing delays including the power to limit and stay delays prosecutions as may be necessary for achieving the ends of justice. However, in the contest of orders of registrars of the High Court, power of revision is not available as they are deemed to be of the High Court

AG and anor V. James Mark Kamoga & Anor , the best relief for someone aggrieved is review under Section 80 & or appeal under 0.50 R.8. The registrar has no power to review delegated to him as it is vested in a subordinate court, the High Court.

Scope of revision is limited to the grounds

Revision is founded on grounds set out in section 33 of the CPA; the exercise of Jurisdiction not vested in the court failure to exercise a jurisdiction so vested, illegal, exercise of jurisdiction could cause a miscarriage of justice. On either of these grounds the High Court may be moved to exercise jurisdiction by a party to the dispute, his or her counsel, judicial officer with supervisory powers e.g. a chief Magistrate, a Registrar or an inspector of courts or it may move itself

Byanyima Winnie v. Ngoma Ngime the applicant files an application for review of the order in the High Court for are count. That the chief Magistrate exercised Jurisdiction not vested in him and had exercised the Jurisdiction with material irregularity. It was held that the chief Magistrate order for are count after the applicant had already sworn in and therefore he had no jurisdiction left in the matter and therefore the order was subject to revision. The court further held that the burden lies on applicant to prove that the application is found on the statutory grounds in Section 83.

The court exercising its power is entitled to exhaustively scrutinize the decision and proceedings in the lower court to confirm or ascertain the alleged illegalities.

The power of revision is discretionary in nature implying that it will only be exercised in appropriate and fitting circumstances.

Section 83(a) the power of revision shall not be exercised unless the parties shall first be given the opportunity of being heard. Revision will not be available where it is belatedly to the detriment of third parties who may have acquired interest to the subject matter of the suit. Section 83(c) the power of revision shall not be exercised where from lapse of time or other cause, the exercise of that power would involve serious hardships of any person.

Kisame Samson v Ali Kiyinkibi . It was held that Section 83 provides the grounds for the exercise of the power of revision in the High Court where a magistrate court has exercised a jurisdiction not vested in it or acted in the exercise of its jurisdiction illegally or with material irregularities or injustices or failed to exercise a jurisdiction so vested in.

However as provided for under Section 83(d) the powers of court should be exercised where from lapse of time or other cause which would otherwise involve a serious hardship to any person.

The party likely to be affected by the High Court's Revision decision must be served with a notice for revision. A court can not entertain an application for revision save where the adversary party is duly noticed by way of service of a hearing notice.

The remedy may not be granted if the person seeking it is guilty of lacks and circumstances are that the orders are likely to cause hardships of third parties who have benefited from the decision or order being challenged.

Procedure

In *Gulu Munipal Council v Nyeko Gabriel*, the Court stated that there is no prescribed procedure of applying if revision proceedings and that there is no legal prohibition of the revision proceedings being initiated by an application of an aggrieved party moving court to exercise its powers.

There is no specific procedure that has been laid down for revision.

In *Assumpta Sebanya v Kyomukama James*; the Application was by way of Notice of motion under Section 83 of the CPA and 0.52 R.1 &3 of the CPR. It was held that where an Affidavit in support of an application is argumentative and full of submission on the matter in dispute, it thereby contravenes the requirements of 0.19 R.3 (1) & (2) of the CPR and will be struck out.

However prudent practice requires that the application is formal by notice of motion and an affidavit

Documents

Notice of motion

Affidavit

Interim applications pending review or revision

An applicant is entitled to an interim relief like stay of execution during the pendency of either applicants

The application is not however brought under 0.43 r 4 of CPR as that is 4 when there is a pending appeal. This one is brought under S.33 of judicature Act, S.98 of CPA & 0.52 of CPR involving the inherent power of court

Art 126(2)(e)

In *Kasirye Byaruhanga & Co. Advocates v Uganda Development Bank*, the Court held that a litigand who relies on the provisions of Art. 126(2)(c) of the Court must satisfy the Court that in the circumstances of a particular case be4 the court it was not desirable to pay undue regard 2 the relevant technically Art. 126(2)(e) is not a magic wand in the hands of defaulting litigants

Difference between Review & Revision.

||OBJECTION MY LORD..... ||

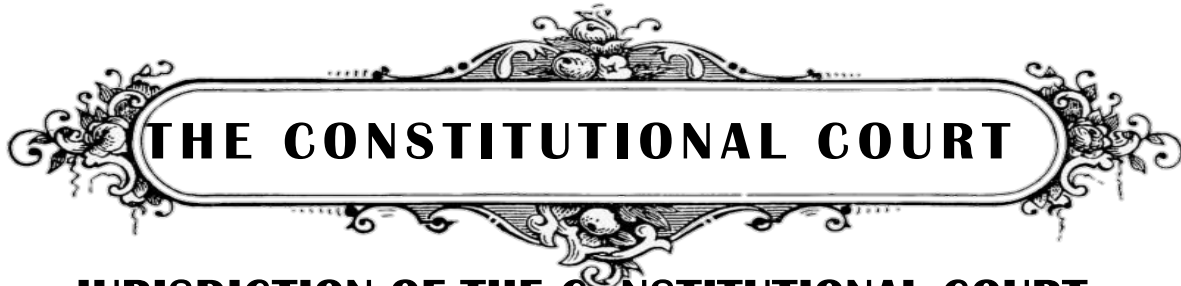
According to AG & anor v. James Mark Kamoga & Anor The difference is with regard to powers of the High Court. High Court has supervisory Jurisdiction to revise decision of Magistrate's Courts which are subordinate to it while Section 82 CPA empowers the High Court to review.

Decisions. Conditions on which the 2 Jurisdictions are invoked are necessarily different and SU are the principles applicable to their exercise.



SLIP RULE

Section 99 of the civil procedure act cap 282, authorizes court to recall its judgment and have it amended in order to give effect to what would have been its intention had there not been an omission in relation to a particular matter. The power of the court as to exercise the slip rule are not intended to enable court to reverse its earlier decision otherwise it would be sitting in its own appeal as per the case of IYAMULEMYE DAVID V A.G S.C.C.A NO.4/2013)



THE CONSTITUTIONAL COURT

JURISDICTION OF THE CONSTITUTIONAL COURT

This is based on Article 137 of the Constitution 1995 wherein the constitutional court is warranted with powers to interpret the constitution. The basic articles to look at include Articles 137, 50, 2, 4, 40, (2), 119, 152, 153, 154, 159, and 163.

Another law to look at is the Rules of the Constitutional Court (Petitions for Declarations under Art. 137 of the Constitution) Legal Notice No. 4 of 1996

In *Mbabalijude V Edward Sekandi Conszt.Petitionno.* Justice Remmy Kasule held that a constitutional question that has to be interpreted by the constitutional court arises when there is an issue legal or otherwise requiring an interpretation of the constitution for the resolution of the cause out of which that issue arises from.

The issue that calls for interpretation of the constitution by the constitutional court must involve and show that there is an apparent conflict with the constitution by an act of parliament or some other law or an act or omission done or failed to be done by some person or authority. Further the dispute where the apparent conflict exists must be such that its resolution must be only when and after the constitutional court has interpreted the constitution.

Further in *ISMAIL SERUGO V. KAMPALA CITY COUNCIL Wambuzi c.j* held that the petition must show on the face of it, that interpretation of a provision has been violated. The applicant must go further to show prima facie, the violation alleged and its effect before a question could be referred to the constitutional court

In *PAUL K. SSEMWOGGERERE & ANOR. -VS- A.G S.C CONST. APPEAL NO. 1/2000* court held that jurisdiction of the Constitutional Court is derived from Art. 137 of the Constitution. An application for redress can be made to the Constitutional Court in the context of a petition under Article 137 brought for interpretation of the Constitution. Clauses (3) and (4) of Article 137 empower the Constitutional Court when adjudicating on a petition for interpretation of the Constitution to grant redress where appropriate.

It must be noted that any person who seeks to enforce a right or freedom guaranteed under the Const. by claiming redress for its infringement but whose claim does not call for an interpretation of the Const. has to apply to any other competent court.

The question of limitation period was discussed in FOX ODOI – OYWELowo & ANOR VS AG where court held that Article . 137 (3) (a) of the Constitution under which the petition is brought does not provide the time limit within which to file any petition under the Constitutional Court. To this end therefore, court overruled the objection that petition was not brought within 30 days. as per Rule 4 (1) of L.N 4 of 1996 [now The Judicature (Rules of the Constitutional Court) (Petitions for Declarations under Article 137 of the Constitution) Directions].

CONSTITUTIONAL PETITIONS

These are brought to seek the court’s interpretation of the constitutional provision(s) in light of any act or legislation.

Law applicable.

They are brought under article 137(3) of the 1995 constitution of Uganda

Rule 3 of the constitutional court (petitions and references) rules 2005, stipulates the form and contents of the petition

Locus

This is governed by Article 137(3) of the constitution and it permits any person whether aggrieved or not to bring a constitutional petition.

The jurisdiction of the constitutional court was well reiterated in the case of Paul Kawanga Ssemwogerere & others V. Attorney General where Mulenga JSC said that

“My conclusion from reading a preliminary ruling and the judgment in this case, is that the under current, which is what the court meant to portal in the said holding was that it had no power, to the said holding was that it had an power to declare any provision of the constitution void in my mind however.

Jurisdiction to interpret or construct a constitutional provision and power to declare such a provision void are two different things, Never the less in the final decision, the majority of the court appear to have considered that their hands were yield by the holding he preliminary ruling to the extent that they declined to consider questions, which clearly arose from the pleading for thereof interpreting one constitutional provision against another” the issue of the court’s jurisdiction is now subject of with ground of appeal, which reads in part as follows:-

“6 the constitutional court erred in law and fact when they hold that a constitutional court would have an jurisdiction to construe part of the constitution as against the rest of the constitution”.

The constitution prescribes the jurisdiction of the constitutional court in clause (1) of article 137 as follows;

Any question as to the interpretation of this constitution shall be determined by the courts appeal sitting with the constitutional court.

The court is thus unreservedly vested with jurisdiction to determine any question as to the interpretation of my envision of the constitution with regard to interpretation of the constitution the court's jurisdiction is unlimited and unfettered to reiterated in clause (5) which provides for referenda of any question as to other petition of this constitution". A rising in any proceedings in a court of law, to the constitutional court for decision in accordance with (lawel)" clause (3) provides that any person or authority, is inconsistent with or in intervention of my provision of the constitution, has a right to access the constitutional court directly by petition.

There upon the constitutional court may grant a declaration that such law, thing act or omission is inconsistent with or contravenes the provision in question in my mind, the clause does not there by preclude the court from interpreting or consisting two or more provisions of constitution brought before it, which may appear to be inflict in my opinion, the court has not only the jurisdiction, but also the responsibility to construes such provisions with a view to harmonies them, where possible through interpretation. It is a cardinal rules in constitutional interpretation, that provisions a constitution concerned with the same subject should as much as possible before construed as complimenting, and not contradicting one another. The constitution must be read as an integrated and cohesive whole. The supreme court of U.S.A in Smith Dolcotavs North Lordine pol the same point thus.

"It is an elementary rule of constitution that no one provision of the constitution is to be segregated from other and in be considered alone but that all the provisions bearing upon a particular subject are to be brought into view and in be interpreted as to effectuate a great purpose of the instrument".

There is no authority other than the constitutional court, charged with the responsibility to ensure that harmonist even where it is not possible to harmonies the provisions brought before it, the court have responsibility to construes them and pronounce, itself on them, albeit in hold in the ex that they are inconsistent with each other. Through the execution of that responsibility, rather than shamming it the court is able to guide the appropriate authorities need if any to cause harmonization through amendment in my opinion therefore, the decision that the constitution is mis-concerned and erroneous in law, the sixth ground of appeal ought to succeed.

Article 137(3) provides that'

" A person who alleges that:-

An act of parliament or any other in anything in or other line under the authority of any lower.

Any act or omission by any person , or authority

Is inconsistent with rule contravention of a provision of this constitution may petition the constitutional court for a declaration to that effect, and for redress where appropriate".

Referring to the above provision in the cases of Philip Karugaba v Attorney General , Kanyeihamba J.S.C said that:

“It is clear that the right to petition the constitutional court is rested in every person in their even individual capacity person in their even individual capacity in my opinion, this is a clear case where this right expires with the deceased person and such death does not applied the rights or obligation of any other person nor does the death company residual right to any other person let alone the deceased course”.

From the wording of article 137(3), HCCA be seen that the procedures by petition and the order that will usually be sought is a declaration, and redress where possible.

Questions unnamable to constitutional interpretation may arise out of:

An inconsistence of an act of parliament within the provisions of the constitutions

An act or omission by any power or authority which in insistent where contravenes a provisos of the constitution.

Proceedings in a court of law other than a field court martial

Ideally the constitutional court is empowered under article 137 (4) to make a declaration and grant an order for redress where it considers it necessary it may disappear the matter to the high court to investigate and determine the appropriate remedy.

It is provided under clause that:

“Where any question as the interpretation of this constitution arises in any proceedings in a court of law other than a filed court marital the court.

May if it is of the opinion that the question involves a substantial question of law and

Shall, if any party the proceedings request it to do so refer the question to the constitutional court for decision in accordance with clause of this article”.

Clause b provides that a court in which a question of constitutional interpretation arises shall disprove of the case in accordance with the decision of the constitutional court. Constitutional proceedings are to be given by priority by the court of appeal, appeal article 137(7) state that

“Upon a petition being made or a question being referred under this article the court of appeal shall proceed and determine petition as soon as possible and may as that purpose suspend another matter bending before it.

Procedure

Drafting of petition and affidavits .Rule 3 of rules

Preservation of petition by lodging at the court registry eight copies. Rule 4(2) of rules.

Pay requisite fees and deposit of 200,000 shillings as security for costs. Rule 4(3) of the rules

Effect service on all the respondents within 5 days and the A.G if they are not party. Rule 5(1) and (2).

Respondent upon service within 3 days must file an address of service and serve it on the petitioner. Rule 6(1) of the rules.

Within 7 days, after service of petition, the respondent must file their reply if they intend to oppose the petition. Reply is filed in 8 copies. Rule 6(3) of the rules. Reply should be accompanied with an affidavit. Rule 6(5).

Serve the reply immediately on the petitioner upon filing reply. Rule 6(6).

Documents

Petition

Affidavit.

Constitutional petition
THE REPUBLIC OF UGANDA
IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA
CONSTITUTIONAL PETITION NO.....OF 2020

MUKASA JJINGOPETITIONER

VERSUS

ATTORNEY GENERAL.....RESPONDENT.

PETITION

(Brought under article 137(1), (2), (3) and (7) of the constitution and rule 3 of the constitutional court (petitions and reference rules 2005)

The humble petition of MUKASA JJINGO whose address for the purposes of this petition is SUI GENERIS AND CO ADVOCATES, showth and states as follows:

Your petitioner is a male adult Ugandan and the registered owner of truck Reg. no. UAP 611A

||OBJECTION MY LORD..... ||

The respondent is the mandated legal representative of the government of Uganda by virtue of article 119 of the constitution.

Your petitioner is aggrieved with s.165 of the traffic and road safety act which contravenes and is in concise with article 21(1) of the 1995 constitution as it imposes liability of another person on another for driving without a valid permit.

WHEREFORE YOUR PETITIONER prays for:

A declaration that section 165 of the traffic and road safety act is inconsistent and contravenes article 28 of the constitution

Costs of the petition

Dated at Kampala this.....day of July 2020

.....
COUNSEL FOR THE PETITIONER

LODGED at the court registry on this.....day of.....2020.

.....
REGISTRAR.

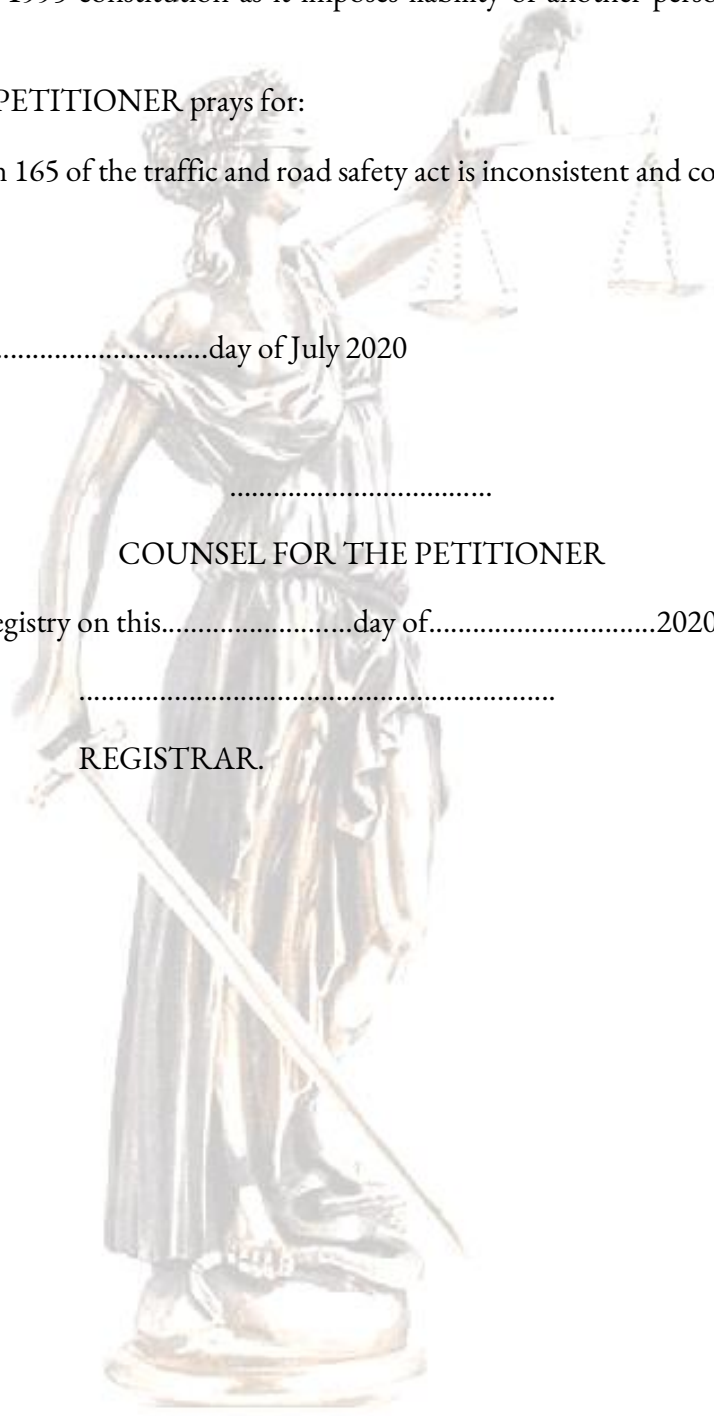
To be served on

Attorney general

Drawn and filed by:

SUI GENERIS

Kampala.





SMALL CLAIMS

THE LEGAL FRAMEWORK

The law governing the Small Claims Procedure (SCP) flows from The Constitution of the republic of Uganda, The Judicature Act and The Judicature (Small Claims Procedure) Rules No.25 of 2011, hereinafter referred to as the Rules. The Rules were made by the Rules committee on the 5th May 2011 in exercise of the powers conferred upon it under S. 41 of the Judicature Act. The Rules came into force on 30th May 2011.

WHAT IS A SMALL CLAIM?

Under Rule 3 of the Rules, a small claim means, “a matter whose subject matter does not exceed ten million shillings”. It has to be civil or commercial in nature. Under Rule 5, a small claim does not include:

- a) Family disputes relating to the management of an estate
- b) A claim against the government;
- c) A suit for defamation, malicious prosecution, wrongful imprisonment, wrongful arrest or seduction;
- d) A petition for divorce, nullification of marriage or separation of spouses;
- e) A case involving the validity of a Will;
- f) A claim in which specific performance is sought without an alternative claim for payment of damages, except in the case of a claim for rendering an account or transferring movable property and disputes arising out of tenancy agreements not exceeding ten million shillings in value;
- g) Contracts of service and Contracts for service.

ESTABLISHMENT AND APPLICATION OF THE RULES

Rule 4 establishes a procedure known as the Small Claims Procedure. The objects of the Rules are to adjudicate over small claims and to perform any other matters that may be conferred by the Chief Justice. The Chief Justice may by notice published in the gazette designate a Court where the Rules shall apply and under Rule7,

the Chief Justice may assign a Judicial officer to preside over a case in a Small Claims Procedure and carry out any other duties incidental thereto.

As a matter of fact, the Chief Justice has already caused publication in the Uganda

Gazette of 20th April, 2012 an instrument by which six (6) Courts have been designated to apply the Rules on pilot basis. The Courts are Mengo, Masaka, Kabale, Arua, Lira and Mbale. The pilot started on 1st November, 2012. There is a gazette for the roll out of the programme at the following courts:-

1. Nabweru
2. Makindye
3. Nakawa
4. Jinja and
5. Mbarara

PARTIES TO A SMALL CLAIM

Under Rule 8, only a natural person may institute an action in a SCC. A body corporate may only become a party to an action as a defendant. It follows that when a body corporate is sued, it has a right to counterclaim under Rule 13 (b) & (c). Under Rule 5(2)(b), the Government cannot be sued in the SCC.

REPRESENTATION IN A SMALL CLAIMS COURT

Rule 8(2) & (3) provides that a person to an action in a SCC shall appear in person and shall not be represented by an advocate during the proceedings. A body corporate brought as a defendant may appear before the Court by a representative not being an advocate.

INSTITUTION OF A SMALL CLAIM

The SCP is an option and it is not mandatory for a person to institute his/her claim in the SCC. Once a claimant opts to file in the SCC, the claim has to be instituted in a Court within the local limits of whose jurisdiction the cause of action wholly or in part arose. In case of a rental dispute or claim, the claim shall be instituted in a Court within the local limits of whose jurisdiction the property is situated or where the defendant resides (Rule 9). The SCC shall have a separate Registry at the Court and a separate case register. The Rules have also made provision for Court forms, and parties will be assisted by the Court Clerks to simply fill in the forms during the filing process. Before instituting a small claim, the claimant has to give a notice of demand to the

intended defendant requesting him/her to satisfy the claim within 14 days of receipt of the notice (Rule 10). The form of the notice is specified in Schedule 1 to the Rules. If payment is made within 14 days, that will end the matter.

If payment is not made after the 14 days, the claimant may then file his/her claim by way of a claim form specified in Schedule 2 to the Rules (Rule 11). The claimant has to attach to the claim a copy of the notice of demand, the affidavit of service of the notice, copies of documents supporting the claim, and give any other information relevant for the speedy disposal of the claim.

The Judicial Officer shall then sign the summons specified in Schedule 4 to the Rules and the documents shall be served upon the defendant either by the claimant personally or by a designated process server who shall within 7 days file an affidavit of service specified in schedule 3 to the Rules.

Upon receipt of the summons, the defendant may satisfy the claim whereby the claimant will give him/her a receipt or written acknowledgement and also inform the Court within 7 days of the satisfaction of the claim. That will then end the matter. If the defendant disputes the claim, he/she will file a Written Statement of Defence (WSD), with a counterclaim where he/she has one. A form is provided for in Schedule 5 of the Rules.

Under Rule 17, where the defendant does not respond to the summons, upon proof of service, the Court shall enter judgment for the claimant. Where the defendant has filed a defense and pleadings are closed, the Court will fix a hearing date and have a notice served upon the parties.

ALTERNATIVE DISPUTE RESOLUTION (ADR) IN A SMALL CLAIM

The SCP has room for ADR. Under Rule 22, within 14 days before the hearing of the case, a Judicial Officer shall in any appropriate case, refer the parties to mediation, arbitration or other forms of ADR. Where the parties reach an agreement, the Judicial Officer shall register a consent judgment. Where the parties fail to settle the matter through ADR, the matter will be heard by the Judicial Officer on the date fixed for hearing.

HEARING AND JUDGMENT

On the date of hearing, the parties shall appear with all their relevant documents, exhibits, witnesses if any, and proof of service upon the opposite party. At the hearing, the Judicial Officer shall request the claimant on oath to state the facts of his/her claim and submit any document or exhibit. The Judicial Officer may then ask the claimant any questions necessary for the proper determination of the case.

The Judicial Officer may also allow the defendant to ask the claimant or his/her witnesses any questions. The Rules however do not permit cross examination. Any questions permitted by the Judicial Officer are for the purpose of facilitating the inquiry into the parties' claim and/or defense.

After the Judicial Officer has heard the Claimant's case on oath, he/she will then ask the defendant to respond on oath to the claim and the defendant may also be asked questions by the Judicial Officer or by the Claimant upon permission of the Judicial Officer.

||OBJECTION MY LORD..... ||

A Judicial Officer may on oath allow a witness to give evidence for any of the parties as may be necessary for the determination of the case. Only one witness shall be allowed in the Court at the time of giving evidence but a witness who has already testified, may attend the proceedings.

Under Rule 26, if the Court is of the opinion that the case contains complex questions of law or fact which cannot be adjudicated upon under the SCP, the Judicial Officer shall suspend the proceedings and the claimant may file a fresh suit under other procedures provided for by the law.

The Judicial Officer is obliged to hear every case before it expeditiously and without undue regard to technical rules of evidence or procedure but shall be guided by the principles of fairness, impartiality and should adhere to the rules of natural justice.

After hearing the case, the Judicial Officer shall make judgment either immediately or within 14 days after hearing the case (Rule 27). A format of the judgment is provided for in Schedule 7 to the Rules. A very brief judgment is envisaged and the Judicial Officer will only enumerate his/her reasons for the decision but will not indulge into detailed reasoning. The Judicial Officer shall then make out an Order in the form specified in Schedule 8 to the Rules.

The most interesting and valuable feature of the SCP is that a case can normally be heard and judgment delivered within one sitting. That is actually the norm and beauty of the Procedure wherever it is practiced. In South Africa and Zambia, hearing of a case up to delivery of judgment normally takes between 30 minutes and 1 hour. However the duration taken will depend on the complexity of the case but most importantly on the experience and skill or tact of the presiding Judicial Officer.

It is desirable that specific days or time are set aside by the Court to conduct the SCC. This is because the SCP requires a different environment from that of ordinary Civil Procedure and practice.

EXECUTION OF JUDGMENTS AND ORDERS

Where the Court has granted judgment for payment of money, it has to inquire into the financial position of the judgment debtor and his/her capacity to pay without delay. The Court may then allow the judgment debtor to pay the debt wholly or in such installments as the court may determine.

Where the Judgment Debtor pays the debt, the Judgment Creditor shall issue a receipt acknowledging payment and shall notify the Court in writing within 7 days of receipt of such payment. Where the Judgment Debtor fails to pay, under Rule 31(3), the Judgment Creditor may with the guidance of the Court apply for execution under S. 38 of the CPA and O.22 r.7 of the CPR.

CORRECTION AND REVIEW OF JUDGMENTS

Under the SCP, judgment of the Court is final and cannot be appealed against. However an aggrieved party may apply for review of the judgment by the same Court on grounds of the judgment being passed in his/her absence, for being void, for having been obtained by fraud or as a result of a mistake common to the parties, or on discovery of new and important matters or for latent errors in the judgment.

EXPECTED BENEFITS OF THE SMALL CLAIMS PROCEDURE

- a) The procedure is less formal and user-friendly. It requires no legal representation as technical rules of evidence and procedure are discouraged. A party is expected to walk in with his claim and walk away with his/her judgment within a very short time.
- b) The SCP is cheap. This is because it takes a short time, involves no lengthy pleadings and only Court costs are reimbursed i.e. Court fees and cost of service of process.
- c) The SCP is inquisitorial rather than adversarial. It therefore facilitates quick and more meaningful settlement of claims.
- d) It is a strong tool for case backlog reduction.
- e) It is intended to demystify our complex Court system and legal procedures and to foster better access to justice.
- f) It is expected to boost public confidence in the Courts

POSSIBLE CHALLENGES

- a) Service of process: There is an apparent problem with service of process by a party in person. Yet it is also clear that the facilitation of the Court process servers by the parties will make the Procedure expensive and unaffordable to some of the parties. Service to parties who cannot easily be traced is also a likely problem.
- b) Court fees: The Rules are silent about Court fees which means the usual Court fees structure shall apply. This however is likely to make the procedure expensive to the indigent.
- c) Manipulation of the Rules: There is a possibility of the parties or their advisors to manipulate the process so that their cases can fit into the SCP when actually they are not meant to go there. That is likely to cause backlog.
- d) Re- opening of cases by way of review: The Rules, in Rule 30, give a party up to a maximum period of one year within which he/she is at liberty to seek review of the Court Judgment in instances set out therein. This is likely to be used by parties to derail the SCC process.
- e) Execution process: No doubt, this is a likely minefield of problems to the SCC. Our people do not have a Culture of willingly paying their debts even when ordered. Yet it is clear that the application of the CPR in this regard is also likely to bring a sour test to the SCP.

IN THE CASE OF BRENDA KIRUMIRA V RAJAB KARIM MAULANA CIVIL REVISION NO. 0006 OF 2023. The High Court clarified that the Small Claims Procedure Rules, 2011 exclude claims arising from contracts for services and ruled that ordering the Applicant to pay the Respondent's expenses was illegal under Rule 29 of the same Rules, which mandates that each party bears their own expenses.

TOPIC SIX



JURISDICTION IN CIVIL MATTERS OF PROCEDURE IN SPECIAL TRIBUNALS DEALING WITH CIVIL MATTERS IN WHICH ADVOCATES HAVE LOCUS

The black's laws dictionary, 9th edition at page 112, defines an appeal as proceedings taken to rectify an erroneous decision of the court by bringing it before a higher court.

TAX APPEALS TRIBUNAL

The Tax Appeals Tribunal is established by section 2 of the tax appeals tribunal act cap 341 of the Laws of Uganda. To this end therefore, it is governed in part by the ;

Tax Appeals Tribunal Act cap 341,

Tax Appeals [Tribunal Rules] SI 341-1

Income Tax Act cap 338,

Civil Procedure Rules SI 71-1

Section 14[1] of the tax appeals tribunal act cap 341 provides that any person aggrieved by a decision made under a taxing act by Uganda Revenue Authority can apply to the relevant tribunal for review. It must be noted that a right of appeal from the Tribunal is sanctioned by section 27 of the tax appeals tribunal act cap 341 and case law in Capital Finance Corporation Ltd Vs URA Civil Appeal 43 of 2000. It must be noted further that this right of appeal from the decisions of the Tax Appeals Tribunal Act to the High Court is on questions of law only [see section 27[2] of the Tax Appeals Tribunal Act cap 341]

There are some necessary preconditions, which an aggrieved person has to fulfil before lodging the application to the tribunal.

First and foremost, the taxpayer should have got an assessment by URA. This is a contextual interpretation of section 15 of the Act

Secondly, the taxpayer lodges a notice of objection to URA under section 15 [1] of the Tax Appeals Tribunal Act cap 341. In URA Vs UCP Ltd [Court of Appeal C. Applic. 3 of 2000], a mandatory requirement is laid out thus, an application for review must be filed within 30 days from receipt of the decision from URA. Time limits are set by statute and are matters of substantive law and not mere technicalities and must be strictly complied with. URA is enjoined to either review or affirm the decision and thus communicate it to the taxpayer.

Fourthly, at this point after receipt of the decision, the taxpayer is at liberty to apply to the tribunal for review of the decision of URA within a period of thirty days on the strength of section 16[1] [c] of the Tax Appeals Tribunal Act cap 341. It must be noted that a taxpayer cannot challenge the decision of the URA after the expiry of six months. This is canvassed in section 16[7] of the Tax Appeals Tribunal Act cap 341.

It must be noted further; that the statutory provision is to the effect that lodging of the objection is synonymous with paying of 30% of the tax assessed or part of the tax assessed which is not in dispute. This statutory provision has however been successfully challenged in Multichoice Ltd Vs URA Misc. Applic. 1 of 2000 where court held that payment of the 30% is not a precondition for lodging the appeal and failure to do so does not render the application void.

Procedure

The tax payer; according to section 16[1] of the Tax Appeals Tribunal Act cap 341, lodges an application in writing in the prescribed form, including the statement of reasons for the application; within 3 days from the date of receipt of the decision of the URA.

The taxpayer is enjoined to pay a non-refundable fee of 20,000 [refer to rule 2 of the Rules] in respect of the application under section 16[5] of the Tax Appeals Tribunal Act cap 341.

Thirdly, after filing the application, a copy thereof should be served on the URA within five days from date of lodgment of the application as provided for by section 16[3] of the Tax Appeals Tribunal Act cap 341.

Within a period of thirty days, after service of the application the decision maker [URA] is enjoined to lodge with the tribunal two copies of the notice of the decision, a statement giving reasons for the decision and every other document in the decision maker's possession or under his or her control which is necessary to the tribunal's review of the decision. [see section 17[1][a-c] of the Tax Appeals Tribunal Act cap 341.

The burden of proof is on the applicant to prove that where the objection is in relation to the assessment, the assessment is excessive or in any other case, the taxation decision should not have been made or should have been made differently. This is provided for in section 18 of the Tax Appeals Tribunal Act cap 341.

Upon receipt of the evidence of either party, the tribunal has powers under section 19 of the tax appeals tribunal act cap 341 to affirm, vary or set aside the decision.

Forum and Documents

The application is filed in the format of form T.A.T. 1 in the Tax Appeals [Tribunal Rules] SI 345-1 [hereinafter referred to as the rules], and is filed in the Registry at the Tax Appeals Tribunal under rule 7[1] of the rules.

Upon receipt of the application, the registrar under rule 10[2] of the rules; duly dates, stamps and signs the application; retains one copy of the application. The second and third copy of the application are retained by the applicant whereby he or she is enjoined to serve a copy on the decision maker [URA] in accordance with rule 13 of the rules.

Upon service of the application on URA, it is enjoined within 3 days after service of the application to lodge a reply in the format of form T.A.T. 2 with the registrar of the tribunal with two copies of the notice of the decision, a statement giving reasons for the decision and every other document in the decision maker's possession or under his or her control which is necessary to the tribunal's review of the decision as fortified by section 17[1][a-c] of the Tax Appeals Tribunal Act cap 345. The notice of the decision is in form T.A.T. 3 to the rules.

The registrar then serves hearing notices on the parties in the format of form T.A.T. 4 to the rules in accordance with rule 6 of the rules.

It must be noted that before hearing the application, the registrar issues summons in accordance with rule 17 of the rules, in form T.A.T. 5 in the schedule to the rules requiring attendance at a date, time and place specified in the summons of witnesses. It must be noted that if a witness without sufficient reason absconds; yet there is proof of service, the tribunal may issue a warrant of arrest in the format of form T.A.T. 6 of the schedule to the rules.

If the respondent does not turn up; the tribunal proceeds to hear the application and upon completion adjourns the hearing.

After conclusion of the hearing and submissions; the tribunal shall make a decision in the presence of the parties or their advocates and shall cause a copy to be served on each party under rule 24 of the rules.

The contents of the decision are provided for under rule 25 to the rules, thus; nature of the application, summary of the evidence, reasons for the decision, relief or remedy to which the applicant is entitled and orders as to costs.

There is a rule of cardinal importance laid out in rule 30 of the rules, to the effect that if the Tax Appeals Tribunal Rules do not provide for a matter, then the rules of practice apply.

HUMAN RIGHTS COMMISSION

The laws of great importance in this scope of study include the following;

Constitution of the republic of Uganda 1995 as amended

Uganda Human Rights Commission Act Cap 26

Uganda Human Rights Commission [Procedure] Rules SI 26-1

Universal Declaration of Human Rights 1948

Government Proceedings Act

Civil Procedure Rules SI 71-1

Article 2 of the Constitution 1995 that all rights are inherent in an individual and not granted by the state. To this end therefore, to find out whether one's rights have been infringed, one looks at cap 4 [or the bill of rights] of the constitution and other relevant articles. International instruments duly ratified by Uganda are also cornerstones of protection of rights of individuals.

To this end therefore, article 50 of the constitution provides that anyone who feels his rights have been infringed; he is at liberty to apply to a court of competent jurisdiction and obtain redress. Article 53[2][c] of the Constitution provides that if the commission is satisfied, it may order for payment of compensation or any other legal remedy or redress.

The Uganda Human Rights Commission established under the constitution has powers to investigate into violation of human rights; at its own initiative or upon lodgment of a complaint by an individual; under article 52[1][i] of the constitution. In addition, rule 4 of the Uganda Human Rights Commission [Procedure] Rules SI 24-1 [hereinafter referred to as the rules], provides that all persons claiming any right or relief in respect of a violation of any human right or freedom may apply to the commission for redress.

Article 8 of the Universal Declaration of Human Rights 1948 provides that everyone has a right to an effective remedy by a competent national tribunal for acts violating his fundamental rights granted by law.

Where one is lodging a complaint against an organ of Government, he or she invokes the principle of vicarious liability as laid out in section 10 of the Government Proceedings Act and on the locus classicus case of AG vs Muwonge [1967].

Forum and Procedure

One applies to the commission under rule 4 to the rules wherein he fills out form 7 in the schedule to the rules, stating the particulars of the complaint, facts of the complaint and particulars of the person complained against. In practice, the complainant is interviewed and a statement is made. The commission may write to the police to get evidence.

After filing the complaint, it is served on the respondent in accordance with rule 13 and form 3 to the schedule to the rules. It must be noted that on the strength of rule 30; no fees are levied on an individual for filing of a complaint. If the respondent is the Attorney General, a formal letter is thereby written to him or her, asking

||OBJECTION MY LORD..... ||

him to respond. After the Attorney General's response, a hearing is fixed. It must be noted that statutory notice does not apply in cases of human rights as fortified by the Osotraco Case [2000].

Witness summons are issued before the date of hearing under rule 14[1] and use of form 1 to the schedule to the rules. Failure to attend by a person duly served with the summons can lead to arrest as provided for in rule 16 and form 2 to the rules.

Rule 21 provides for hearing of the case, which is like in normal cases. Rule 32 provides that the Civil Procedure Rules apply in the hearings. After concluding the hearing, a decision is passed in accordance with rule 23 of the rules to wit, shall be in writing and shall contain the nature of the complaint, evidence, a summary of the evidence, the remedies and the order.

It must be noted that on the strength of rule 24 of the rules, execution of the orders of the commission follow the rule of procedure to wit CPR SI 71-1.

Major Documents.

These have been discussed above and they include the following;

The Complaint Form - Form 7 to the schedule to the Rules.

Summons - Form 3 to the schedule to the Rules.

Witness Summons - Form 1 to the schedule to the Rules.

Enforcement of orders made by the commission.

The usual rules of procedure apply; to wit, one extracts a decree, serves it on Government to satisfy. If Government fails to satisfy the decree, one obtains leave of court and applies for mandamus.

INDUSTRIAL COURT

The law of major application in this area of study includes the following:

The law applicable to this scope of the study is:

The Constitution of the Republic of Uganda 1995

The Judicature Act Cap 16

The Civil Procedure Act Cap 282

The Civil Procedure Rules SI 282-1

The Evidence Act Cap 8

The Judicature (Court of Appeal) Rules Directions SI13-8

The Judicature (Supreme Court) Rules Directions SI13-10

Practice Directions 2 of 2005

Practice Directions 4 of 2005

Case law

Common law and Doctrines of Equity

The basic issues which arise out of an appeal/ a checklist for a prudent lawyer include:

Whether X has a right of appeal?

Whether the facts disclose any grounds of appeal?

Whether the grounds can be opposed successfully?

What other remedies are available to the parties?

What is the forum, procedure and documents?

The following points should be noted under appeals:

An appeal is a creature of statute

An appeal has a scope; that is can be on a point of law, point of fact or point of mixed law and fact.

An appeal has a time frame.

At times an appeal needs a certificate of importance.

These are discussed below under distinct heads:

RIGHT OF APPEAL

An appeal is a rehearing of the matter before a superior/higher court

There is no inherent right of appeal. For an individual to appeal, he or she should show court that the right of appeal is expressly provided for in a given statute. this principle was discussed in AG vs Shah (No.4) (1971) EA 50, Bhogal Vs Khashan [1953]20 EACA 17and followed with approval in the case of UNEB Vs Mparo Constructors . It must be noted that unlike appeals in criminal cases which should be from final orders of court; appeals in civil suits are from rulings and orders. To this end therefore, appellate courts have power and jurisdiction vested in them as a result of statutory provision.

||OBJECTION MY LORD..... ||

In *BAKU RAPHEAL V ATTORNEY GENERAL SCCA NO 1 OLF 2005*, the Supreme Court held that there is no inherent right of appeal. The same court held in *LUKWAGO V ATTORNEY GENERAL SCCA NO. 6 OF 2014* that the right of appeal is a creature of statute and there is nothing known in law as an inherent right of appeal.

The right must thus be provided for by the law and any party seeking to invoke it must comply with all the stipulations therein.

A civil appeal can lie from decrees and final orders of chief magistrates in exercise of original jurisdiction and grade 1 to high court. As per section 220(1) MCA CAP 19

SECTION 220(5) MCA CAP 19, provides that no appeal lies from a decree passed from a decision judgment or order given or made as a result of the consent of parties.

DUTIES OF THE APPELLATE COURT

Duty of the first appellate court.

In *BANCO ARABE ESPANOL V BANK OF UGANDA SCCA NO. 8 of 1998*, the court stated that the duty of the first appellate is the evidence on record as a whole and come to its own conclusion bearing in mind that it has neither seen nor heard the witnesses and should make due allowance in that regard. The same is re-echoed in *Uganda Revenue Authority V Rwakasaija Azarious And 2 Ors*

Powers of the first appellate court.

These were laid down by the supreme court in *fr.narsensio begumisaw and 3 ors v eric kawtibebaga*, . The court held that it is a well settled principle that on a 1st appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in case of conflicting evidence, the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses. It must weigh the conflicting evidence and draw its own inference and conclusions. Even where the appeal turns out on a question of fact, the court of appeal has to bear in mind that its duty is to rehear the case and the court must re-consider the materials before the judge with such other materials as it may have decided to admit.

The court must then make up its own mind not disregarding the judgement appealed from but weighing and conflicting and not striking and over ruling it of on full consideration the court comes to the conclusion that the judgement is wrong. When the question arises which, witness is to be believed rather than another and that question turns on manner and demeanor, the court of appeal always is and must be guided by the impression made on the judge who saw the witnesses.

In *Banco Arabe Espennal V Bank of Uganda SCCA 8/1998*, the court commented on the duty of a first appellate court as follows.

The court specifically said that:

It has discretion to admit additional evidence as per Order 43 r 22 CPR

Re-appraise evidence of the lower court and subject it to scrutiny

Determination of the appeal

It can affirm the decision and orders of the lower court and thereby dismiss the appeal

Allow the appeal ,set aside the lower court judgment and orders

Vary the orders of the lower court

Pass any decree and make any order which ought to have been passed by the lower court.

The duty of court of appeal force capacity evidence on an appeal from high court in its original jurisdiction is set at in rule 29 rules of the court of appeal as follows: -

29(1) on any appeal from a decision of a high court acting the exercise of its original jurisdiction the court may.

Re-appraise the evidence and draw inference of fact.

In its discretion, for sufficient reconstitute add final evidence or direct that additional evidence be taken by the trial court by commissioner;

(2).....

(3),

This court recently restated the approaches of this rule in the case of Kifamunte Henry v Uganda although the principal states there in co are in respect of a criminal appeal these can be an doubt that they equally apply to civil appeals on the first opted an appellate courts own consideration and review of the evidence as whole and its own decision there on in Kitormate Henry (supra) this court said;

“We agree that on the first appeal....The appellant is entitled in have the appellant own any direction and views of the evidence as a whole and in own decision there on the first appeal court has a duty in rehear the case and in recondite, the material before the trial of judge, the appellate court must then make up it own mind not dis regarding the judgment appealed grants if card weighing and considering it when the question arises which o matter stable beloved rather that another and that question from an manner and demean, the appellate court must be guided by the impeding made on the judge whose we witness but there may be other circumstances given apart from a manner and do means, which may show whether statements credited in differing from the judge excess the question of each turning on credibility of witness where the appellate court intention,

see Pandges v R (1957) EA 336, Olen v Republic (1972) EA 32 and Charla, Bitove v Uganda land appeal No. 23/85 (SCU) (unreported)”

In my opinion the days of a first appellate court as restated in the case of a fomenter (Supra) applies to re-appraisal or re-evaded of evidence by oral testimony except of court, that by oral testimony except of course, that implement of demand over of witness or draw implementation of demeanor of witness draw crises in the case of affidavit over dues.

In the same case the court when said

“it does not seem to it that except in the courts and of cases, we are required in the evacuate the evidence be a trial appreciate the court. In second appeal it is sufficient to decide whether that first appellate court on approaching its check, applied or failed in apply such principles VCC DK Pandya v R (1957) EA (Supra); Kens v. Digenda

After referring to provisions of the judicature act and the trial on indictments decree, where not relevant to the instant case, the court continued.

“This court will no doubt consider the facts of the appeal to the extent of considering the relevant point of laws, mixed law and fact raised in any appeals of the re-evaluate the facts of each come wide clear we shall assume the duty in the 1st appellate court and creates. Unnecessary certainly which can interfere with the conclusions of the court of appeal if it appears that in consider action of the appeal as a first appellate court, the court of appeal misapplied or folioed in apt the principles of out in such decisions and Pander (Supra) Reawake (Supra) basis (Supra)”

The same principles were actioned by the court in subsequent car as seen in Bogere Morah Annoix Uganda and Bogere Charles v Uganda Supreme court criminal appeal No. 10 of 1998 (unreported)”.

In URA v R, WEakaSaija XZarious and 2 others CACA 8/2007, Engwau, JA said that.

“This being the 1st appellate courts, it is duty bound there appraise the evidence on recorder a whole and dome to its conclusion, bearing him and that it has neither seen nor heard the witnesses and should make due allowance in that regard. see D.R Pandyer V.R (1957) E.A 336 EphariomOngom& Anor Francis Binenga Dongo,

S.C C.A No. 10 of 1987 (Unreported) and rule 30(1) (a0 of that rules of this court.

Having cautioned myself about a rule of this court in its capacity of the first applicable court, I have subjected to evidence on record as a whole to a fresh and exhaustive examination and scrutiny.

Usually, the first appellate court will determine questions of law and fact

Re-evaluation of evidence

One of the duties of the first appellate court is to re-evaluate, assess and scrutinize the evidence on record. This was upheld in *Pandya vs Republic* [1957] EA 336 and followed in *Uganda Breweries Vs Uganda Railways Corporation* SCCA 6 of 2001. The first appellate court will thus not shrink from overruling the trial judge if on full consideration the court comes to the conclusion that the judgment is wrong.

The duty of the second appellate court is to decide whether the first appellate court re-evaluated the evidence, but in the clearest cases, the second appellate court may re-evaluate the evidence. This principle was upheld in *Kifamunte Henry vs Uganda* where court held thus

“it does not seem to us that except in the clearest of cases, we are required to re-evaluate the evidence like a first appellate court. On second appeal, it is sufficient to decide whether the first appellate court on approaching its task applied or failed to apply such a principle as stated in *Pandya vs R* [supra]... The principles stated in *Kifamunte*[supra] which was a criminal case apply to civil cases as well.”

Interference with discretion of a lower court

The appellate court has a power to interfere with the discretionary powers of a trial judge, if it deems fit. This principle was upheld in *Mbogo and anor vs shah* . where court held that a court of appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercising his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in the exercise of his discretion and that as a result there has been injustice.

It must be noted that discretionary powers once exercised judiciously, the appellate court will be reluctant to interfere unless the trial court has acted upon a wrong principle of law or that [in case of damages awarded] the amount is so high or so low as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled. This principle was laid out in *Robert Coussens vs Attorney General* . Other authorities to look at include *Francis Sembuya vs All Port Services {U} Ltd* and *Uganda Breweries Vs Uganda Railways Corporation* SCCA 6 of 2001. In *Banco Espanyol vs Bank of Uganda* SCCA 3 of 1997, court held that

“it is now well settled that an appellate court should not interfere with the exercise of unfettered discretion of a trial court unless it is satisfied that trial court misdirected itself in some matter and as a result arrived at a wrong decision or unless its manifest from the case as a whole that the trial court was clearly wrong in exercise of its discretion and that as a result there was failure of justice”.

Calling additional evidence

Where it appears that where evidence was wrongly rejected by a trial court, or where the appellate court requires any document to be produced or for any substantial cause, the appellate can call additional evidence. This can be envisaged in rule 29 of the Judicature (Court of Appeal) Rules Directions SI 13-8 for the court of appeal,

rule 29 of the Judicature (Supreme Court) Rules Directions SI13-10 for the supreme court and Order 43 rule 22 of the CPR for the High Court.

The principles upon which additional evidence may be taken were laid out in GM Combined [U] Limited Vs AK Detergents and 4 Others a page 15 where Wambuzi CJ held that; [on the strength of Karmali Tarmohamed and another Vs IH Lakhani and co. {1958} EA 567] the party seeking to adduce evidence must show that the evidence was not available at the time of the trial or could not with reasonable diligence have been produced. The evidence must be credible and have an important influence on the result of the case.

Ordering a retrial

An appellate court may order a retrial of the case. In the case of Gokaldas Tanna Vs Sr. Rosemary Muyinza and Anor, it was held in context that ordering a retrial is only made if its clear on the face of it that the retrial would serve a useful purpose.

Duty of second appellate court

In UGANDA BREWERIES LTD V UGANDA RAILWAYS CORPORATION(2002) EA 634, Court held that the duty of the second appellate court is to ascertain and confirm whether the first appellate court has adequately discharged its duty to re-evaluate and scrutinize the evidence on record as a whole to come to a correct conclusion and that, where the second appellate court finds that the 1st appellate court has failed in its duty, the second appellate court should re-evaluate the evidence and make appropriate orders.

In Administrator General V James Bwanika , the court noted that the authorities also state that a second appellate court will not interfere with the findings of fact by the first appellate court. It will do so only where the first appellate court has erred in law in that it has not treated the evidence as whole to that fresh and exhaustive scrutiny which the appellant was entitled to expect.

Third Appellate court.

Section 6 (2) of the judicature act cap 16, stipulates at a 3rd appeal may lie to the supreme court if it concerns a matter of law of great public or general importance or it necessary that justice be done by hearing of the matter.

Interim Applications pending Appeals.

Leave to Appeal.

Application is only granted where the intending appellant satisfies the chief magistrate or the high court that the decision against which an appeal is intended involves a substantial question of law or is a decision appearing to have caused a substantial miscarriage of justice.

There must be a substantial question of law and the proceedings were manifested by a miscarriage of justice that merits consideration by the appellate court as per the court in ALLEY ROUTE LTD V UGANDA DEV'T BANK LTD HCMA N0.634.

IN SANGO BAY ESTATES LIMITED V DRESDNER BANK (1971) E.A 17, the court held that leave to appeal from order in civil proceedings will normally be granted where prima facie it appears that there are grounds of appeal which merit serious consideration.

In FIDA BIRABWA V SULEIMAN TIGAWALANA HCCA N0.27 OF 1992, court stated that a substantial miscarriage of justice is said to occur where there has been misdirection by the trial court on of facts relating to the evidence given where there has been unfairness in the conduct of the trial.

Application.

In G.M COMBINED (U) LTD V A.K DETERGENTS (U) LTD CIVIL APPLICATION , court stated an application for leave to appeal may be made informally if counsel has instructions to appeal at the time of delivering the judgement. It however may also be made formally by notice of motion with an affidavit.

Documents.

Notice of motion

Affidavit.

Other applications include:

Stay of execution and interim stay of execution

Extension of time if any of the timelines have not been complied with.

APPEALS IN LOCAL COUNCIL COURTS

Section 32(1) of the local council courts Act comperes the right of appeal and prohibits appeals from an sent judgment or orders. Under section 32(2) it is provided that an appeal shall lie:-

From the judgment and orders of a village local and court to apparent local council court.

From the judgment and orders of a parish land council court to a town dividing sryslly country council court;

From the judgment and orders of the town division or Sub County, local council court to a court provided over by a chief magistrate.

From decrees and orders modern appeal by a chief magistrate, with is leavers, the chief magistrate or the high court to the high court”.

Section 32(3) regulars that have to appeal under paragraph bill of sub section (2) of this section shall not be granted except where the intending applicant set out as the chief magistrate or the high court that the decision against which an appeal is intended involves substantial question of law or is a decision appealing to have caused a substantial miscarriage of justice.

Section 32(4) prescribes that the application for leave in appeal must be made within 30 days from the date the decision. The first application in the chief magistrate and upon this refusal then an application should be made within 21 days of the refusal to the high court.

Section 33(1) requires an appeal from a village, parish, town, division or sub county local council court to be lodged within fourteen days from the date of the judgment or order appended against the that from the chief magistrate court to two lodged within pattern days from the date leave to appeal is granted.

Section 33(2) requires every appeal to be presented in form of amended the final of which is set out in form of demand in the fourth schedule to the act.

Sub section 3 requires the appeal court to cover article of the management of appeal to be served out the respondent and the final of the notice is set out inform of the fourth schedule to the Act.

Section 34 empowers the appellate court to hear ultravires if it considers the interest of justice. The court can do so on the application of a party or on its own motion under the former section, the court is also empowered to heal the cases a fresh.

Section 35 of the Act provides to form powers of the appellate court it provides that:-

Upon hearing an appeal, the appellate court may discuss the appeal on the grand that the decision appealed that did not occasion any miscarriage of justice or may allow the appeal.

Where the appellate court also was an appeal, it may

Reverse or vary the decision appealed for

Subject to any limit prescribed by this act or any other matters law, increase as reduce on amount compilation awarded time improved by the lower court; or

The orders set out in section 13 of this act for an order or orders made by the lower court”

APPEALS TO HIGH COURT

These appeals are governed by the Civil Procedure Act Cap 282, Magistrate Courts Act Cap 19 and the Civil Procedure Rules SI 71-1.

s.220 (1) (a) of MCA creates a right of a civil appeal from decrees and orders of magistrate grade one and CMs court while exercising original jurisdiction to the high court.

What is a decree/order

S.1 of the CPA and the case of HWAN SUNGLTD V M &D MERCHANTS AND TRANSPORTERS LTD , define a decree as a forum expression of an adjudication which conclusively determines the rights of the parties to any matter in controversy in the suit and it may be preliminary or final.

An order means a formal expression of any decision of a civil court which is not a decree.

In INCAFEX (U) LTD V KABATEREINE (1999) KALR 645, the court emphasized that appeals arise from final decrees or orders of court and not interlocutory orders.

Appeals from consent judgements.

Under s.67 (2) of the CPA, no appeal lies from a decree arising from the consent of the parties.

Order 43 of the CPR covers appeals to the High Court Rule 1 provides that the form of appeal 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. It must be noted that 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.

Under rule 4 of the order, the High Court may for sufficient cause order stay of execution of the decree from which an appeal is preferred. It must be noted that no order for stay of execution shall be made under rule 4 (1) or (2) unless the court making it is satisfied—

- (a) that substantial loss may result to the party applying for stay of execution unless the order is made;
- (b) that the application has been made without unreasonable delay; and
- (c) that security has been given by the applicant for the due performance of the decree or order as may ultimately be binding upon him or her.

In relation to appeals from orders, appeals as of right are provided for in order 44 of the CPR to wit an order under rule 10 of Order 7 returning a plaint to be presented to the proper court; an order made under rule 23 of Order 9 rejecting an application for an order to set aside the dismissal of a suit; an order under rule 27 of Order 9 rejecting an application for an order to set aside a decree passed ex parte; (d) an order made under rule 21 of Order 10; an order under rule 10 of Order 16 for the attachment of property; an order under rule 19 of Order 16 pronouncing judgment against a party; an order under rule 31 of Order 22 on an objection to the draft of a document or of an endorsement; an order under rule 67 of Order 22 setting aside or refusing to set aside a sale; an order that execution be levied made under rule 6 of Order 23; an order under rule 8 of Order 24 refusing to set aside the abatement or dismissal of a suit; an order under rule 9 of Order 24 giving or refusing to give leave; an order under rule 6 of Order 25 recording or refusing to record an agreement, compromise, or satisfaction; an order under rule 2 of Order 26 rejecting an application for an order to set aside the dismissal of a suit; orders in interpleader suits under rule 3, 6 or 7 of Order 34; an order made upon the hearing of an originating summons under Order 37; an order made under rule 2, 3 or 6 of Order 40; an order made under rule 1, 2, 4 or

8 of Order 41; an order under rule 1 or 4 of Order 42; an order of refusal under rule 16 of Order 43 to readmit or under rule 18 of that Order to rehear an appeal; an order under rule 4 of Order 44 granting an application for review; an order made in an interlocutory matter by a registrar.

It must be noted that an appeal under these Rules shall not lie from any other order except with leave of the court making the order or of the court to which an appeal would lie if leave were given. Rule (3) applications for leave to appeal shall in the first instance be made to the court making the order sought to be appealed from.

Appeals arising as 2nd appeals from CM'S decision.

Under s.220 (1) (c) these are filed in the high court with leave of court. In OKELLO OKELLO v. AYGA OGENGA , court held that where the requirement to seek leave prior to the institution of the appeal is not a mere technicality but a mandatory one.

The court noted that the jurisdiction for the requirement is to avoid a multiplicity of appeals regardless of merit.

Grounds of Appeal.

S.77 (1) of the CPA requires that an appeal sets forth as a ground of appeal any error, defect or irregularity in such order affecting the decision appealed.

O.43(2) of CPR requires that the MOA sets forth, concisely and under distinct heads the grounds of objection (Appeal) to the decree appealed from without any argument or narrative and the grounds shall be numbered consecutively.

When raising grounds look at the record in totality with all the attendant documents. From the above identity: a procedural error of fact, an error of law of mixed law and fact, a defect and or an irregularity.

Example of grounds from workshop.

The learned trial magistrate erred in law when he misdirected himself on the principle himself on the principle governing proof of a triable issue in an application for leave to file a defense in a summary suit.

The learned trial magistrate erred in law and fact when he failed to properly evaluate the evidence on record and grant the appellant leave to defend the suit when;

He had denied liability of the suit claim.

Had explained circumstances upon which the subject acknowledgement of receipt of suit sum was made.

Had explained circumstances under which cheques drawn from M/S sunset enterprises ltd had been issued and countermanded.

Scaffold Engineering & Construction Limited v. Diamond Trust Bank Ltd, Civil Application No. 1016 of 2023, The Court of Appeal upheld the significance of Section 76(2) of the Civil Procedure Act, which prohibits

second appeals concerning orders on interlocutory matters. The applicant sought protective orders to restrain the respondent from dealing with properties used as collateral for an overdraft facility. The applicant, having failed to secure a temporary injunction from both the Registrar and the High Court, appealed to the Court of Appeal. The respondent raised a preliminary objection, arguing that the appeal was invalid under Section 76(2) of the Civil Procedure Act, which bars second appeals from orders relating to interlocutory matters. The Court of Appeal agreed, dismissing the application as incompetent, ruling that the appeal was barred by law, and awarded costs to the respondent.

Procedure, forum and documents.

Procedure

Extraction of a decree/order.

Filing of a memorandum of appeal in the high court within 30 days from the date of then judgement (ORDER 43 R 1(1))

Payment of the prescribed fees

Under deserving circumstances court may order for security for costs at the time of filing of the appeal. Such security is mandatory in all cases where the appellant resides outside Uganda and not in possession of sufficient immovable property within Uganda. (ORDER 43 R 9(1)).

A court may dismiss an appeal where security is ordered and not furnished by the appellant (ORDER 43 R 9(2)) of the CPR.

On receipt of MOA, registrar of high court is required to communicate a notice of appeal to the relevant lower court under which he /she also requests such court to urgently forward a certified typed record of proceedings and judgment to the high court to enable court fix the appeal. (ORDER 43 R 10). The practice however is that counsel for the appellant writes to the lower court requesting for a certified typed record of proceedings of judgement, serving a copy of such letter onto the opposite party. Once the record is obtained, counsel will prepare an order/decree, MOA and index of appeal for filing in high court.

Service of the MOA plus an order /decree on opposite party; at his last known address.

Forum

High court. Article 139(1) of the constitution, section 220(1) (a) and section 229 of the MCA, section 79(1) of the CPA.

Documents.

An order/decree

MOA

Letter requesting for certified proceedings of judgement.

What is the procedure, forum and documents necessary to lodge on Appeal.

Procedure

The intending appellant Ordinarily has the obligations on extract a decree, or order cause it to be signed and sealed and also request for proceedings to be prepared, certified and availed from the Judgement or ruling of the trial court. S.220(1) as Abato Tumushabe v Startcy Beinae Abalo.

Held: S.220 (1) (a) MCA (Magistrate Court Act) requires that an Appeal must be from a decree, that at the time the appeal is lodged, a decree appealed from must be in existence 0.18 R.7 (now 0.21 R.7) puts the Duty of extracting a decree on the successful party. It was therefore erroneous for the respondent to argue that the intending appellant has the duty to extract the decree.

Haji Muhammed Nyanzi Ali Segne (1992-1993) HCJ 21:

Held, that it is the duty of the successful party to prepare without delay a draft decree and submit it to the magistrate for signature and sealing. If the applicant's Lawyer prepared the decree which gave wing data they have themselves to blare, especially so if they left it to the court to do.

Previously failure to extract a decree was total to the appeal.

Kintu Sarah v Jombwe Ssebaduka.

Held; further under S.220 (1) (a) of MCA laws of Uganda, it is provided that an Appeal from the Chief Magistrate Court or Magistrate GJ is from the decree or order from the decision of the trial court.

I have perused the court judgment it doesn't indicate that the appellant extracted the decree or order before preferring an appeal.

In the case of Kiwege and Mgude Sisal Estates Land Vs Manilal Ambala Nathwans ; It was held that "an Appeal to the High Court must be against a decree which must be extracted and filed together with memorandum failure to extract a formal decree before filing the appeal was a defect going to the jurisdiction to the court and could not be waived. The appellant's actors have contravened the above provisions of the law"

However, the current legal position is that it is not amendatory required to extract a decree before preferring an appeal to the High Court.

Tumuhae Luck v the electoral commission. It was

Held;

After due consideration of the arguments on the point, this court's take the view that, indeed, the duty to extract a decree in the Magistrate's Court lies with the court in accordance with 0.12 2.7(3) CPR. It provides as follows: "in a magistrates Court, the decree shall be drawn up and signed by the magistrate who pronounced it or by his or her successor"

This position is well supported in *Mbakana Mumbere v Maimuna Mbabazi* per Lameck N Mukasa J. where leaned judge; citing the decision in *Baco Aspanol v Bank of Uganda* (1996) HCJ 12, in which the court after holding that the decree was not properly extracted as required by law, reiterated the position in *Kibuula Musoke Wiliam & Another v Dr. Apollo Kaggwa* App No.46/1992 that;

".....it is clear from the above provisions that the extraction of a formal decree embodying the decision complained of is no longer a legal requirement in the Institution of an Appeal. An Appeal by its very nature is against the judgment or a reasoned order. The extraction of the decree was therefore a mere tedricality which the old municipal law put in the way if intending appellants and which at Eme prevented them from having their cases teard on merits such a law can not co-exist in the context of the 1995 constitution A. 126(2) (c) where the courts are enjoyed to administer "substantive justice without undue regard to technicalities.

William Kisembo & Anor v Kiiza Rwakakara HCCA No.07/2013

Held; this court is alise to the previously strict view that required an appellant to extract a decree before appealing. However, this is done row as a matter of prudence because the court of Appeal in the case of *standard chartered Bank (U) Ltd vs Grand Hotel (U) Ltd* held that it is no longer a requirement to accompany the appeal with a formal order or extracted decree.

The High court echoed the same legal proposition in the case of *Patrick Nkoba vs Ruwenzori Highlands Tea Co & Another* , for the above reasons I over rule the objection raised by the respondent for lack of merit.

The same position was held in *Henry Kasambwa v Vakoba Rutantamba* and *Namemba Suleiman v Bwekwaso Magenda* . The extraction of decree is aged practice but not a mandatory requirement. That as long as you have a judgment you may not need to extract a decree to appeal.

An Appeal to the High Court is preferred by a memorandum of appeal containing the grounds of Appeal and duly signed by counsel for the appellant S.79 CPX.

0.43 r.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.

It is not a requirement to lodge a notice of appeal either in the Magistrates Court or to the High Court as a notice of appeal does not commence an appeal from the magistrates court to the High Court. However, a notice of appeal required when it is from the High Court to the court of Appeal.

Buso foundation Ltd v Mate Bob Phillips HCCA No. 40.2009

Held; an appeal is by killing a memorandum of appeal not by a notice of appeal in a magistrate court.

In Sekyali v Kyakwambala , it was held that an Appeal in the High Court is instituted by a Memorandum and not notice of appeal

The intending appellant normally files request of the proceedings indecisive of judgment by formal letter to the trial court to enable him or her prepare for the grounds for appeal.

In Nawemba Sulaiman v Byekwaso (1989) HCJ 140, It was held that it would be anomalous for a party to be required to file a memorandum of appeal before obtaining or having access to the lower record.

The question that arises is whether is amendatory requirement to serve the letter requesting for the proceedings on the opposite party or counsel. In the context of an appeal from magistrate court to the High court service of such a letter is not a mandatory requirement but a rule of courtesy and prudent practice and failure to do so does not render he appeal totally defective. (it is a mandatory requirement for appeal from High Court to court of Appeal and court of Appeal to supreme Court.

Buso foundation Ltd V Mate Bob Phillips

Held; that appeal to the (High Court, are governed by the clear provisions of 0.43 CPR and S.79 of CPX. In the premises there is no legal requirement for the appellant to copy and serve his request to the lower courts for the decreed order and proceedings to the respondent in appeal to the High Court. He could however as a matter of Country copy the same to the respondent.

In Sekyali v Kyakwambala, it was held that there is no requirement for an appellant to serve a respondent with the letter seeking a record of proceedings.

The purpose of the request for proceedings is to enable the intended appellant to obtain satisfied copies of the proceedings and judgment and prepare a memorandum of appeal. A memorandum of appeal must be lodged in the High Court (the relevant Registry). A memorandum of appeal must be lodged within 30 days from the date of decision of the trial court S.79.

Section “79. CPA (1)

Except as otherwise specifically provided in any other law every appeal shall be entered within thirty days of the date of the decree or other of the court as the case may be appealed against; but the appellant court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.

In *Buso foundation Ltd V Bob Mate Philip*, it was held that an appeal which was filed 3 months from the date of the lower court’s decree prima facie offended the 30 days rules prescribed by S.79 (1) of CPA.

Sarah Kintu v Jjombwe Ssebaduka (HCCA No. 025 of 2011)

Held;

The laws governing/ concerning lodging of appeals from the lower courts of the Magistrate Courts to the High Court are 0.43. Rule of CPR which provides that an appeal shall be commenced by a memorandum of appeal; and section 79 (i) (a) CPA, which provides that an appeal shall be entered within 30 days of the date of the decree or order of the court.

In the instant appeal, the appellant commenced the appeal with a notice of appeal; and filed the memorandum of appeal on 5th August 2011 which is far beyond the prescribed time by law within which to file an appeal. Thus this appeal was filed out of time.

MCA provides that the appeal lies from a decree or order and S.79 suggest that the time starts running from the date of the decree or order.

Buso foundation v Mate Bob; Section 79 appeal must be lodged within 30 days of the date of the decree or order of the order. In the instant case, judgment was delivered on 22nd July 2022 and today is 12th July 2022 which means that BCJ Bank is still within time to appeal.

However, the 30 days within which the appeal must be lodged do not start running until such a record of proceedings has been availed S.79(2). In the case of Godfrey Tuwangye Kazzora v Georgina Kitari Kwenda (1992 -9(3) HCB 1215, it was held that “The time for lodging an appeal does not begin to run until the appellant receives a copy of proceedings against which te or ste intends to appeal.

Buso foundation

S.79(2) CPA excludes the time taken by the court to supply the lower courts proceedings and order/ decree sought to be appealed from. Where the proceedings are availed the appeal is lodged in the High Court in form of a memorandum of appeal under 0.43 R.1.

In Okia Joseph v I gira Lawrence , it was held that appeals are originated by filing a memorandum of appeal under 0.43 R.1 OF CPR. That it would be anomalous for a party to be required to file a memorandum of appeal before obtaining or having access to lower court record. The memorandum of appeal must be signed by the appellant or counsel for the appellant and should be lodged in the registry of the relevant division of the High Court order 43 R.1 and it must be signed and sealed by the registrar of the High Court 0.43 R-8. Where a memorandum of appeal is lodge, the High Court shall send a notice of the appeal to the final court requiring i.e. to dispatch all material papers in the suit 0.43 R.10.

William Kisembo v Kiiza Rwakaipara.

Hellen Obura J; I have perused with entire 0.43 CPR which govern appeals to this court.

0.43 2.10(2) puts the responsibility of giving notice of appeal with a view of calling for the records from the trial court onto the High Court. There is no mention of the appellant’s role beyond filing the memorandum of appeal.

The memorandum of appeal should be served on the respondents within 21days from the date of filing 0.43 R.11.

When the proceedings are duly typed, satisfied and the original file forwarded to the High Court, Counsel for the appellant normally prepares a record of proceedings upon which the appeal is lodged. This is not a mandatory requirement but prudent predice 0.43 R.10(3) allows the parties to apply in writing to the trial court for copies of the necessary papers and such copies shall be availed at the expense of the applicant.

Kazina v Samalie Nasali HCCA No. 34/2017

Held;

There is no statutory requirement to attach the record of proceedings, the orders, taxation certificate etc to the affidavit in support of the chamber

Summons

The contention that it necessary to include the order, decree, taxation certificate or ruling has no basis under the rules which are applicable to appeals from taxation decisions

The record of appeal should as a matter of prudent practice be served on the respondent or counsel for the respondent.

There after the intending appellant should apply to have the appeal fixed for hearing (extract hearing notices to be served on the other party O.43 R.11)

Powers of the high court as an appellate court.

It has the discretion to admit additional evidence where the lower court refused to admit evidence which it ought to have admitted or where such evidence is necessary to enable the high court pronounce its judgement.

ORDER 43 R 22 of CPR. ANIFA KAWOOYA V NCHE SCCA APPN0.8/2013

Determine the appeal. ORDER 43 R 20 of CPR.

To allow the appeal and set aside the lower court judgement and or orders.

To order a retrial .ORDER 43 R 21 of CPR.

To vary the orders of the lower court or substitute the same with any appropriate order.

To pass any decree and make any order which ought to have been passed by the lower court. ORDER 43 R 27 CPR.

To dismiss the appeal and affirm the decision and orders of the lower court.

Stay of execution pending an appeal.

One may stay execution pending an appeal under order O.43 r 4(2) upon proof of sufficient cause.

Conditions for stay.

Existence of a pending appeal (MOA) with a high probability of success.

Application is made within a reasonable time.

Threats to execute the order/decree

Likelihood to suffer substantial loss if a stay is not granted.

Furnishing of security for due performance of the order/decree; making an order taking to pay such security. No security is required from government under O.43 R 6 of CPR.

Procedure, forum and documents.

Procedure

1. Lodging a formal application to court.
2. Payment of filing fees
3. Deposit in court of security for due performance of the order/decree
4. Serving opposite party with the application.

Forum

High court.

Documents O.43 R 4(5) of CPR.

Notice of motion

Affidavit in support.

THE PROCEDURE FOLLOWED IN APPEALS GENERALLY

Leave To Appeal;

It must be noted that where any decision has been made by the High Court, or any other court, one ought to ascertain whether the right of appeal exists; if not one has to ascertain whether he or she has to obtain leave to appeal. It must be noted that if leave is required before one appeals, and he or she does so without obtaining the leave; the appeal is incompetent and should be struck out as such. This principle is fortified by the case of EAGEN Vs EAGEN Civil Application 22 of 2001 [court of appeal].

Notice Of Appeal

An intended appellant to the High court, Court of Appeal and the Supreme Court is enjoined by law to give notice of appeal to the appellate court within 14 days from the date of judgment. This is provided for under order of the Civil Procedure Rules, rule 75[2] of the Judicature (Court of Appeal) Rules Directions SI 13-8 and rule 71[2] of the Judicature (Supreme Court) Rules Directions SI 13-10.

It must be noted that even when leave to appeal is not granted, an intended appellant may lodge a notice of appeal. This is evident in sub rule 4 of rule 75 of the Judicature (Court of Appeal) Rules Directions SI 13-8 and rule 71 of the Judicature (Supreme Court) Rules Directions SI 13-10.

Rules 77[1] of the Judicature (Court of Appeal) Rules Directions SI 13-8 and 73[1] of the Judicature (Supreme Court) Rules Directions SI 13-10 provide that a notice of appeal must be served upon the respondent within 7 days from the date of lodging. The notice should be served on all persons directly affected by the appeal. This is fortified by the case of Francis Nyansio Vs Nuwah Walakira SCCA 24 of 1994.

Rules 79 of the Judicature (Court of Appeal) Rules Directions SI 13-8 and 75 of the Judicature (Supreme Court) Rules Directions SI 13-10 provide that a respondent served with a notice of appeal must within 14 days file an address of service. A respondent who defaults to do this should not be seen to complain that the record of appeal was not served upon him in time. This was held in Hussein Mohamed Vs Augustine Kyeyune SCCA 7 of 1990.

Application For Record Of Proceedings

An appellant must make an application for a record of proceedings of the decision he or she intends to appeal against, within 30 days from the date of such decision, under the provisions of Rules 82[2] of the Judicature (Court of Appeal) Rules Directions SI 13-8 and 78[2] of the Judicature (Supreme Court) Rules Directions SI 13-10 respectively.

The application must be writing and must be served and evidence of service upon the Respondent must be proved or obtained. It must be noted that the provision of the rules above are mandatory and the appellant can not rely on the record of proceedings unless a copy of the letter requesting for the record is served on the Respondent and proof of service obtained. This was upheld in Kasirye Byaruhanga Vs UDB.

Preparation Of Record Of Appeal

When the record of proceedings is ready, the registrar writes to the intended appellant forwarding the certified copy of the record of proceedings.

In case of the court of appeal, the appellant then prepares 6 copies of the record of appeal whereby, three copies are retained by the court for the justices, a copy for the Respondent, a copy for the court record, and a copy for the appellant.

In case of the supreme court, the appellant then prepares 8 copies of the record of appeal whereby, five copies are retained by the court for the justices, a copy for the Respondent, a copy for the court record, and a copy for the appellant.

Basic documents in appeals

Judgment

Order giving leave to appeal [if necessary]

Notice of Appeal

Memorandum of appeal

Record of Proceedings

Supplementary Record [under Rules 89 of the Judicature (Court of Appeal) Rules Directions SI 13-8 and 85 of the Judicature (Supreme Court) Rules Directions SI 13-10 respectively].

It must be noted that an appeal is incompetent where a basic document is not filed with the original record on the strength of the holding in *Executri of the Estate of the late Namatovu Tebajukira vs Mary Namatovu SCCA 8 of 1988*.

Filing A Record Of Appeal

On the apogee of preparation of the record of appeal, it must be filed in the Court of Appeal or supreme Court within sixty days from the date when the record of proceedings was forwarded to the appellant. It must be noted further that the record of appeal filed in court must be served upon all the respondents within seven days from the date of filing, under rules 87 and 83 of the Judicature (Court of Appeal) Rules Directions SI 13-8 and the Judicature (Supreme Court) Rules Directions SI 13-10 respectively].

RIGHTS OF THE RESPONDENT

A] Cross Appeal

A respondent has a right to cross appeal. He may cross appeal within thirty days from the date of service of record of appeal, under rules 90 and 86 of the Judicature (Court of Appeal) Rules Directions SI 13-8 and the Judicature (Supreme Court) Rules Directions SI 13-10 respectively. It must be noted that a respondent who does not cross appeal against particular matters, for instance damages and interest can not be seen seeking courts' indulgence for their modification or for any other reason whatsoever. This was upheld in the case of *Fortunato Frederick Vs Irene Nabwire*

B] Affirming a decision

A respondent has a right to ask court to provide record of proceedings passed by the lower court in his favor on grounds that other additional evidence to what was relied on by the lower court, the appellant's appeal has no merit. He is enjoined to give notice to the court within thirty days from the date of service of the record of appeal upon him or her, under rules 91 and 87 of the Judicature (Court of Appeal) Rules Directions SI 13-8 and the Judicature (Supreme Court) Rules Directions SI 13-10 respectively.

C] Application for further security

A respondent has a right to apply to court for further security., the appellate court shall if it deems fit, direct that further security for costs be given, under rules 104[3] and 100[3] of the Judicature (Court of Appeal) Rules

Directions SI 13-8 and the Judicature (Supreme Court) Rules Directions SI 13-10 respectively. This power is discretionary. A case in point where this point was observed is UCB Vs Multi Constructors Ltd SCCA 29 of 1994.

D] Application to strike out Notice of Appeal or Appeal

This application may be made on any of the following grounds:

The appeal is barred by statute.

An essential step has been omitted, e.g. failure to obtain leave of appeal.

An essential step has been taken out of time

The provision of this right are evident in rules 81 and 77 of the Judicature (Court of Appeal) Rules Directions SI 13-8 and the Judicature (Supreme Court) Rules Directions SI 13-10 respectively. In Mustaq Abdulah Bhegani Vs Obola Ochola , court held that a respondent named in the notice of appeal is empowered to apply to strike out the Notice of appeal with costs. In Hannington Wasswa and Anor Vs Maria Ochola and Others the appellant failed to institute the appeal within 60 days from the date service of the record of proceedings upon him; on application by the respondent, the appeal was struck out on ground that an essential step had not been taken.

APPEALS FROM GRADE II MAGISTRATE'S COURT

Where the appeal is from a Grade II Magistrate's Court, it lies in the Chief Magistrate's Court. This is conversed in section 204(1)(b) of the Magistrates Courts Act. Section 204(2) of the Magistrate Courts Act provides that the scope of this appeal is limited to matters of law, fact or mixed law and fact.

It must be noted that where a person has pleaded guilty, no appeal shall lie therein except against the legality of the plea or sentence as enunciated in section 204(3).

APPEALS FROM CHIEF MAGISTRATE'S COURT

An appeal from a Chief Magistrate's Court lies in the High Court. This is provided for in section 204(1) (a) of the Magistrate Courts Act Cap 16. Subsection 2 provides that the scope of this appeal is on matters of fact, matters of law and matters of mixed law and fact. Section 204(4) provides that an individual can not appeal from a sentence of one month or fine of less than one hundred shillings.

Documents for appeals from CM to H.C

Order.

THE REPUBLIC OF UGANDA

||OBJECTION MY LORD..... ||

IN THE CHIEF MAGISTRATES COURT OF LIRA AT LIRA

CIVIL SUIT NO.784 OF 2018

OBWAL OSBERTPLAINTIFF

VERSUS

KULAMA BEN.....DEFENDANT.

ORDER.

This suit is coming up for final disposal this 7th day of September 2020 before H/W MUKASA JOHN CHIEF MAGISTRATE in the presence of Mr. Ben kikuma for the plaintiff and Mr. Oguttu Osbert for the defendant.

IT IS HEREBY ORDERED THAT;

The plaintiff is entitled to UGX.22,500,000 against the defendant

The costs of the suit.

GIVEN UNDER my hand and seal of this honorable court this.....day of September 2020

.....
DEPUTY REGISTRAR

Extracted by:

Memorandum.

THE REPUBLIC OF UGANDA

THE HIGH COURT OF UGANDA AT LIRA

CIVIL APPEAL NO.....OF 2020

(Arising from chief magistrates court of lira)

Civil suit No. 784 of 2018)

KILAMA BENAPPELLANT

VERSUS

OGWAL OSBERT.....RESPONDENT.

MEMORANDUM OF APPEAL

(Appeal from the judgement of H/W Mukasa john in civil suit No.784 of 2018)

The appellant, KILAMA BEN appeals to the H.C at Lira from the decree of H/W Mukasa john in chief magistrate court of lira civil suit No.784 of 2018 dated 7th day of September 2020 and sets forth the following grounds of appeal against the whole order

The learned trial magistrate erred in law and facts.....

WHEREFORE the appellant prays that:

The appeal is allowed

The judgement of the trial court is set aside.

The appellants is awarded costs of the appeal and in the court below

Dated at Kampala thisday of2020

.....
MS SUI GENERIS ADVOCATES
COUNSEL FOR THE APPELLANT.

Lodged in this court registry of the H.C at Lira on the dayof September2020

.....
REGISTRAR

To be served on

Drawn by

Hearing notice

Some title as in memorandum.

||OBJECTION MY LORD..... ||

HEARING NOTICE.

TO: OGWAL OSBERT

TAKE NOTICE that the hearing of this appeal has been fixed for the day ofofof 2020 ato'clock in the fore/afternoon or soon thereafter as the case may be heard in court.

If no appearance is made by yourself or on your behalf by your advocate or by someone by law authorized to act for you in this appeal, it will be heard and decided in your absence.

Given under my hand and seal of this court thisday of.....2020

.....

REGISTRAR

Extracted by:

Notice of appeal

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)**

XYZ.....APPELLANT

VERSUS

ABC.....RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that XYZ the appellant being dissatisfied with the decision by the honorable justice CM Kato of the high court of Uganda (commercial division) intends to appeal to the court of appeal of Uganda against the whole of the said decision

The address of service of the appellant is C/O KLM Advocates, plot 8 kyabube street, P.O BOX 7117, Kampala.

It is intended to serve copies of this notice on:

||LUBOGO ISAAC CHRISTOPHER..... ||

DFK Advocate, plot 7

Parliament Avenue

P.O box 76, Kampala

(Counsel for respondent)

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

SUI GENERIS ADVOCATES

COUNSEL FOR THE APPELLANT

TO: Registrar high court

Lodged in the court on thisday of.....2020

.....

REGISTRAR.

Drawn and filed by.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISC. APPLICATION NO. OF 2022

ARISING FROM MISC APPL. NO OF 2022

**ARISING FROM CHIEF MAGISTRATE'S COURT OF KAMPALA OF MENGO C/S NO.
212/2014**

BCJ Bank (U) LtdAPPLICANT

Vs

KALANGALA FINANCIAL SERVICESDEFENDANT

CHAMBER SUMMONS EXPARTE

(under 0.43 R.4(5) CPR)

||OBJECTION MY LORD..... ||

Let all parties concerned attend the heard judge in Chamber on theday of 2022 at O'clock in the forenoon or as son as Counsel for the Applicant camber heard for orders that;

An interim order doth issue staying the execution of the decree in C/S No. 212 of 2022 of Chief Magistrate's Court of Kampala at Mengo pending determination of Misc Application No. Of 2022& CA No.of 2022

Costs of this application be provide for.

THE GROUNDS ON WHICH THE APPLICATION IS BASED ARE IN THE AFFIDAVIT.

TAKE NOTICE THAT this Application is supported by an Affidavit of Janeson Muhurizi managing Director of BCJ (U) Ltd which contains more elaborating grounds and shall be read and relied on at the hearing.

This summons was taken out by Counsel for the Applicant.

Given under my hand and the seal of this court this Day of 2022

.....

REGISTRAR

Drawn and filed

SUI GENERIS

APPEALS FROM THE HIGH COURT

Article 134 of the Constitution 1995 provides for the right of appeal from the High Court to lie in the Court of Appeal. It is further provided for in section 10 of the Judicature Act Cap 16 that an appeal from the High Court shall lie in the Court of Appeal.

Each must be strictly complied with or the defaulting party must show cause why the appeal should not be struck out for failure to observe an essential step in the prosecution of the appeal. UTEX INDUSTRIES LTD V ATTORNEY GENERAL SCCA N0.52 OF 1995 and rule 82 of COAR.

Notice of appeal to be filed in the H.C registry within 14 days from the date of the decision. Rule 76(1) and (2)

It should state whether the intended appeal is against the whole decision and orders or part thereof.

It must state the address of the appellant and the address of the persons intended to be served

It is signed by the appellant or his advocate. (RULE 76(3))

Service of notice of appeal on the other party within 7 days. rule 78(1)

Written application for a certified copy of proceedings of judgment from the registrar of H.C. Must be done within 30 days from the date of judgement and served within those days. (RULE 83(2))

Upon service of the notice of appeal, the respondent must within 14 days file a respondents notice of address and serve it on the appellant within 14 days (RULE 80(1) (a) and (b)).

Within 60 days from the date of filing of the notice of appeal, the appellant must file the MOA with the record of appeal. The 60 days pausing running the moment the letter requesting for certified proceedings is filed and served and resume to run upon receipt of the record and judgement. RULE 83(1), you file 6 copies of memo of appeal,6 copies of record of appeal, evidence of payment of requisite fees, security for the costs of the appeal.

Payment of filing fees and a deposit of security for costs of the appeal. R.104 and 105of COAR

Serve the MOA and record of appeal within 7 days from the date of filing. R.88 of COAR.

Applications for extension of time.

These are brought under Rule 2 (2) and rule 5 of the COAR.

Documents.

Notice of motion

Affidavit in support

Stay of execution.

Brought under R.2 (2) of COAR.

Okumu & 2 Others v Uganda Electricity Transmission Co. Limited (Miscellaneous Application 60 of 2021)
An application for stay of execution pending an appeal in the Supreme Court can be filed in the High Court (the trial court) where an application for execution has been preferred in the High Court, and the decree and order sought to be executed originated from the High Court

Grounds.

Pending appeal. A notice of appeal is a sufficient document upon which stay of execution can be obtained. ALCON INTERNATIONAL LTD V KASIRYE BYARUHANGA AND CO ADVOCATES (1996) HCB 61. Further R.3 OF COAR defines an appeal to include an intended appeal.

High chances of the appeal succeeding

Failure to obtain a stay will render her rights in the pending appeal nugatory.

Procedure for getting a certificate of general importance

This is covered in both the Judicature (Court of Appeal) Rules Directions and the Judicature (Supreme Court) Rules Directions, depending in what court an individual is applying to:

In case it is the Court of Appeal;

Rule 39 (1)(a) of the Judicature(Court of Appeal) Rules Directions (herein after referred to as the court of appeal rules) provides that an application is made to the High Court where the Applicant prays for a Certificate general importance.

Rule 2 of the Court of Appeal Rules provides that applications to the High Court should be by Notice of Motion supported by an affidavit.

Rule 4 places a mandate on the Applicant (usually the convict) to give Notice to the Police. This is fortified by Namudu Vs Uganda SCCA 3 Of 1999, which lays down the considerations for the certificate of general importance.

In case it is the Supreme Court ;

Rule 38(1) (a) of the Judicature(Supreme Court) Rules Directions (herein after referred to as the supreme court rules) provides that where an appeal lies if the court of appeal certifies that a question or questions of public importance arise, applications to the court of appeal shall be made informally at the time the decision of the Court of Appeal is given against which the intended appeal is to be taken. Rule 38(1) (b) provides that where the court of appeal declines to grant a certificate referred to in para a, then an application may be lodged in the Court within fourteen days after the refusal to grant the certificate by the Court of Appeal.

APPEALS FROM THE COURT OF APPEAL.

Article 132(2) of the Constitution provides that a right of appeal from the court of appeal shall lie in the Supreme Court. This is further fortified by section 5(1) of the Judicature Act Cap 13.

Section 6 of the judicature act provides for civil appeals to the Supreme Court it states that

An appeal shall lie as the right to the supreme court where the court of appeal confirms, varies or reverses on judgment or order, including an introductory order given by the high court in the exercise of its original jurisdiction and either confirmed, varied or reversed by the court of appeal.

Where an appeal amounts from a judgment as order of a chief magistrate or a magistrate grade in the exercise of his or her original jurisdiction but not including an interlocutory matter a party aggrieved may lodge a third appeal to the supreme court on the certificate of the court of appeal that the appeal concerns a matter of law of great public or general importance or if the supreme court considers, in its overall duty to see that justice is done that the appeal should be heard.

The judicature act supplement content directions have good provisions similar to that of the court of appeal.

Civil appeals are dealt with from R.71 to 98 security for costs is provided for in R.101 which sets out that:-

Subject to rule 109 of the rules, there shall be lodged in court on the institution of a civil appeal as security of the courts of the appeal the sum of 400,000shs.

Where an appeal has been withdrawn under rule 9 of these rules, after notice of appeal has been given, the court may on the application of any person is a respondent the cross appeal direct the cross appeal direct the cross appellant to engage the court as security for costs the sum of 400,000 shillings, or any specified sum less than 400,000 shillings, or may direct that a cross appeal be heard without security for costs being engaged

The court may at any time if the court thinks fit direct that further security to costs be given and may direct that security be given for the payment of facts costs relationship the mater in question in the appeal.

Where security for courts has been indged the register may payment and with the consent of the parties as in infirmity with the decision of a court and having a regard the rights of the parties under it.

MonitorKiggundu & 7 Others v Kiyaga(Miscellaneous Application 552 of 2024) The court disagreed with the Respondent's argument that costs follow the event, and since the Appeal dismissed Civil Suit No. 0073 of 2021, it follows that even costs of the Civil Suit had to be paid. The court emphasized that costs must be expressly awarded, not implied. Since the orders in Miscellaneous Application Appeal No. 0001 of 2021 were silent on costs related to Civil Suit No. 0073 of 2021 and Miscellaneous Application No. 0178 of 2021, it was improper to include them in the Bill of Costs for taxation. The court also noted that the Bill of Costs inaccurately listed Civil Suit No. 0073 of 2021,creating the false impression that costs had been awarded.

Scope of appeals to Supreme Court:

If it is a conviction from the High Court, or court of appeal, the scope of the appeal in the Supreme Court is limited to matters of law, or mixed law and fact, per section 5(1) (a) of the Judicature Act.

If it is an acquittal from the High Court; and a subsequent conviction in the Court of Appeal, the scope of appeal in the Supreme Court is limited to matters of law, fact or mixed law and fact, section 5(1) (b) of the Judicature Act.

||OBJECTION MY LORD..... ||

If there is a conviction in the High Court; followed by an acquittal in the court of appeal, the DPP's appeal in the supreme court is limited on matters of law or mixed law and fact for a declaratory judgment, section 5(1) (c) of the Judicature Act.

If there is an acquittal in the High Court, followed by a subsequent acquittal in the Court of Appeal, the DPP's appeal to the supreme court is limited to matters of law of General importance, section 5(1) (d) of the Judicature Act.

It must be noted that appeals in criminal matters arise from final orders for examples convictions, acquittals, special findings, ruling on no case to answer. This principle is fortified in Charles Twagira vs Uganda.

GROUNDS OF APPEAL

In ascertaining the grounds of appeal, one should consider the following:

The conduct of the trial,

The sufficiency of evidence to sustain the charges; with regard to ingredients of the offence committed.

The errors of fact and of law by the trial judge or magistrate

The legality of the sentence

Misdirections and non directions the trial magistrate or trial judge relied on.

Admission of evidence (with particular regard to inadmissibility and irrelevance)

Reliance on fanciful theories by the trial judge or trial magistrate.

Material irregularities

Evaluation of evidence on record. This is fortified by the case of Kifamunte Vs Uganda SCCA 10 of 1997, which noted the case of Pandya vs R (1957) EA 336 with approval and court held the appellate court has a duty to evaluate the evidence while the second appellate court has a duty to re- evaluate the evidence on record.

TIME FRAMES FOR LODGING APPEALS

The general rule is evident in section 28 of the Criminal Procedure Code Act, thus an appeal is commenced by a notice of appeal lodged with the Registrar of the Court in which the decision was passed.

Section 31 of the Criminal Procedure Code Act provides that one can apply to the High Court for extension of time, if he or she wishes to file the appeal out of time.

Rwavira Patrick v. Kutesa Richard, Civil Application No. 248 Of 2023. The COA highlighted that the Applicant's failure to file a Notice of Appeal within the required 14-day period, as mandated by Rule 76, and the omission to seek court validation for the late filing, rendered the Notice of Appeal invalid.

If it's the court of appeal;

Rule 59 of the court of appeal rules provides that in capital cases, notice of appeal is presumed to have been given at the time of passing the judgment. In addition, rule 59(3) provides that there is no need for a application for leave of court to appeal or for a certificate of general importance. This is premised on the constitutional provision that states that a sentence passed whereby a person is sentenced to death shall not be executed until confirmed by the highest appellate court of the land.

Rule 60 of the Court of appeal rules provides that in non capital cases, notice may be given informally at the time of passing the decision against which one intends to appeal.

Rule 61 of the court of appeal rules provides that in case of acquittals, the DPP is enjoined to give notice of appeal.

If it's the Supreme Court;

Rule 56 of the Supreme Court rules provides that in capital cases, notice of appeal is presumed to have been given at the time of passing the judgment. In addition,

Rule 57 of the Supreme Court rules provides that in non capital cases, notice may be given informally at the time of passing the decision against which one intends to appeal.

Rule 58 of the Supreme Court rules provides that in case of acquittals, the DPP is enjoined to give notice of appeal.

Procedure of for application for extension of time:

Application is by notice of motion supported by an affidavit to the court where one seeks to appeal. This is governed by rule 5 of the court of appeal rules in case one is appealing to the court of appeal and rule 5 of the Supreme Court rules in case one is appealing to the Supreme Court.

END



AUTHOR'S NOTE

Isaac Christopher Lubogo, the esteemed author, remarks: "This revised edition reflects my unwavering commitment to advancing Ugandan jurisprudence and supporting the legal community."

A NEW BENCHMARK IN LEGAL EXCELLENCE

With the revised edition of "Objection, My Lord!", Isaac Christopher Lubogo has once again raised the bar, delivering another tour de force that surpasses the original's groundbreaking impact. This masterpiece solidifies its position as the go-to resource for Uganda's legal fraternity, providing unparalleled depth, clarity, and expertise.



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