THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 39 OF 2001

ENVIRONMENT ACTION NETWORK LTD ] APPLICANT

VERSUS

1. ATTORNEY GENERAL ]
2. NATIONAL ENVIRONMENT ] RESPONDENTS
MANAGEMENT AUTHORITY ]

BEFORE: - THE HON PRINCIPAL JUDGE - MR. JUSTICE J.H. NTABGOBA

RULING

On 10th September 2001 the Attorney General and National Environment Management Authority (NEMA), herein to be referred to as the applicants, filed Miscellaneous Application No. 609 of 2001 in this Court but headed "IN the Court of Appeal of Uganda at Kampala" but they did not accompany it with a supporting affidavit. For the omission to accompany it with an affidavit, Mr. Oluka has informed Court that he had inadvertently made the omission.

With regard to the heading "In the Court of Appeal of Uganda" which I should have thought Counsel could have verbally applied to amend on 19/9/2001 when the application came up for hearing, Counsel Oluka for the applicant instead made the following application: -

"The Respondents were not served. I just discovered it now. So it is clear we did not serve them. I also want to amend so that the application is in the High Court and not in the Court of Appeal". He did not apply for leave to amend. I granted him the adjournment as applied for in the following words: -
"Hearing is adjourned to 17/10/2001".

The learned State Attorney rather than amend, went ahead to file a fresh application for leave to appeal to the Court of Appeal, which this time he duly accompanied with a supporting affidavit. He filed it on 15th October 2001.

On 17th October 2001 when the application was called hearing Mr. Karugaba Phillip, learned Counsel for the Environmental Action Network Ltd, the respondent, raised a preliminary objection to the effect that the application was time barred because it was not brought within 14 days as required under Rule 39 (2) (a) of the Court of Appeal Rules which provides that: -

"(a) Where an appeal lies with leave of the High Court, application for the leave shall be made informally at the time when the decision against which it is desired to appeal is given; or failing that application or if the Court so orders, by notice of motion within fourteen days of

the decision"

My decision against which it is desired to appeal was made on 28/9/2001 and the learned State Attorney did not then make any informal application for leave to appeal. Of course he was absent even though he had been notified of the date of reading the decision. I agree with him when he argues that his earlier application filed "in the Court of Appeal of Uganda at Kampala" was filed within the stipulated period of 14 days, but he withdrew it and instead of amending it, brought a fresh application, which was filed late.

Learned State Attorney may be right when, basing on the wording of Rule 3 of Order 48 of the Civil Procedure Rules, he argues that his application "in the Court of Appeal of Uganda at Kampala" was proper without a supporting affidavit. I agree with him on that argument in view of the wording of the rule which implies that a notice of motion not grounded on evidence by affidavit may be proper. However, his argument seems to shoot him in the arm when he argues that the present application is the same as the one filed "in the Court of Appeal of Uganda…" since the present one has a supporting affidavit. I should, in fact mention that he had no authority to amend his application without the leave of the Court in view of the provision of Order VI (as amended by Statutory Instrument No. 26 of 1998) which in Rule 19 provides that: -

"A plaintiff may, without leave, amend his plaint once at any time within 21 days from the date of issue of summons to the defendant or, where a Written Statement of Defence is files, then within 14 days from the filing of the Written Statement of Defence or the last of such Written Statements."

In this case, even assuming that the application filed "in the Court of Appeal of Uganda…" was properly filed and therefore amended by the one filed on 15th October 2002, there is no sign that it was served on the respondent, although to be fair to the applicants, the respondent must have received the notice of motion. The point I am making, however, is that it did neither comply with the 21 days nor the 14 days provided in Order 6 Rule 19 (as amended by S.1 No. 26/98). And no leave is shown to have been sought to amend.

The learned State Attorney than makes a mistake when he argues that his application was on a point of law. His application was to enable him to challenge this Court that it failed to refer to an authority of the decision in the Rwanyarare petition and that Court should have held that Misc. Application No. 39 of 2001 was a nullity in so far as the applicants therein should have sought the permission of the Court to represent the public.

Apart from my decision that in public interest litigation there was no need to follow Order 1 Rule 8 of the Civil Procedure Rules, as also there was no requirement to sue under Act 20 of 1969, I see nothing being a point of law being sought to be appealed against. I think the appeal sought was on a point of fact, namely, the alleged failure of the Court to follow the Rules of Procedure. But this is a by the way. The fact is that neither did the applicants file the amendment within the stipulated period nor did they seek leave of the Court to amend outside that period.

It is in light of the above that I struck out the application (amendment) and promised to give these reasons in support of my decision.

J.H. NTABGOBA

PRINCIPAL JUDGE

"Speak up for those who cannot speak for themselves, for the rights of all who are destitute,

Speak up and judge fairly; defend the rights of the poor and needy." Proverbs 31: 8-9

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