

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HCT – 01 – CV – CA 40 OF 2019**  
**(ARISING FROM KAS – OO – CV – LD- MA – 25 OF 2019)**  
5 **(ARISING KASINGA COURT CS NO. 12 OF 1987)**

**PETER MASEREKA ::: APPELLANT**

**VERSUS**

**1. YOSAMU KULE**

**2. INEYA MBISA ::: RESPONDENTS**

10 **BEFORE: HON. JUSTICE VINCENT WAGONA**

**JUDGMENT**

**Introduction:**

The appellant filed Misc. Application No. 25 of 2019 for orders that:

1. An order for a retrial of the case.
- 15 2. Costs of the application be provided to the appellant.

**Background:**

The appellant contended in lower court that he filed a suit in Kasinga Court and later judgment was given in favour of the 1<sup>st</sup> Respondent who has since died and was survived by the 2<sup>nd</sup> Respondent. That the appellant appealed against the  
20 judgment of Kasinga but the proceedings got lost. That on 21<sup>st</sup> January 2018, the appellant received a letter from the Magistrate that the file could not be traced and

the appellant was referred to the High Court at Fort Portal. That the appellant later filed an application seeking a retrial of the suit.

The application was opposed by the 2<sup>nd</sup> Respondent who contended that the application was bad in law, it lacked merit and ought to be dismissed with costs.

5 The 2<sup>nd</sup> Respondent contended that the 1<sup>st</sup> Respondent died intestate in 1998 and no one has secured letters of administration to his estate. That he was not aware of any appeal filed by the appellant. That he was wrongly sued since he was not a party to the suit that existed between the appellant and the 1<sup>st</sup> Respondent.

At hearing, a point of law was raised by Counsel Kanyonyi for the 2<sup>nd</sup> Respondent  
10 contending that the suit was barred by limitation and bad in law as the same could not proceed. That the suit that the appellant sought to retry had been filed 32 years back and the 2<sup>nd</sup> Respondent was not a party to a suit.

The Trial Magistrate made a ruling dismissing the suit on the basis that it was barred by limitation and that litigating must come to an end. The appellant being  
15 aggrieved lodged an appeal and framed the following grounds:

1. The learned Chief Magistrate erred in law and fact when he failed to consider that an appeal was a right of the appellant which he could not exercise without the court record and that land is a sensitive matter and a source of livelihood.
- 20 2. The Trial Magistrate failed to consider that it was not the fault of the appellant to have taken time to appeal but the fault of court which failed to avail the record of appeal.
3. The Trial Magistrate failed to consider that filing a fresh case in the circumstances was the best option available as the appellate court could not  
25 entertain an appeal without a lower court record.

4. The learned Chief Magistrate erred in law and in fact when he referred to the Constitution without quoting the provision of the said Constitution that prohibits one appeal.

The appeal was filed on 19<sup>th</sup> December 2019 with no further steps taken by the parties since then. This court thus proceeded to determine the appeal on the basis of the memorandum of appeal and the record of the lower court.

**Duty of the First Appellate Court:**

As a first appellate court, my duty is to subject the evidence of the lower court to a fresh and exhaustive scrutiny and draw fresh and independent inferences and conclusions. I will bear in mind the fact that I didn't have the opportunity to see the witnesses testify. (*See Panday Vs R (1967) E.A 336 and Narsensio Begumisa & 3 others Vs. Eric Kibebaga, SCCA NO. 17 of 2002.*)

Order 43 rules 1 and 2 provide the manner in which an appeal is preferred from the lower court to the High Court and the manner in which the grounds of appeal are to be framed thus:

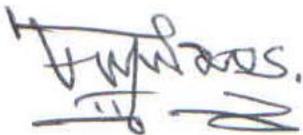
1. *Every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for that purpose.*
2. *The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively.*

The grounds of appeal must be concise, under distinct heads and should not be argumentative or narrative. In other words, the memorandum of appeal should be precise and concise and should state the ground of the objection to the decision appealed against without going into arguments or narrating as to what transpired in

the lower court. I further wish to add, that the grounds of appeal should be premised on the law and not merely on facts and should flow directly from the decision appealed against. In addition, the grounds of appeal must be as clear as possible, as brief as possible and as persuasive as possible without descending into narrative and argument and should make an invitation to court for a decision over the same. (See **M/S Tatu Naiga & Co.Emprorium V Verjee Brothers Limited, SCCA No.2/2000;Kitgum District Local Government &Another V AyellaOdoch Jimmy Joel HCCA No.008/2015 and Ruryabeita Frank Vs. Beyunga Kenneth & 3 others, Civil Appeal No. 59 of 2020**).

10 In this case I find the grounds of appeal to be narrative in nature and not focused on the decision appealed against. They merely narrate what the appellant thought the magistrate would have done and are not centered on the ruling appealed against. The memorandum of appeal does not bring out the proper reasons for the appellant's objection to the decision of the Chief Magistrate. The memorandum of  
15 appeal is thus rejected and the appeal is hereby dismissed with costs awarded to the Respondent.

I so order.



Vincent Wagona

20 **High Court Judge**

**FORT-PORTAL**

**11.01.2022**