**Kobusingye v Nyakana and another**

**Division:** Supreme Court of Uganda at Mengo

**Date of judgment:** 22 February 2005

**Case Number:** 5/04

**Before:** Odoki CJ, Oder, Tsekooko, Karokora and Kanyeihamba JJSC

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*[1] Appellate procedure – Third appeals – Grounds for lodging a third appeal – Whether the appeal*

*was competent – Section 6(2) – Judicature Act.*

*[2] Civil procedure – Jurisdiction of the Court of Appeal – Scope of jurisdiction – Whether sections 74*

*and 75 of the Civil Procedure Act were applicable to the Court of Appeal – Sections 68, 74 and 75 –*

*Civil Procedure Act – Sections 11 and 14 – Judicature Act – Rule 31*(*2*) *– Court of Appeal Rules.*

**Editor’s Summary**

The respondents filed a suit against the appellant claiming damages for malicious prosecution and false imprisonment. The trial magistrate dismissed the suit. The respondents then appealed unsuccessfully to the High Court. Subsequently, they filed a second appeal consisting of four grounds of appeal in the Court of Appeal. When the appeal came up for hearing, counsel for the present appellant raised a preliminary objection to the first two grounds of appeal on the ground that the Court of Appeal had no jurisdiction to consider them as the two lower courts had made concurrent findings on the issues. He argued that the former sections 74 and 75 of the Civil Procedure Act restricted the jurisdiction of the Court of Appeal and that rule 31(2) of the Rules of the Court of Appeal did not permit the court to circumvent those provisions. Counsel for the present respondents argued in reply that the old section 11 of the Judicature Act and rule 31(2) gave the court the necessary jurisdiction or, in the alternative, old sections 74 and 75 gave the court power to consider the matter since the errors of the first appellate court were errors of law. The Court of Appeal agreed with counsel for the respondents and overruled the objection. The appellant was dissatisfied with the decision and was granted leave to appeal to the Supreme Court on the ground that the appeal involved matters of law of great public and general importance. The appellant argued, *inter alia*, that the Court of Appeal had erred in holding that old sections 74 and 75 were not applicable to the Court of Appeal and in holding that section 11 of the Judicature statute of 1996 was wider than section 5. In his arguments before the Supreme Court, counsel for the respondents argued that sections 74 and 75 did not apply to the Court of Appeal in hearing second appeals.

**Held** – Section 6(2) of the Judicature Act precluded the lodging of third appeals to the Supreme Court on interlocutory matters. There was no right of appeal to the Supreme Court from interlocutory orders of the Court of Appeal when those orders were incidental to the appeal; *Uganda National Examinations Board v Mpora General Contractors* applied. This appeal was, therefore, incompetent as it had no jurisdictional foundation. Where an erroneous opinion amounting to an illegality was brought to the Supreme Court’s attention, it had the duty to correct the illegality; *Mukula International v HE Cardinal Nsubuga* followed. In this instance, the illegality brought to its attention concerned the view held by the Court of Appeal that the old sections 74 and 75 of the Civil Procedure Act did not apply to it. The aim of the Civil Procedure Act was to make provision for procedure in civil cases. Since the jurisdiction of both the Supreme Court and the Court of Appeal included civil jurisdiction, there was nothing in section 1 of the Civil Procedure Act prohibiting, in appropriate cases, the application of the Act to procedure in either the Supreme Court or the Court of Appeal. The operation of the Civil Procedure Act with regard to the Supreme Court and the Court of Appeal had to be placed alongside the operation of the Judicature Act and the Constitution. Article 134(2) of the 1995 Constitution which conferred jurisdiction on the Court of Appeal, was operationalised by section 11 of the Judicature Statute of 1996. This section which provided, *inter alia*, that appeals to the Court of Appeal lay from decisions of the High Court prescribed by the Constitution, the Judicature Act and any other law, conferred jurisdiction on the Court of Appeal in general terms. This section was to be read with the old section 14 of the Judicature Act which provided that references to the Supreme Court in any enactments before 1996 would be read as references to the Court of Appeal. This meant that the old sections 68, 74, and 74A which set out in detail the three classes of appeal in ordinary civil matters were applicable to the Court of Appeal. The Court of Appeal had erred in interpreting *Francis Sembuya v Allports Freight Services* to mean that sections 74 and 75 were not applicable to it. The holding in that and other cases to the effect that the old sections 74 and 75 did not apply to appeals to the Supreme Court did not mean that those sections were, therefore, not applicable to the Court of Appeal.

Appeal struck out.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Ephrain Ongom Odonga v Francs Renega Bonge* Civil appeal number 10 of 1987

*Francis Sembuya v Allports Services* (*u*) *Ltd* Civil appeal number 6 of 1995

*Mukula International v HE Cardinal Nsubuga* [1982] HCB 11

*Uganda National Examinations Boards v Mpora General Contractors* Civil application number 19 of

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2004) – **AP**