WALUBITA v MWEMBA (1968) ZR 143 (HC)
HIGH COURT
EVANS J
28th OCTOBER 1968

Flynote and Headnote

[1] **Courts - High Court - Jurisdiction - Power to hear appeal from decision of a Barotse local court concerning land - May not grant extension of time within which to appeal.**
Section 57 (1) (a) of the Local Courts Act does not empower the High Court to grant an extension of time within which to appeal from a decision of a Barotse local court concerning a "land matter", nor does the High Court have an inherent power to grant such an extension.

[2] **Civil procedure - Appeal from a decision of a Barotse local court concerning a land matter - High Court has no power to grant an extension of time within which to Appeal.**
See [1] *above*.

[3] **Civil procedure - Appeal from a decision of a Barotse local court concerning a land matter - Delay by the Kuta in granting leave to Appeal is not fatal to the appeal.**
On construction, section 56A (3) of the Local Courts Act empowers the High Court to hear an appeal from a Barotse local court concerning a land matter where application has been made by the appellant to the Kuta within thirty days of the decision appealed against, even though the Kuta has not granted leave to appeal until after the end of that thirty - day period.

Statute construed:
Local Courts Act, 1966 (No. 20 of 1966), ss. 56A (3), 57 (1) (a).
Daley, Director of Legal Aid, for the appellant:
No appearance, for the respondent:
Ryan, Senior State Advocate, *Amicus Curiae*.

Judgment

Evans J: This is in the nature of a test case to determine whether in this case, and in a number of similar ones, the High Court can hear an appeal under section 56A of the Local Courts Act, 1966 (hereinafter called "the Act"), when the provisions of subsection (3) of that section have, according to their ordinary meaning, not been complied with. The effect of the said section is that no appeal lies from a decision of a local court in the Barotse Province relating to land matter except with the leave of the Saa - Sikalo Kuta (hereinafter referred to shortly as "the Kuta"), when an appeal lies to the High Court direct. The said subsection (3) reads: -

"(3) An application for leave to appeal under this section shall be made, and where such leave is granted, the appeal shall be entered, within thirty days of the decision appealed against:
Provided that no appeal shall lie from the refusal of the Saa - Sikalo Kuta to grant such leave."

Apparently, the ordinary meaning of subsection (3) is that, for an appeal from a decision of a local court in Barotse Province relating to a land matter to lie to the High Court, three things must be done within thirty days of the local court's decision, namely:

(1) the appellant must apply to the Kuta for leave;

(2) the Kuta must grant leave; and

(3) the appeal must be entered.

But this meaning can cause grave injustice to an appellant who, within the said thirty days, applies to the Kuta for leave, but the Kuta's decision on the application (although favourable to the appellant) is delayed beyond the said period of thirty days for any reason

(quite unconnected with the appellant) such as illness, inefficiency, incompetence, *mala fides* or pressure of work on the part of the Kuta or its staff. Is the appeal, although the Kuta grants leave (albeit out of time), to be frustrated by any of these events?
In the instant case, the appellant wishes to appeal against a decision relating to a land matter of the Nalolo Local Court given on the 29th November, 1967. On the 16th December, 1967, he filed a notice of appeal which incorrectly stated that the appeal was to the subordinate court of the first class for the Mongu District, instead of applying to the Kuta for leave to appeal to the High Court, but the notice of appeal was apparently sent to the Kuta and there treated as an application for leave, which the Kuta granted on the 9th April, 1968, that is, well outside the said thirty - day period.
No rules have been made and no forms have been prescribed by the Chief Justice under section 67 of the Act to regulate the practice and procedure upon an application to the Kuta under subsection (2) of section 56A of the Act, and in the circumstances and in view of section 61 of the Act I think it was proper for the local court and the Kuta to accept the appellant's said notice of appeal as an application under section 56A (2) of the Act and to act upon it. However, there was, according to information supplied by the provincial local courts officer at Mongu, a delay in the forwarding of the notice of appeal by clerks of the local court to the Kuta. The extent of the delay is unknown, as is the date when the Kuta received the notice, and it was not until the 9th April, 1968, that the Kuta's leave was given. Is the delay, for which the appellant was apparently in no way to blame, to frustrate his desire to appeal to the High Court and the Kuta's granting of leave therefor? [1] [2] It is, if section 56A (3) of the Act is construed according to its ordinary meaning, and counsel and I consider that neither the Kuta nor the High Court has any express power to grant any appropriate extension of time - we are of the opinion that section 57 (1) (a) of the Act is inapplicable and relates only to the granting of leave by an appellate court (which the Kuta in these circumstances is not) to appeal out of time in an ordinary case (not a land matter), from a local court, or from a subordinate court on an appeal from a local court - and I do not accept Mr Ryan's submission (which was not supported by authority) that the High Court has an inherent power to grant any extension.
[3] Before the coming into force of the Act on the 1st October, 1966, there was no appeal (under the Barotse Native Courts Ordinance, Cap. 160) to the High Court from a decision of what was then called a native court in any civil proceedings relating to rights in or over land in the Barotse Province (section 33 (4) of Cap. 160). The Act, however, conferred the right to such an appeal, with the leave of the Kuta, and I cannot conceive that the intention of the legislature was that such right should be rendered nugatory by delays on the part not of an appellant but of a local court or the Kuta of their staff. Such an intention would be unjust and absurd and repugnant to the rest of section 56A of the Act, so to what extent can section 56A (3) be properly construed so as to avoid the injustice and absurdity, but without this court's usurping the functions of Parliament?
To quote from Maxwell, Interpretation of Statutes, 11th ed, pages 1 - 2:

"A statute is the will of the legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded 'according to the intent of them that made it'. If the words of the statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature. The object of all interpretation of a statute is to determine what intention is conveyed, either expressly or impliedly, by the language used, so far as is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it."

But I quote again from the same book (at page 6):

"But judges are not always prepared to concede as plain language that which involves absurdity and inconsistency. In construing wills and, indeed, statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or some repugnancy or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further."

And again from the same edition (at pages 221 - 222):

"Where the language of statute, in its ordinary meaning and grammatical construction, leads to manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modified the meaning of the words,

and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, or by rejecting them altogether, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Nevertheless, the courts are very reluctant to substitute words in a statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense."

In the light of these authoritative statements, and having regard to what I have said above concerning the intention of the legislature, I am prepared (although not without hesitation) to accede to Mr Daley's submission that subsection (3) of section 56A of the Act should be construed as though the words "and where such leave is granted, the appeal shall be entered" were in parentheses instead of being preceded and followed by commas (which the draftsman may have employed in lieu of brackets, which are rarely found in statutes), with the result that it is only the application for the Kuta's leave that must be made within the thirty day period. In my view, this accords with the presumed intention of the legislature and with the type of appeal provision most commonly found in statutes, and it avoids injustice. In other words, subsection (3) may be construed thus:

"An application for leave to appeal under this section shall be made within thirty days of the decision appealed against and where such leave is granted the appeal shall be entered."

Order accordingly.