

CIVIL PROCEDURES CASES AND MATERIALS

CASENOTES ON CIVIL PROCEEDINGS

COMMENCEMENT OF PROCEEDINGS

Principle: Service of notice to an advocate is in all normal circumstances as good a service as one made to the advocate's client.

UNTA EXPORTS LTD VS CUSTOMS [1970 EA 645

Goudie J held that:

- 1) Notice was properly given to the Advocate for the claimant where the Commissioner General of Customs gave that notice to an advocate with whom he had been in correspondence with and
- 2) No document is properly filed until the fees have been paid.

Principle: The Court of appeal can waive any procedural irregularity in the lodgement of an appeal.

MOTEL SCHWEITZER VS THOMAS EDWARD CUNNINGHAM AND ANOR [1955] 22 EACA 252

The memorandum of Appeal was filed on the 6th day of December 1954 but no decree upon judgment was drawn until 7th Jan 1955. a preliminary objection was taken by the respondents that the appeal was incompetent as no decree was in existence at the time of lodging the memorandum and that the appellant had failed to file the appeal in accordance with the rules.

Sir Barclay Nihill held:

- 1) Rule 56 as aforesaid is procedural only and does not affect a substantive law by which a right of appeal is conferred by a municipal law. Its primary purpose is to provide that a notice of appeal can be given before any formal decree is drawn up.
- 2) An appeal is not instituted in the court of appeal until the record of appeal is lodged in its registry, fees are paid and security lodged as provided for in rule 58 of the rules.
- 3) By virtue of rule 72(1) of the Court of appeal rules, the court now has a right to waive an irregularity in the procedure.

Principle: An advocate who commences proceedings without the authority of the plaintiff incurs personal liability with regard to costs.

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Hussin A.Rothana



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