

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

Coram: Buteera, DCJ, Bamugemereire & Mulyagonja, JJA

**CONSOLIDATED ELECTION PETITION APPLICATION NO 12 OF
2021 AND MISCELLANEOUS APPLICATION NO 412 OF 2021**

DR LOKII JOHN BAPTIST :.....APPLICANT

VERSUS

OLOO PAUL:.....RESPONDENT

AND

OLOO PAUL :.....APPLICANT

VERSUS

DR LOKII JOHN BAPTIST:.....RESPONDENT

***(Arising from Election Petition Appeal No 62. of 2021 from the
decision of Hon Lady Justice Jane Okuo Kajuga, J, in Soroti
Election Petition No 006 of 2021)***

RULING OF THE COURT

Introduction

The applicant in Election Petition Application (EPA) No 12 of 2021, Dr Lokii John Baptist, filed his application in this court on 2nd November 2021, under the provisions of rules 82, 43, 91 and 44 (1) of the Rules of this Court, and rules 30, 31 and 36 of the Parliamentary Elections (Election Petition) Rules, herein after referred to as "the Election Petition Rules." He sought for orders that Election Petition Appeal No 62 of 2021 be struck out and the respondent therein, Mr Oloo Paul be ordered to pay the costs of the application and the appeal.

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Subsequently, on 23rd December 2021, the respondent in EPA 12 of 2021, Paul Oloo, filed Miscellaneous Application No. 412 of 2021 under the provisions of rule 5 of the Judicature (Court of Appeal Rules) Directions (SI 13-10) and rules 34 and 36 of the Election Petition Rules.

- 5 He sought an order to extend time within which to file and serve a Memorandum and Record of Appeal, or validate his appeal which was filed in this court on 28th October 2021.

Background

- 10 The background to the applications, and the appeal, was that the parties participated in the Parliamentary Elections that were held on 14th January 2021. Dr Lokii John Baptist was returned the victor having garnered 6,794 votes against Mr Oloo Paul who garnered 6,602. Mr Oloo was not satisfied with the results so he filed Election Petition No 006 of 2021 in the High Court at Soroti, against Dr Lokii and the
- 15 Electoral Commission to challenge the results. However, Dr Lokii was sworn in as the Member of Parliament for Matheniko County Constituency in Moroto District.

- The grounds in the petition were that the respondent committed various malpractices and the election did not comply with the laws governing
- 20 parliamentary elections; and that these two factors substantially affected the results. Judgment in the petition was delivered by Okuo Kajuga, J, on 16th September 2021 dismissing Oloo Paul's petition with costs. Being dissatisfied with the decision Oloo Paul filed an appeal in this court on 28th October 2021.

- 25 At the hearing of the appeal on 31st March 2022, Oloo Paul was represented by Kenneth Engoru, learned counsel. Caleb Alaka, learned counsel, represented Dr Lokii. By consent of counsel for both parties, MA 412 of 2021 and EPA 12 of 2022 were consolidated and heard together.

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Counsel for the parties filed written submissions as directed by court. The applicant's submissions in EPA 12 of 2021 were filed on 10th November 2021 while the respondent's reply was filed on 14th March 2022. The applicant's submissions in MA 412 of 2021 were also filed on
5 14th March 2022. The respondent filed his reply on 23rd March 2022.

Grounds in EPA 12 of 2021

The grounds in this application were that there was no valid appeal before this court because the respondent had not taken an essential step in the appeal; he did not file the Memorandum of Appeal within the
10 prescribed time.

Grounds in Application No 142 of 2021

The grounds in this application were that counsel for the applicant was not able to file a Memorandum of Appeal within the prescribed time because he had not secured a copy of the typed judgement. Further that
15 he obtained a copy of the judgment on **19 September, 2021**. It was further stated that the applicant immediately after the judgment was delivered diligently and conscientiously followed up the judgment. But owing to shortcomings of the trial court he was not availed with a copy thereof within the timeframe to enable him to meet the strict timelines
20 in the rules of procedure. Further that his advocates received the proceedings and the typed judgment and filed the Memorandum and Record of Appeal on 28 October, 2021, and it was served upon the respondent's counsel.

EPA 12 of 2021 was supported by the affidavit of Dr Lokii John Baptist
25 sworn on the 2nd November 2021. Oloo Paul deposed an affidavit in reply on 14th March 2022. MA 412 of 2021 was supported by the affidavit of Mr Oloo Paul dated 22nd December 2021. Dr Lokii deposed an affidavit in reply on 21st March 2022.

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The affidavits

In his affidavit in support of EPA 12 of 2022, Dr Lokii stated that judgment in Election Petition NO 6 of 2021 was delivered by Okuo Kajuga, J on 16th September 2021 and the petition was dismissed. That
5 on the 22nd September 2021, Paul Oloo filed a Notice of Appeal in the High court at Soroti. That he was informed by his lawyers that though Paul Oloo was by law required to file a Memorandum of Appeal within 7 days after the Notice of Appeal, he did not do so. Instead he filed a Record of Appeal in the Court of Appeal in which was included a
10 Memorandum of Appeal on 28th October 2021.

Dr Lokii further averred that by so filing the Memorandum of Appeal, Paul Oloo filed it 36 days after he lodged the Notice of Appeal. He further stated that he was informed by his advocate, Kato Fred, that when he failed to file the Memorandum of Appeal within the time specified, and
15 serve it on him, Mr Oloo failed to take an essential step in the proceedings. Further that Mr Oloo demonstrated lack of diligence and did not attach importance to his appeal. That there was no valid appeal before court and what is on record ought to be struck out.

In his affidavit in reply dated 14th March 2022, Mr Oloo stated that he
20 personally attended the delivery of the judgment in the petition at the High Court in Soroti. That after she delivered judgment, the trial judge informed all present that she had to complete editing the judgment and the same would be shared at a later date.

He further averred that he instructed his lawyers to lodge a Notice of
25 Appeal, which they did, and request for a record of the proceedings. That the advocates wrote to request for the proceedings and also informed court that they required a copy of the judgment in order to formulate the grounds of appeal. Mr Oloo further averred that on several occasions he went to the court to request for a copy of the judgment but

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it was not availed to him; and that despite diligent efforts by his lawyers to retrieve the judgment from the court within the timeframe for filing the appeal, they only obtained it on 19th October 2021, upon which they filed a the Memorandum and Record of Appeal on 29th October 2021.

5 He went on to aver that after the Memorandum and Record were filed in this court, his lawyers filed MA 412 of 2021 to validate the appeal or extend the time within which to lodge the appeal. Further that the failure to file the appeal in time was a result of delay by court staff and he should not be prejudiced as a litigant by having his appeal rejected
10 due to the error or omission.

He further averred that no prejudice would be occasioned to the applicant because the Memorandum and Record of Appeal in the appeal were served on counsel for Dr Lokii. That consequently, counsel for the applicant would have sufficient time to read the same and should be
15 able to defend the appeal which the court would hear and determine on its merits.

In his affidavit in support of MA 412 of 2021, Mr Oloo repeated the contents of his affidavit in reply to EPA 12 of 2022, save that in paragraph 13 thereof, he stated that when judgment was delivered, his
20 lawyers were not in court. That they thus failed to develop grounds of appeal and draft the Memorandum of Appeal. That as a result they advised him to wait till they get a copy of the judgment.

In his affidavit in reply to MA 412 of 2021, Dr Lokii John Baptist stated that he was advised by his lawyers that the application made by Mr Oloo
25 was barred in law because it did not seek to validate the late filing of the appeal. That it was not demonstrated that there was sufficient cause that could have prevented the applicant from filing Election Petition Appeal No. 62 of 2021 within the time stipulated by the rules. That his

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lawyers also informed him that they would seek to have the appeal struck out with costs.

Dr Lokii went on to state that the contents of the affidavit of Mr Oloo are not correct; that it was not true that the trial judge delivered
5 judgement on 16 September, 2021, she did so from a copy that was not edited. That the truth of the matter was that Okuo Kaguga, J, delivered her final judgement on 16 September, 2021 and the same was certified by the Deputy Registrar of the High Court at Soroti on 17 September, 2021. A copy of the certified copy of the judgement was attached to the
10 affidavit in reply and marked as Annexure "A."

Dr Lokii went on to state that it was also not true that the Court Clerk informed the parties that the trial judge had to edit the judgement before handing it over to them as the applicant stated in paragraph 4 of his affidavit in support of the application. He asserted that the judgement
15 in the petition was certified on 17 September, 2021 and there was dilatory conduct on the part of Mr Oloo when he did not use the certified copy to formulate his grounds of appeal within the time stipulated by the law. He added that Mr Oloo was not vigilant in pursuing his appeal and was guilty of unexplained and/or dilatory conduct resulting in
20 inordinate delay in filing his appeal. That he could not blame the court or his lawyers when he did not take any steps to follow up his appeal.

He went on to clarify that on the 16th day of September 2021 when judgement was delivered by the court in Soroti, Mr Oloo was present and he was represented by Mr Amodoi Samuel Moses. That the contents
25 of paragraph 13 of Mr Oloo's affidavit in support of the application were therefore also false. That he did not demonstrate that there was sufficient cause upon which the court could grant his application. That he is therefore not entitled to the prayers that the appeal be validated by extending time within which it was filed and served.

Submissions of counsel

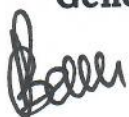
Election Petition Application No. 12 of 2021

In this regard to, Mr Alaka for the applicant, Lokii John Baptist, identified 4 issues for resolution by this court as follows:

- 5 i) Whether there is a valid appeal by the respondent on record;
- ii) Whether the respondent did not take some essential step in the proceedings;
- iii) Whether the respondent did not file a Memorandum of appeal within the prescribed time;
- 10 iv) What are the remedies?

With regard to the first issue, Mr Alaka submitted that Election Petition Appeals have specialised procedure set out in rules 29, 30 and 31 of the Election Petitions Rules. He set out the timelines for filing a Notice of Appeal being 7 days after delivery of judgment, and the Memorandum
15 of Appeal to be filed within 7 days of filing the Notice of Appeal. He asserted that Paul Oloo filed his Memorandum of appeal 36 days after he filed the Notice of Appeal. That this means there was no valid appeal before the court.

With regard to the second issue, Mr Alaka submitted that not only did
20 Paul Oloo fail to file his appeal within the time specified under the Election Petition Rules, he also did not serve the Memorandum of Appeal on Dr Lokii or his advocates as is required by law. That he therefore failed to take an essential step in the appeal when he did not comply with rule 30 (b) of the Election Petition Rules. He referred us to
25 the decision in **Abiriga Ibrahim Y. A v. Musema Mudathir, Court of Appeal Election Petition No 24 of 2016** in which this court relied on the decision of the Supreme Court in **Utex Industries Ltd v. Attorney General, SCCA No 52 of 1995**, where the court defined what "taking



an essential step” means. He further submitted that the court imposed an even greater duty on parties in election petitions to promptly take all necessary steps do that their appeals are heard and determined as quickly as possible.

- 5 Mr Alaka referred us to the decision in **Kasibante Moses v. Katongole Sigh Marwaha, Election Petition Application No 8 of 2012**, where this court held that allowing an intended appellant to take his or her time to file the record of appeal outside the time set by the Rules without exceptional circumstances being shown would defeat the time frame
10 provided in the Constitution, the Act and the Rules for the expeditious disposal of election matters.

He drew our attention to the situation in **Abiriga Ibrahim** (supra) in which principle in Article 126 (2) (e) was advanced on an application to extend time to lodge an appeal. He submitted that the court in that case
15 relied on the decision in **Utex Industries Ltd.** (supra) and held that they were not persuaded that the intention of the Legislature in enacting Article 126 (2) (e) was to do away with the rules of procedure. Further, that the court pointed out that the principle in that provision was to be applied subject to the law. He referred to the decision in **Kasirye**
20 **Byaruhanga & Co Advocates v Uganda Development Bank, SCCA No 2 of 1997**, that Article 126 (2) (e) of the Constitution is not *“a magical wand in the hands of defaulting litigants.”*

Mr Alaka then submitted that on the basis of the decision above, in **Abiriga’s case** (supra), this court found and held that the computation
25 of time follows the specific legislation and in election matter, it is rule 30 of the Election Petition Rules. It provides that a Memorandum of appeal shall be filed within 7 days of lodging a notice of appeal. He prayed that we find that the Mr Oloo failed to take an essential step in he proceedings.

With regard to the 3rd issue, which in our view was a repetition of the second issue framed by counsel, Mr Alaka reiterated that having filed his Memorandum of Appeal 36 days after the Notice of Appeal, Paul Oloo filed his appeal out of time.

5 Going on to the remedies available, he submitted that rule 36 of the Election Petition Rules provides for the application of the Court of Appeal Rules with such modifications as are necessary. Further that rule 82 of the Rules of this court which provides that a notice of appeal or an appeal can be struck out on the ground that some essential step
10 has not been taken by the intending appellant. He prayed that the Notice of Appeal and the Appeal be struck out with costs.

In reply, Mr Engoru for the respondent accepted the issues that Mr Alaka framed but addressed issues 1, 2 and 3 together since they all relate to the question whether the intending appellant failed to take an
15 essential step in the appeal.

He submitted that the memorandum of appeal was filed several days after the time stipulated by the Rules. Further that according to rule 2 of the Election Petition Rules, the trial court is required to ensure that the record of proceedings is typed in time to facilitate the production of
20 the record of appeal. That the respondent, Mr Oloo, took active steps to prosecute the intended appeal because when he realised that there was an issue of compliance, he filed MA 142 of 2021 to validate the appeal.

He referred us to rule 42 of the Court of Appeal rules for the submission that where a document has already been filed in this court, we have the
25 discretion to validate the filing of the document. That the fact that the appeal was filed and served on opposite counsel shows that Mr Oloo intends to prove his case before this court; striking out the appeal would not meet the ends of justice.



With regard to the decision in **Kasibante Moses** (supra) he submitted that it is distinguishable from the case now before us. He submitted that in that case, the court was addressing a situation where a Record of Appeal was filed out of time and there was no application for extension of time. He referred us to Article 126 (2) (e) of the Constitution and submitted that a delay in the processes of the lower court to produce the record and the judgment should not be visited on the innocent litigant. He referred to the decision of former Court of Appeal for Eastern Africa in **Bhatt v. Tejwart [1962] EA 487**, where it was held that sufficient reason was proved where the delay was attributable entirely to the process of the court.

Mr Engoru also referred us to the decision in **Uganda Commercial Bank v. Severio Oryeda, Court of Appeal Civil Application No 3 of 1986**, where it was held that a refusal to extend time to file an appeal would cause injustice in that case especially because the delay was caused by the court. He explained that the Court of Appeal in the latter case relied on the dictum in **Bhatt v. Tejwart** (supra).

He reiterated that the failure to file the memorandum of Appeal in time was occasioned by a failure of the court to avail the judgement. That it would be a travesty of justice if this court denied the applicant extension of time to execute an act he diligently pursued.

With regard to the remedies available, Mr Emgoru submitted that maintaining the appeal would enable Dr Lokii to extensively and unequivocally defend the decision of the trial court which found that he was the duly elected Member of Parliament. That appeal would be disposed of on its merits and the rights of the parties determined. He referred us to the decision in **Tegras Byeitima & Others v. Asaba Jaiden, Court of Appeal Civil Application No 246 of 2013** to support his submission.

He then prayed that we exercise out discretion to not to strike out the appeal but order that it be validated because the complete record of appeal was already file in court and a copy served on Dr Akii's advocates. He also prayed that the costs abide the result of the appeal.


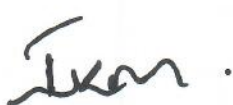
5 ***Miscellaneous Application No. 142 of 2021***

For the applicant, Paul Oloo, Mr Engoru submitted that although judgement was delivered on 16th September 2021, it was not availed to his client until 12 October, 2021 when he received a signed copy that had been certified by the Registrar. That actual copies thereof were
10 issued on 19 October, 2021. Thereafter the applicant proceeded to prepare the Memorandum of Appeal together with the Record of Appeal which were filed in the Registry of the Court of Appeal on 28 October, 2021.

Mr Engoru repeated his submissions in EPA No 12 of 2021 and asserted
15 that it would have been utterly impossible to draft the Memorandum of Appeal without a thorough appreciation of the judgement of the court.

He went on to submit that in the event that it is found that the Memorandum of Appeal was filed out of time, it was excusable under Article 126 (2) (e) of the Constitution. He stated that this principle was
20 followed in **Tegras Byeitima** (supra). Further that there exists sufficient reason for extending time or validating the appeal because it was already filed and served on counsel for Dr Lokii. He would therefore not be prejudiced in the appeal because his advocates got ample time within which to study and respond to the appeal.

25 In reply Mr Alaka, counsel for Dr Lokii the respondent, formulated 2 issues for determination by this court as follows:



1. Whether the applicant made out a case for extension of time to file and serve his memorandum and record of appeal out of time;
2. What remedies are available to the parties.

With regard to the 1st issue Mr Alaka asserted that the applicant has not made out a case to warrant the extension of time within which to file and serve his Memorandum and Record of Appeal. He further submitted that it is settled that it is the duty of the intending appellant to actively take the necessary steps to prosecute his intended appeal. That it is not the duty of the court or any other person to carry out this duty. That once judgement is delivered the intending appellant has to take all the necessary steps to ensure that the appeal is filed in time. He referred us to the decisions in **Kasibante Moses v. Electoral Commission, Court of Appeal Election Petition Application No. 7 of 2002, Utex Industries Ltd v. Attorney General, Supreme Court Civil Application No 52 of 1995** and **S. B. Kinyatta & Another v. Subramanian & Another, Court of Appeal Civil Application No 106 of 2003.**

Mr Alaka went on to submit that it is also the law that in case of an election petition appeal the intending appellant has an even higher duty to expeditiously pursue every step in the appeal, so that the appeal is disposed of quickly. He referred us to the decisions in **Moses Kasibante (supra)** and **Abiriga Ibrahim (supra)**

Counsel went on to submit that the contents of paragraphs 1-8 of the affidavit in support sworn by Paul Oloo were not true because judgement was delivered by the court on 16 September, 2021 and certified by the Registrar the following day. He referred us to paragraphs 5, 6, 7, 8 and 9 of Dr Lokii's affidavit in reply where the correct facts were stated. He also pointed us to the certified copy of the judgement which was attached to the same affidavit. He then stated that Mr Oloo





lied on oath when he stated that the judgement was issued on the 19th day of October 2021.

Mr Alaka emphasised that it was the duty of the applicant, Mr Oloo, to actively take the necessary steps to secure a copy of the judgement when it was delivered on 16 September, 2021 and certified the next day, as well as to formulate his grounds of appeal and file the appeal in time. He referred to the authorities above and submitted that the applicant could not blame the court for any delay in view of the clear fact that the High Court delivered its judgement which was duly certified on 17 September, 2021.

Counsel went on to challenge the statement in paragraphs 13 of Paul Oloo's affidavit in support of the application where he stated that his lawyers were not in court when judgement was delivered on the 16th day of September 2021. He submitted that this too was a lie which was debunked in the affidavit of Dr Lokii who stated that on the delivery of the judgement, Mr Oloo was in court and was represented by Mr Amodoi. He added that it was inconceivable that the High Court which had suspended all business in order to handle election petitions could deliver judgement in an election petition on 16 September, 2021 and only avail a copy of the same in October 2021.

Mr Alaka contended that although the applicant averred that the delay in processing the judgement was by the court he did not produce any letters written to the court by his lawyers reminding the Registrar to avail him with a copy of the judgement and the record of the court. That as a result the applicant did not produce any evidence to show that he was vigilant in following up his appeal.

Mr Alaka then turned to the decision in **Bhatt v. Tejwart** (supra) relied upon by counsel for the applicant for the proposition that any delay attributable entirely to the court amounts to sufficient reason for

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granting an extension of time within which to appeal, and stated that this is not what happened in the High Court at Soroti. He reiterated the facts about the delivery of the judgement as they were stated in the affidavit of Dr Lokii to challenge Paul Oloo's application.

- 5 With regard to the decision in the case of **Uganda Commercial Bank v Severio Oryeda** (supra) where it was stated that a refusal to grant leave to extend time to file an appeal would amount to an injustice if the delay was occasioned by court, he submitted that it was inapplicable to the case at hand. He emphasised that the court did not cause any delay in
10 delivering or certifying the judgement. That instead it was Mr Oloo and his advocate who were not vigilant because they could have obtained certified copies of the judgement from the court in the same way that the Dr Lokii obtained it.

15 He concluded that Paul Oloo did not present a case upon which this court could grant him leave to extend time within which to file the Memorandum and the Record of Appeal and serve them out of time. He prayed that this 1st issue be resolved in favour of the respondent.

With regard to the remedies he drew our attention to the submission and the authorities that were referred to by counsel for the applicant to
20 support his proposition that time within which to file an appeal could be extended under Article 126 (2) (e) of the Constitution. He pointed out in **Utex Industries Ltd** (supra) and **Kasirye Byaruhanga & Co Advocates v. Uganda Development Bank Ltd, Supreme Court Civil Appeal No. 2 of 1997**, the court was not persuaded that the legislature
25 intended to do away with the rules of procedure by enacting Article 126 (2) (e) of the Constitution. That the principle in that provision is subject to law. He went on to submit that this court in the case of **Abiriga Ibrahim** (supra) relied on the authorities that were cited by counsel for the applicant and held that Article 126 (2) (e) of the Constitution was

not available for a litigant who filed an appeal out of time. He prayed that this court employs the same reasoning and rejects the applicant's application to extend time within which to file his appeal.

Determination

5 Although the advocates in these applications framed several issues upon which they based their submissions, it is our view that there are only two questions that need to be determined in order to dispose of them. They are as follows:

- 10 i) Whether the applicant in MA No 412 is entitled to extension of time within which to lodge his appeal/or validation of the intended appeal and serve it on the respondent, and if not;
- ii) Whether the applicant's application in EPA 12 of 2021 to strike out the intended appeal ought to be granted, with costs against the respondent therein.

Issue 1

15 It is not in dispute that Election Petition Appeal No. 62 of 2021 was filed in this court outside the time specified by rule 30 of the Election Petition Rules. Mr Oloo therefore brought MA No. 412 of 2021 to validate the appeal under rule 5 of the Rules of this court and rules
20 34 and 36 of the Election Petition Rules.

Rule 5 of the Rules of this court provides for extension of time as follows:

25 **"The court may, for sufficient reason, extend the time limited by these Rules or by any decision of the court or of the High Court for the doing of any act authorised or required by these Rules, whether before or after the expiration of that time and whether before or after the doing of the act; and any reference in these Rules to any such time shall be construed as a reference to the time as extended."**



It is clear from its wording that the rule applies to time limited by the Court of Appeal Rules, decisions of this court or the High Court for doing acts authorised by the Court of Appeal rules. It therefore does not apply to the application at hand because the timeframe within which to lodge an appeal is specified by the Election Petition Rules.

Rule 34 of the Election Petition Rules provides for the time limit for hearing appeals, while rule 35 provides for service on the Commission and returning officers. The two rules are therefore not applicable for bringing applications for extension of time to this court. Counsel for the applicant therefore cited the wrong rules in this application. However, the applicant cannot be penalised for his error. The application will therefore be considered because rule 19 of the Election Petition rules provides for extension and enlargement of time under the Rules as follows:

"The court may of its own motion or on application by any party to the proceedings, and upon such terms as the justice of the case may require, enlarge or abridge the time appointed by the Rules for doing any act if, in the opinion of the court, *there exists such special circumstances as make it expedient to do so.*"

We note that submissions were offered based on proving that there was sufficient reason for extension of time, within the meaning of rule 5 of the Rules of this court. What amounts to sufficient reason for purposes of the Rules of this court has been set out in several decisions of this court and the Supreme Court.

In **Boney Katatumba v. Waheed Karim, Civil Application No 27 of 2007**, the Supreme Court defined sufficient reason under rule 5 of the Supreme Court Rules as follows:

"Under r.5 of the Supreme Court Rules, the Court may, for sufficient reason, extend time prescribed by the Rules. What constitutes "sufficient reason" is left to the Courts unfettered discretion. In this context the Court

will accept either a reason that prevented an applicant from taking the essential step in time, or other reasons why the intended appeal should be allowed to proceed though out of time. For example, an application that is brought promptly will be considered more sympathetically than one that is brought after unexplained inordinate delay. But even where the application is unduly delayed the Court may grant the extension if shutting out the appeal may appear to cause injustice.”

The same court in **Sitenda Sebalu v. Sam K. Njuba, Election Petition Appeal No 27 of 2007**, deemed it fit to extend time within which to serve Notice of the petition on the respondent because it was established that the delay in issuing the notice of the petition was occasioned by the court. However, the court did not define what amounts to “special circumstances” for purposes of rule 19 of the Election Petition Rules.

We therefore come to the conclusion that on the basis of the decision of the Supreme Court in **Bonny Katatumba’s case** (supra) what amounts to special circumstances was left to the unfettered discretion of the court. However, in exercising its discretion in extending time, the court must take cognizance of the need to expedite the conclusion of electoral disputes because courts are given a limited time within which to dispose of them.

This court in **Ikiror Kevin v. Orot Ismael, Election Petition Appeal No. 105 of 2016**, observed that the whole of Part X of the Parliamentary Elections Act is characterised by strictness as to the time of lodgement and prosecution of an election petition, including an appeal, if any. The court approved the expression about the strictness that must be enforced in the conclusion of electoral disputes as it was aptly stated in **Muyiya v. Nyagah & Others 2003]2 EA 616, at page 621**, as follows:

“Elections are serious matters of a state with its citizens. As elections are held, the outcome announced, the electorate must know their political leader quickly and assuredly. There must be limited or no uncertainty about this. Roles of elected representatives are many and diverse vis-à-vis their electors. To perform the roles well the elected must be sure of his post and the elector of his leader. And the sooner the better to give that

5 *certainty. So either the election is accepted at once or if challenged, that challenge must be moved along to end swiftly enough to restore certainty. And for that, election petitions are governed by this Act with its Rules in a very strict manner. Election Petition law and the regime in general, is a unique one and only intended for elections. It does not admit to other laws and procedures governing other types of disputes, unless it says so itself."*

10 This court was satisfied that necessity for strictness and certainty expressed in the quotation above equally applies to election petitions in this country lodged and prosecuted under Part X of the Parliamentary Elections Act. It was observed that these provisions must be interpreted and applied strictly and timelines being of material significance. It is from this perspective that we evaluate the evidence adduced by Mr Paul Oloo in his affidavit in support of his application.

15 Mr Oloo's application is based on the allegation that the court delayed the release of the judgment in in the petition. That while it was delivered on 16th September 2021, he only received a copy thereof on 12th October 2021. Further that he had no legal representative at the delivery of the judgment and it was impossible to frame the grounds of appeal without
20 internalising the contents of the judgment.

 The proceedings that were included in the Record of Appeal indeed show that the whole record was certified by the Deputy Registrar of the High Court at Soroti on 12 October 2021. So does the copy of the judgment. However, the copy of the judgment that was attached to the affidavit
25 that Dr Lokii filed to challenge the application shows that it was certified on 11 September 2021 as a true copy of the original. At page 318 of the proceedings, it is shown that judgment was delivered in open court in the presence of Amodoi Samuel Moses who was holding the brief for Kenneth Engoru and Richard Latigo. Both copies of the judgment also
30 indicate that the trial judge signed the judgment on 16th September 2021.

Judging from the signature endorsed on both copies of the judgment attached to the affidavits in this application, certification was by the same Deputy Registrar. It is inconceivable that on 17th September 2021, the Deputy Registrar certified a copy of the judgment that had not been
5 corrected by the trial judge. We therefore find that the trial judge signed and delivered a judgment without errors on 16th September 2021. The Registrar then certified copies thereof on the 17th September 2021. There was nothing to prevent him from certifying other copies for the petitioner on 12th October 2021 when he requested it because it was his
10 duty to do so.

With regard to the argument that it was not possible to frame grounds of appeal after judgment was read in open court in the presence of Samuel Amodoi, it is our view that it expected of an advocate holding a brief to take note for his principal. The notes should reflect the gist of
15 the findings and the decision of the trial judge, if the advocate is indeed competent to hold the brief for another. Such an advocate stands in the feet of the advocate that was retained to prosecute or defend the matter. His responsibility to the client is exactly the same as that of the advocate that was retained by the litigant.

20 If Mr Engoru did not attend court and did not access a certified copy of the judgement until the 12th October, an excuse we have rejected, he could have filed a tentative memorandum of appeal within the time specified by the Election Petition Rules. He would have then exercised the option of amending it at any time, as is provided for in Order 6 rules
25 18 and 19 of the CPR.

Further, rule 30(b) of the Election Petition Rules provides that in a case where a written Notice of Appeal has been given, the Memorandum of Appeal shall be filed within 7 days after notice is given. According to
section 34 (1) of the Interpretation Act, in computing time for the

purpose of any Act, a period of days from the happening of an event or the doing of any act or thing shall be deemed to exclude the day in which that event happens or the act or thing is done.

5 The Notice of Appeal was filed in the High Court at Soroti on 23rd September 2021. The Memorandum of Appeal therefore ought to have been filed on 30th September 2021. Instead, it was filed on 28th October 2021, which was a period of 28 days outside the time within which it ought to have been filed.

10 A delay of 28 days is inexcusable within the legal framework of hearing electoral disputes. Rule 34 of the Election Petition Rules provides that:

“Unless the court extends the time on exceptional grounds, the hearing of an appeal shall be completed within 30 days from the lodging of the appeal in court.”

15 But before that, section 66 of the Parliamentary Elections Act imposes a duty on this court to hear and dispose of all electoral appeals within a period of 6 months. In addition, the court must suspend all other matters pending before it.

20 Given the provisions above, this court cannot extend the time within which to lodge an appeal except where special circumstances are advanced and proved by the applicant. We find that the applicant has not advanced any such circumstances. Instead he is guilty of inordinate delay in lodging his appeal before this court. It can also be said that the lodging of the Memorandum of Appeal was merely an afterthought. In the alternative, he went on a fishing expedition to find any grounds that
25 he could advance in order to justify a hearing of an appeal by this court.

Moreover, Mr Oloo's application to validate the Memorandum of Appeal was filed on 23rd December 2021, after the respondent filed his application to strike out Election Petition Appeal No 62 of 2021 on 2nd

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November 2021. We are therefore not persuaded that he exercised diligence even in filing the application to correct the error brought about by the absence of diligence in pursuing the appeal. The lodgement of the application after the application to strike out the appeal concretises our
5 perception that the applicant was not diligent at all in pursuing his intended appeal.

We therefore find that we have nothing upon which to exercise our discretion to extend time within which to lodge the appeal or validate the Memorandum of Appeal that was filed 28 days out of the time
10 specified by the Election Petition Rules.

Issue 2

Rule 82 of the Court of Appeal Rules provides as follows:

"82. Application to strike out notice of appeal or appeal.

15 **A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time."**

20 In this case, though the respondent, Mr Oloo, filed a Memorandum of Appeal on 23rd October 2021, the step was taken out of the period of 7 days prescribed by the Election Petition Rules.

According to rule 83 of the Rules of this court, appeals in this court are instituted by lodging a Memorandum of Appeal in the Registry. This also
25 applies to electoral petition appeals, though they are subject to timelines specified in the electoral laws and regulations made under them. Mr Oloo has not furnished proof to show that there are special circumstances that would persuade us to validate his intended appeal. He clearly did not take an essential step to bring his appeal before this



court. There is therefore no appeal before this court because the Memorandum of Appeal that he purported to file on the 23rd October 2021 is incompetent.

In conclusion therefore, MA No 412 of 2021 is hereby dismissed with costs to the respondent therein. Election Petition Application No. 12 of 2021 is allowed with costs to the applicant therein. And as a consequence, Civil Appeal No. 62 of 2021 is hereby struck out with costs to the respondent therein.

It is so ordered.

Dated at Kampala this 4th day of May 2022.



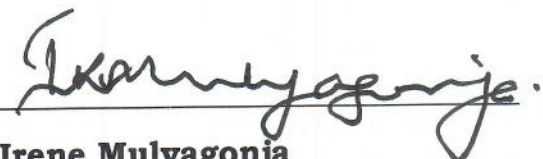
Richard Buteera

DEPUTY CHIEF JUSTICE



Catherine Bamugemereire

JUSTICE OF APPEAL



Irene Mulyagonja

JUSTICE OF APPEAL