

**THE REPUBLIC OF UGANDA  
IN THE SUPREME COURT OF UGANDA AT KAMPALA  
CIVIL APPLICATION NO. 06 OF 2023**

**1. ALBERT BANDA KAMULEGEYA  
2. KINALWA FRED  
3. NANSAMBA EDITH KASIRYE (Administrator  
of the Estate of the late Angelo Kasirye):.....APPLICANTS**

**VERSUS**

**1. SENTONGO JOHN  
2. HAJJI ISA SSENYONGA:.....RESPONDENTS**

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JSC  
(SINGLE JUSTICE)**

**RULING OF THE COURT**

The applicants lodged this application seeking the following reliefs:

- "1) The applicants be granted an extension of time within which to file a Civil Reference against the Ruling of Justice Rubby Opio Aweri (the late) in SCCA 40 of 2019 dated 14<sup>th</sup> December, 2021.**
- 2) The costs of this application be provided for the applicants."**

**Background**

The 1<sup>st</sup> applicant sued one Angelo Kasirye and the 2<sup>nd</sup> applicant in the High Court in connection with a dispute over ownership of a certain piece of land measuring 11 acres situated at Kireka-Bira in Wakiso District. At the time of filing the suit, Kasirye was the registered proprietor of the suit land after having allegedly obtained a transfer from the 1<sup>st</sup> applicant who was the former registered proprietor. The 1<sup>st</sup> applicant alleged in his suit in the trial Court that Kasirye had become the registered proprietor of the suit land through fraud and sought for cancellation of his certificate of title. The High Court allowed the 1<sup>st</sup> applicant's suit and ordered for cancellation of Kasirye's title and for reinstatement of the 1<sup>st</sup> applicant as the registered proprietor.

Kasirye and the 2<sup>nd</sup> applicant were dissatisfied with the decision of the High Court and appealed to the Court of Appeal but their appeal was unsuccessful. They brought a further appeal to this Court vide Civil Appeal No. 05 of 2018. That appeal was withdrawn by consent of the parties on terms contained in a document titled "Consent to Withdrawal of Appeal" dated 11<sup>th</sup> March, 2019 which was endorsed by the Registrar of this Court. Paragraph 2 of the highlighted document stated as follows:

**"The respondent (1<sup>st</sup> applicant) assents to the 2<sup>nd</sup> appellant's (3<sup>rd</sup> applicant) possession and transfer of ownership of 11 (eleven acres of land comprised in Busiro Block 306 Plot 1297 at Bira."**

It has now come to light from the respondent's pleadings that following the Court of Appeal decision, the 1<sup>st</sup> applicant sold the suit land to Kasirye. The sale was the basis for making the above highlighted paragraph 2.

Meanwhile, it appears that after the 1<sup>st</sup> applicant was reinstated as proprietor of the suit land by the High Court, he caused its subdivision and transferred two of the newly subdivided plots to the 1<sup>st</sup> and 2<sup>nd</sup> respondents. Thus, the 1<sup>st</sup> and 2<sup>nd</sup> respondents who had obtained an interest in the suit land that was subsequently transferred to Kasirye, in the highlighted consent judgment, were dissatisfied with the said judgment and applied to have it set aside. They averred that the consent judgment was illegal as it had the effect of overturning the decisions of the lower Courts which had declared the 1<sup>st</sup> applicant as the owner of the suit land and on whose authority the 1<sup>st</sup> applicant had subdivided the land and transferred portions to them.

The application for setting aside the consent judgment was entertained by Hon. Mr. Justice Rubby Opio-Aweri, JSC sitting as a Single Justice of the Court. In his ruling, the learned Single Justice agreed that the relevant consent judgment had the effect of setting aside the decisions of the lower Courts. He considered that this was illegal as a decision of the Court of Appeal may only be set aside by the Supreme Court after hearing an appeal and not by consent of the parties. He allowed the respondents' application and made an order striking out paragraph 2 of the impugned consent judgment.

In the intervening period since the decision of the learned Single Justice, Kasirye died and he was replaced by the 3<sup>rd</sup> applicant who is his legal representative. All the applicants aver that they are dissatisfied with the learned Single Justice's decision and wish to make a reference to a panel of three Justices in accordance with the law. However, the learned Single Justice's decision was rendered on 14<sup>th</sup> December, 2021 and the time permitted for bringing the reference, being seven days from the date of the relevant decision, had, as at 23<sup>rd</sup> February, 2023 when the present application was lodged, long expired. The applicants are therefore seeking this Court to grant orders of extension of time for filing the reference.

The grounds for the application are as follows: 1) The applicants are dissatisfied with the decision of the learned Single Justice; 2) The respondents who benefited from the decision were not party to the proceedings in the appeal or the lower Courts yet the ruling effectively held that they lawfully obtained their interests in the suit land; 3) The applicants have now filed a suit in the High Court contesting the manner in which the respondents became the registered proprietors of the suit land and therein raise serious allegations of fraud; 4) The applicants' failure to lodge their reference in time was caused by inadvertence as a result of failure of their lawyers to sufficiently explain the meaning of the paragraph 2 of the consent judgment. The inadvertence should not be visited on the applicants; 5) It is in the interest of justice to grant extension of time to the applicants to file their reference.

The application is supported by evidence contained in two affidavits of the 3<sup>rd</sup> applicant; one in support of the application and the other in rejoinder to the 1<sup>st</sup> respondent's affidavit in reply.

The 1<sup>st</sup> respondent filed an affidavit in reply opposing the application. Most of the averments in the 1<sup>st</sup> respondent's affidavit concern allegations of abuse of court process against the applicants but are not directly relevant to deciding the present application except the following: 1) That there has been dilatory conduct on the applicants' part and that they have not shown any sufficient reason or proffered any satisfactory explanation for their delay in

applying for a reference; 2) That the outcome of the intended reference will not change the status of the suit land, as the applicants have never appealed against a decision of the Commissioner for Land Registration which declared that the respondents had an interest in the suit land.

### **Representation**

At the hearing, Mr. Bamulutira Edward, Mr. Twinomugisha Daniel and Mr. Innocent Wanambugo, all learned counsel, appeared for the applicants. Mr. Tibaijuka Charles and Mr. Deo Kalikumutima, both learned counsel, appeared for the respondents.

Counsel for the respective sides filed written submissions.

### **Applicants' submissions**

Counsel for the applicants submitted that the applicants were, by the present application, seeking this Court to make two orders. Firstly, an order in exercise of the Court's inherent powers under **Rule 2 (2)** of the Rules of this Court; and secondly, an order extending time to allow the applicants to file a reference against the decision of the learned Single Justice, out of time.

With respect to the application for extension of time, counsel submitted that this Court has discretion to order for extension of time upon the applicant showing sufficient reason justifying its doing so. In support of this submission, counsel referred to the following cases; **Turinawe and 4 others vs. Turinawe and another, Supreme Court Civil Application No. 27 of 2010**; and **Tushabe vs. Co-operative Bank Ltd (In receivership/statutory liquidation) Supreme Court Civil Application No. 08 of 2018 (both unreported)**. Counsel further submitted, while relying on **Kaderbhai and Another vs. Virji and 3 Others, Supreme Court Civil Application No. 20 of 2008**, that what constitutes sufficient reason under Rule 5 of the Rules of this Court is left to the discretion of Court but includes what prevented the applicant from taking the timely steps or why the intended application should be allowed to proceed out of time such as where it appears that shutting out the application may cause an injustice.

Counsel submitted that the 3<sup>rd</sup> applicant has demonstrated sufficient reason in the present case which is that she was unaware of the significance of the decision of the learned Single Justice, in so far as that decision had the effect of granting ownership of the suit land to the respondents. It was further submitted that the 3<sup>rd</sup> applicant's former lawyers inadvertently failed to explain the effect of the impugned decision to the 3<sup>rd</sup> applicant which amounts to inadvertence of counsel. Counsel submitted that in the **Tushabe case (supra)**, it was held that failure of counsel to inform the applicant in time constituted sufficient reason to grant extension of time. Counsel reiterated that the 3<sup>rd</sup> applicant has only recently seen the full copy of the impugned ruling and her new lawyer have promptly filed this application to remedy the negative effects.

Furthermore, counsel submitted that the nature of the subject matter of the litigation between the parties, being prime land measuring 7 acres situated near Kampala Capital City, justifies the granting of an extension of time so as not to deprive the 3<sup>rd</sup> applicant of her interest in such prime property without hearing the suit she has filed in the High Court challenging the manner in which the respondents became registered proprietors of the suit land. Counsel contended that the hearing of that suit will be frustrated by the respondents pleading *res judicata* against it on grounds that the decision of the learned Single Justice decreed ownership of the suit land to the respondents.

Regarding the applicant's invocation of this Court's inherent powers under **Rule 2 (2)** of the Rules of this Court, counsel submitted that this application ought to be allowed so as to give this Court an opportunity when determining the reference from that decision, to cure what counsel referred to as several "infractions" arising from the decision of the learned Single Justice namely: a) The nature of the findings contained in the decision could not lawfully originate from an interlocutory application like that with which the decision was concerned; b) The finding in the challenged decision to the effect that the respondents acquired land from the 1<sup>st</sup> applicant lawfully when there is a pending substantive suit in the High Court to determine the same question



denied the applicants their non-derogable constitutional right to a fair hearing; and c) The learned Single Justice, in declaring that the respondents had lawfully acquired the suit land exercised original jurisdiction in the matter yet this Court cannot exercise such jurisdiction when handling interlocutory applications.

Furthermore, counsel submitted that this application ought to be allowed to prevent the respondents from abusing Court process by relying on an erroneous finding in the decision of the learned Single Justice that they lawfully acquired the suit land yet that is not the case so as to prevent the hearing of the mentioned suit. In support of this submission, counsel relied on pleadings in the relevant suit that were attached to the appellant's submissions.

Counsel concluded by praying this Court to grant the applications so as to protect the applicant's right to a fair hearing as highlighted above.

### **Respondents' submissions**

Counsel for the respondents began by objecting to counsel for the applicants' reliance on alleged High Court pleadings in their submissions. Counsel submitted that those pleadings were not attached to the 3<sup>rd</sup> applicant's affidavits in support of the application; had no evidential value and were only intended to mislead this Court.

On the merits of the application which seeks extension of time to allow the applicants to file a reference out of time, counsel submitted that the law as set out in cases decided by this Court such as **The Executrix of the Estate of the Late Tebajjukira and Another vs. Stanazi, Civil Application No. 8 of 1998; and Administrator General vs. Mwesigye, Civil Application No. 12 of 1996 (both unreported)** is that this Court has discretion to order for extension of time upon the applicant showing sufficient reason to justify such an extension.

Counsel submitted that there was no merit in the two reasons advanced by the 3<sup>rd</sup> applicant, namely: 1) That she never got a sufficient explanation from her previous lawyers as to the effect of the decision of the learned Aweri,

JSC and as such never took steps to remedy the decision; and 2) That there was inadvertence on behalf of her former lawyers which prevented her from timely filing a reference from the said decision.

With regard to the failure to obtain sufficient explanation about the challenged decision, counsel submitted that the 3<sup>rd</sup> applicant has not disclosed the inadequate explanation given by her former lawyers and/or the proper explanation given by her current lawyers so as to assist this Court to assess in this application whether there was merit in that regard. Further, that there was a contradiction in the 3<sup>rd</sup> applicant's evidence as to whether she had ever seen the learned Single Justice's ruling or not. In some parts of the 3<sup>rd</sup> applicant's evidence, she states that the ruling was never read to her and that she only saw the order arising from that ruling while in other parts she said that the ruling was only insufficiently explained to her, meaning that she had seen the ruling. Counsel further submitted that in a separate pleading, the 3<sup>rd</sup> applicant claimed that she had failed to file her reference due to default on the part of her former lawyers although she had duly instructed them to file the reference. Counsel contended that the various reasons given by the applicants portrayed them as liars who had no sufficient reason for failing to file the reference in time.

As for the applicants' submission that refusing this application will cause injustice, counsel responded that the applicants have not demonstrated why that is the case. Counsel contended that the applicants are contesting over the suit land for which the respondents are the registered proprietors, and whose proprietorship has been confirmed by the Commissioner for Land Registration. Counsel further contended that in the pleadings in the application which led to the learned Single Justice's decision, the respondents pleaded that they had an interest in the suit land and the applicants made no objection. The learned Single Justice based on the respondents' pleadings to determine that they had a lawful interest in the suit land. Counsel contended that the applicants' failure to object to the respondents' interest in that application meant that making a similar objection in the reference will prove unsuccessful.

In relation to the applicants' submission that the learned Single Justice, in reaching his decision which decreed the suit land to the respondents, exercised a jurisdiction he did not have since the respondents were not party to the litigation in the High Court and the Court of Appeal, counsel responded that although the respondents were not parties, they were affected by the relevant consent judgment which deprived them of an interest in the suit land. Counsel contended that the law permits this Court, in any proceedings, to address judicial errors that affect the rights of third parties. For this submission, counsel relied on **Bitamisi vs. Rwabuganda, Supreme Court Civil Application No. 04 of 2015 (unreported); and Turyatamba and Others vs. Attorney General [2011] 2 EA 411.**

Furthermore, counsel submitted that this application should be refused owing to the improper conduct of the applicants subsequent to the decision of the learned Single Justice, to wit: 1) Instead of immediately applying for a reference from the said decision, the applicants opted to ignore it and resorted to attempting to evict the respondents through unlawful execution proceedings; 2) The applicants thereafter proceeded to file a suit against the respondents in the High Court instead of pursuing a reference; 3) The applicants have previously denied that the decision of the learned Single Justice granted ownership of the suit land to the respondent and are now belatedly accepting it so as to file the present application; 4) The applicants colluded to make a new sale agreement on which they are basing to assert that the 1<sup>st</sup> applicant sold the suit land to the 3<sup>rd</sup> applicant. However, this sale agreement was not tendered in evidence in the trial Court. Counsel submitted that the highlighted conduct amounts to abuse of court process by the applicants and should not be condoned by this Court.

Finally, counsel submitted that this application ought to be refused because the intended reference will not change the status of ownership of the suit land which the Commissioner for Land Registration has already confirmed is owned by the respondents. Counsel prayed that this Court dismisses the application with costs.



## **Consideration of the Application**

I have carefully studied the respective parties' pleadings and evidence and also considered the submissions of counsel for both sides and the law and authorities cited. This is an application for extension of time to allow the applicants to file, out of time, a reference against the decision of Hon. Mr. Justice Rubby Opio-Aweri, JSC, sitting as a Single Justice of the Court in Civil Application No. 40 of 2019 dated 14<sup>th</sup> December, 2021. Under **Rule 52** of the **Rules of this Court**, the reference ought to have been filed within 7 days from the decision of the learned Single Justice, that is, by 21<sup>st</sup> December, 2021. Instead as at 9<sup>th</sup> February, 2023 about 1 year, 1 month and 18 days (413 days) after the decision of the learned Single Justice was rendered, the applicants had never filed their reference. They now seek this Court's indulgence to extend time and allow them to file their reference via this application.

Applications for extension of time are brought under **Rule 5** of the Rules of this Court which provides as follows:

### **"5. Extension of time.**

**The court may, for sufficient reason, extend the time prescribed by these Rules or by any decision of the court or of the Court of Appeal 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 so extended."**

In **Katatumba vs. Karim, Supreme Court Civil Application No. 27 of 2007 (unreported)**, it was held that what constitutes sufficient reason under Rule 5 is left to this Court's unfettered discretion. This means that this Court has the discretion to determine whether the reasons advanced in an application under Rule 5 constitute sufficient reason. The considerations for grant of an application for extension of time have been discussed in cases previously decided by this Court. In the **Katatumba case (supra)**, it was stated that:

**"Under r.5 of the Supreme Court Rules, the Court, may, for sufficient reason extend the time prescribed by the Rules. What constitutes "sufficient reason" is left to the Court's 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 duly delayed, the Court may grant the extension if shutting out the appeal may appear to cause injustice."**

I further observe that in exercising its discretion in an application for extension of time, this Court shall exercise its discretion judiciously, that is to say, by considering all the circumstances of the case and deciding whether or not the extension ought to be granted. The court's decision should, therefore, be characterized by sound judgment.

The first question to be determined is whether or not the applicants have, in their pleadings and evidence, set out sufficient reasons that justify the granting of the present application. The applicants raised failure to get "sufficient explanation from their then lawyers" and inadvertence of the same lawyers, as the sufficient reasons in this case. It was pleaded at paragraphs 7 and 8 of the applicants' Notice of Motion application as follows:

- "7. The time within which to file a reference against the said decision has already run out and the applicants never got sufficient explanation from their then lawyers as to the implications of that sentence that the intended reference intends to contest and as such never took steps to have the same remedied.**
- 8. The inadvertence to do the above should not be vested on the applicants as it is not their own mistake. (sic)"**

The applicants alluded to a sentence in the decision of the learned Single Justice which was not appropriately explained to them by their advocates. However, they did not clearly specify which sentence, in their pleadings. Further, as counsel for the respondents submitted, the applicants did not, in

their pleadings, disclose the insufficient explanation given to them by their former lawyers and any more appropriate explanation which has been rendered to them by their current lawyers.

I have carefully read the decision of the learned Single Justice which was rendered in an application seeking the striking out of paragraph 2 of a consent judgment entered between the 1<sup>st</sup> applicant on the one hand and Kasirye and the 2<sup>nd</sup> applicant, on the other. The learned Single Justice allowed the application and struck out paragraph 2 of the consent judgment. His reasons were that paragraph 2 was illegal and amounted to abuse of court process because it set out orders granting ownership of the suit land to Kasirye which had not been granted in the lower Courts and amounted to overturning the decision of the Court of Appeal. The High Court, whose decision was upheld by the Court of Appeal, had held that the rightful owner of the suit land was the 1<sup>st</sup> applicant.

The learned Single Justice, in his decision, made remarks that seemed to suggest that the respondents were lawful owners of part of the suit land, having lawfully acquired their respective portions following a transfer from the 1<sup>st</sup> applicant. At page 13 of his ruling, the learned Single Justice stated as follows:

**"The effect of that consent as endorsed by the Registrar of this Court meant that the finding of the Court of Appeal and the High Court had been overturned by that consent, but further implied that the applicants risked losing their respective interests in Plot No. 4423, 4423 and 442 to the 2<sup>nd</sup> (sic) respectively to the 3<sup>rd</sup> respondent."**

The learned Single Justice further stated at page 14 of the record as follows:

**"The purported consent between and amongst the respondents raises a lot of questions as it is evidence that the respondents colluded to reach that settlement and thus clandestinely deprive the applicants' interest in their respective properties lawfully acquired from the 1<sup>st</sup> respondent."**

As highlighted at the beginning of this ruling, the suit in the trial Court from which arose Supreme Court Civil Appeal No. 05 of 2018, that was settled by consent concerned a dispute between the 1<sup>st</sup> applicant on one side and

Kasirye and the 2<sup>nd</sup> applicant on the other. The 1<sup>st</sup> applicant alleged that Kasirye, who at the time of instituting the suit was the registered proprietor of the suit land, had become registered through fraud. The High Court accepted the said allegation and ordered for cancellation of Kasirye's certificate of title and reinstatement of the 1<sup>st</sup> applicant as the proprietor of the suit land.

The litigation in the lower Courts did not address the alleged interests of the respondents in this case. It will be noted that the respondents claim to have acquired their interest upon transfer by the 1<sup>st</sup> applicant following the High Court decision which decreed him as the rightful owner of the suit land. Indeed, the respondents are in possession of certificates of title showing that the suit land was subdivided into several plots, two of which are owned by them. The learned Single Justice, perhaps, accepting that the certificates of title of the respondents were conclusive of their lawful ownership of the suit land, made the remarks that he made. But it is important to add that the learned Single Justice's final decision was to strike out paragraph 2 of the impugned consent judgment. Neither the learned Single Justice, nor this Court had it proceeded to determine Civil Appeal No. 05 of 2018 on its merits, had the powers to pronounce itself on the lawfulness of the respondents' interests in the suit land as those had not been addressed in the decisions of the lower Court which were subject of the appeal. It is with that in my mind, that I believe that the learned Single Justice did not intend to make final pronouncements on that matter. The issue of whether the respondents lawfully obtained their interests in the suit land can ultimately only be determined in a separate suit in the High Court.

I noted that on 7<sup>th</sup> October, 2022, after the decision of the learned Single Justice had been rendered, the 1<sup>st</sup> applicant and Kasirye's administrators filed a suit in the High Court against the respondents and the Commissioner Land Registration seeking for cancellation of the respondents' certificates of title on grounds that they were obtained fraudulently. In my view, this suit is necessary to address the dispute between the parties as to whether the respondents' interests were acquired lawfully. However, it will be noted that



the respondents have filed an application seeking dismissal of the highlighted suit on grounds that the suit is *res judicata* as it seeks to determine issues that have been determined by the Supreme Court in the decision of the learned Single Justice now being challenged.

It is in my view absurd and unjust to assert that this Court could have settled the issue on lawfulness of the respondents' interest in the suit land in an application to set aside a consent judgment reached in litigation that did not address the issue of whether or not the respondents lawfully acquired their interests in the suit land. Yet it is possible, as the parties' interpretation of the learned Single Justice's decision has demonstrated, that the learned Single Justice's decision may be misunderstood and misapplied in a manner that supports that unjust assertion. In the peculiar circumstances of this case, I consider that there is sufficient reason to grant extension of time because it will afford this Court an opportunity, while deciding the reference, to determine if the issue on whether the respondents lawfully acquired their respective interests in the suit land could be finally decided in the ruling of the learned Single Justice. In the event that this Court, while deciding the reference, finds that the learned Single Justice could not settle the issue as he is said to have done, that would facilitate a competent court, in this case the High Court in a fresh suit, to conduct an investigation into whether the respondents lawfully acquired their respective interests in the suit land, as the interests of justice of this case, demand.

I have also noted that the applicants and the respondents trade accusations of abuse of court process against each other. However, it is, in my view, difficult to assess these accusations considering that this case has proceeded by way of affidavit evidence.

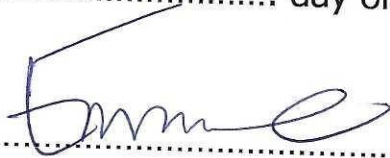
I also wish to point out that the applicants filed the present application after a period of 1 year, 1 month and 18 days (413 days) which in my view amounts to inordinate delay. In the **Katatumba case (supra)**, it was held that an application for extension of time brought after inordinate delay will be looked at less favourably than one that is brought promptly. However, I do not consider the highlighted inordinate delay as conclusive for the reasons

given earlier when I found that the peculiar circumstances disclosed by this application justify the grant of an extension of time. But I consider that the applicants ought to have filed this application more promptly. Therefore, to discourage litigants from tardiness in filing applications for extension of time, I shall penalise the applicants in costs which I award to the respondents.

In conclusion, for the reasons given in this ruling, I allow this application and grant the applicants an extension to file their reference from the decision of the learned Single Justice within 7 days from the date of delivery of this ruling. The costs of the application shall be paid to the respondents.

**It is so ordered.**

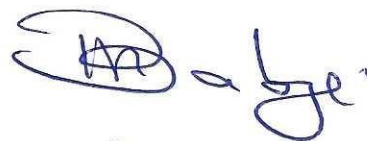
Dated at Kampala this 31<sup>st</sup> day of May 2023.



**Elizabeth Musoke**

Justice of the Supreme Court

The ruling delivered as directed  
by the Registrar.



31-05-2023.