

5 **THE REPUBLIC OF UGANDA**

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: OWINY-DOLLO, CJ; TIBATEMWA-EKIRIKUBINZA;
 CHIBITA; JJ SC)

10 **CIVIL REFERENCE NO. 09 OF 2022**

(Arising from Consolidated Civil Reference Application Nos. 63
 &.64 of 2021)

(Arising from Miscellaneous Applications No.17 of 2020 and No.
 01 of 2021)

15 **TEBAJANGA TONY & 3 ORS ::::::::::::::::::::::::::::::::::: APPLICANTS**

VS

GUKINA SARAH ::::::::::::::::::::::::::::::::::: RESPONDENT

20 **(A Reference from the Ruling and order of Tuhaise, JSC (sitting as a single Justice) dated**
 14th February, 2022, in Consolidated Civil Reference Application Nos. 63 &.64 of 2021.)

RULING OF THE COURT.

This is a reference by the Applicants, Tebajanga Tony and 3 Others
against the ruling of Tuhaise JSC (sitting as a single Justice) in

Reciev.

5 ***Consolidated Civil Reference Application Nos. 63 &.64 of 2021,***
where she overruled the preliminary objections raised by the
applicants regarding the competence of the respondent's taxation
references in regards to the time for filing the same.

The applicants filed the reference under the provisions of Rule 106
10 (7) & (8) of the Rules of this Court seeking to set aside the said
decision and find that the respondent's references were filed out of
time.

Background to the Reference

On 26th November, 2021, the Assistant Registrar of this Court
15 delivered a taxation ruling in favour of the applicants in reference to
two Bill of costs filed by the applicants. The first bill of costs related
to the respondent's Notice of appeal which was struck off with costs
vide Miscellaneous Application No.01 of 2019 filed by the applicants.
The second bill of costs was in relation to the respondent's
20 application for leave to appeal out of time vide Miscellaneous
Application No.17 of 2020 which was also dismissed with costs.

Dissatisfied with the said ruling, the respondent made an application
for reference to the Registrar vide two letters dated 1st December,
2021 to challenge and refer the matters for consideration to a single
25 Justice. The letters briefly indicated the grounds of the intended
reference and also requested for certified copies of the ruling and
record of proceedings to enable her file a memorandum of reference.
On 21st December, 2021 the respondent was availed with the certified
copies of the ruling together with the proceedings. On 23rd December,

5 2021, the respondent filed the record of reference vide civil references Nos. 63 & 64 of 2021. On 19th January, 2022 the same were served on counsel for the applicants.

At the hearing before a single Justice (Tuhaise, JSC), the references were consolidated. However, before they could proceed, the
10 applicants raised a preliminary objection on the ground that the references were incompetent since they were filed and served out of time contrary to Rule 106(5) of the Rules of this Court. The learned Justice overruled the preliminary objection and ordered that the hearing of the references should proceed. Dissatisfied, the applicants
15 have filed this reference against the decision of the learned Justice.

Grounds

The Reference is based on the following grounds:

**1. The Learned Justice of the Supreme Court erred in Law and fact when she held that Rule 106 sub rule (5) does not prescribe
20 timelines for References and as such reached a wrong Conclusion that the Respondents filed their Taxation References in time.**

**2. The Learned Justice of the Supreme Court rightly ruled that the two Letters received by Court on 1st December 2021 were not References but erred in Law and reached a wrong conclusion
25 that there are no timelines for filing a Reference.**

3. The Learned Justice of the Supreme Court erred in Law and fact when she wrongly evaluated the evidence on record

5 **and failed to find that the Respondent's Taxation References were filed out of time.**

The applicants prayed that the honourable Court sets aside the decision of the learned Justice and find that the Taxation References by the Respondent herein were filed out of time.

10 **They also prayed for costs.**

Representation

At the hearing, the Applicants were represented by Mr. Nuwamanya Justus while Mr. Hassan Lwanga represented the Respondent. The parties filed written submissions.

15 **Submissions**

Applicants' Submissions

Counsel for the applicants argued all the grounds together.

Counsel for the applicants submitted that the interpretation of Rule 106(5) by the learned Justice was wrong. Rule 106 prescribes
20 timelines for making a reference to a single Justice. The Rule is clear that an application for a reference should be made at the time of the taxation ruling or within seven days from the date of the taxation ruling. Counsel contended that in the present case, the taxation ruling was delivered on 26th November, 2021 and the reference was
25 filed on 23rd December, 2021 and served on 19th January, 2022 which was out of time.

He further argued that a letter of intention to make a reference made by the respondent to the Registrar on 1st December, 2021 was not an

5 application for a reference as envisaged in the Rule. The learned Justice therefore made her finding on a wrong evaluation yet she agreed that a letter requesting for the record of proceedings was not a reference.

Counsel also argued that the respondent never gave any explanation
10 for the delay that instead her counsel submitted that the delay was curable under Article 126 of the 1995 Constitution. Counsel relied on the case of **Utex Industries ltd v Attorney General SCCA No. 52/95 and URA v Uganda Consolidated Properties Ltd, Civil Appeal No. 31 of 2000(CA)**.

15 Counsel invited Court to allow the reference and find that the respondent's reference was filed out of time. He prayed that the ruling of the single Justice is set aside with the order that the taxation of the Registrar is maintained.

Respondent's Submissions

20 Counsel for the respondent opposed this reference and argued that the respondent's letters of 1st December, 2021 to the Registrar were written applications for references within the meaning of Rule 106(5) and were filed within the seven days. Counsel explained that the taxation rulings were delivered untyped on 26th November, 2021.
25 That on 1st December, 2021 the respondent through her lawyers wrote/ applied to the Registrar that she was dissatisfied with taxation ruling and wished to refer the matter to a single Justice. The letters further indicated the reasons for the reference and further requested for typed and certified record of proceedings and ruling to enable the

5 respondent form proper grounds of her references. Counsel therefore argued that the learned Justice rightly found that the letters were applications for a reference.

Counsel further supported the learned Justice's finding that the letters were not references themselves but rather applications for
10 reference. He submitted that save for applications for reference, the rules of this Court do not prescribe timelines for filing references themselves. That therefore it is not true that the respondent's references were filed out of time.

He argued that the certified typed copies of the ruling and record of
15 proceedings were availed to the respondent on 21st December, 2021 and on 23rd December, 2021 the respondent accordingly file References Nos. 63 & 64 of 2021 as per the record of References. He explained further that the same were signed by the Registrar on 19th January, 2022 and served on the applicants the same day.

20 Counsel therefore invited this Court to find that the respondent complied with Rule 105(6) of the Rules of this Court and that the references were not filed out of time. He further prayed that this Court orders that the references be heard and determined on merit.

Court Consideration of the Reference

25 We have perused the record and considered the submissions of counsel for both parties. The main contention of counsel for the applicants is that the taxation references Nos. 63 & 64 of 2021 were filed out of time beyond the seven days requirement under Rule

5 106(5) and yet the learned single Justice decided otherwise. The learned Justice therefore wrongly interpreted Rule 106(5) of the Rules of this Court.

The law governing references on taxation is set out in Rule 106 of the Rules of this Court which reads in so far as is relevant as follows:

10 **"(1) Any person who is dissatisfied with a decision of the registrar in his or her capacity as a taxing officer may require any matter of law or principle to be referred to a judge of the court for his or her decision and the judge shall determine the matter as the justice of the case may require.**

15

(5) An application for a reference may be made to the registrar informally at the time of taxation or by writing within seven days after that time. "

20 The learned Justice having considered the above law determined the preliminary objection at page 8-9 as follows:

25 ***"The record of the now consolidated References shows that the ruling of the Taxing Master regarding Miscellaneous Application No. 17 of 2020 and Miscellaneous Application No. 01 of 2021 was delivered on 26th November 2021. The record also shows that there are two separate letters from M/S Tuhimbise & Co. Advocates addressed to the Registrar of this Court, in regard to each of the References. The letters were each duly received by the Registry of this***

5 ***Court on 1st December 2021. Each of the said letters indicate that the Applicant was dissatisfied with the taxation ruling, and intends to have the taxation referred to a Single Justice. Each of the said letters highlighted the grounds of the intended reference and requested for certified copies of the ruling and the record of taxation proceedings to enable them prepare and file a memorandum of reference.***

10 ***It is clear from the two separate letters on record that the Applicant, through her Counsel, informed the Registrar of this Court in writing about her intention to have the ruling of the taxing master referred to a Single Justice. The two letters, which were received by the Registrar of this Court on 1st December 2021, were filed five days after the ruling was delivered. This was clearly in compliance with Rule 106 (5) of the Rules of this Court which requires an application for a reference to be made to the Registrar of this Court orally at the taxation, or in writing within seven days after the taxation.***

15 ***The Respondent's Counsel in his submissions appears to suggest that a reference should be made within seven days after the taxation, and further argues that the letters written by the Applicant's Counsel are not references. In, my considered opinion, with respect, this is a wrong interpretation of rule 106 (5) of the Rules of this Court.***

5 *I agree with the Respondents' Counsel that, indeed, the two*
letters the Applicant's Counsel wrote where he stated the
Applicant's intention to have the taxation referred to a
Single Justice are not references. The two letters are
rather, applications for a reference, which is exactly what
10 *rule 106 (5) of the Rules of this Court envisages when it*
prescribed the time within which they can be made to the
Registrar of this Court, that is either orally at the time of
taxation, or written, within seven days after the taxation.
Rule 106 (5) does not prescribe timelines for references, but
15 *rather, it does so for applications for references to the*
Registrar of this Court.

Rule 106 (6) is the rule which provides for references, but
even then it is silent about timelines for a reference, and
only provides for the discretion of a Judge to adjourn a
20 *reference for the consideration of the Court.*

Thus, based on the foregoing, I would overrule the
Respondents' first objection.

The second objection, was firstly, that the Respondents'
Counsel was not served with the References within seven
25 *days as required by rule 106 (5)*

As already observed above, rule 106 (5) of the Rules of this
Court does not specify when service of the Reference
should be done. However, rule 18 of the same Rules states
that service of documents should be effected in such a way

5 ***as the court may, in any case, direct which shall normally
be a way in which a comparable process of the High Court
could be served.....***

10 ***With respect to time, given that both the References and
the hearing notices were signed and sealed by the
Registrar on 19m January 2021., and that the same were
served upon the Law Firm of the Respondents' Advocate
that same day, an objection cannot arise as to time of
service.....***

15 ***I would, based on the foregoing, overrule the Respondents'
second objection.***

***Thus, for reasons given, the preliminary objections raised
by Counsel for the Respondent are overruled. Costs will be
in the cause.***

20 ***The hearing of the consolidated References should
accordingly proceed.”***

25 Indeed, a reference under Rule 106 is envisaged to be made in two
alternative ways either orally at the time the registrar delivers a
taxation ruling or in writing to the registrar within seven days after
the taxation decision of the registrar asking for a reference to be
made.

 We note that the Rule does not specifically provide the written format
or mode of the procedure envisaged under Rule 106(5) but the

5 accepted Judicial practice is that an application for a reference can be by way of a letter to the registrar as was in the present case.

We further note that the filing of a reference under 106 should be less elaborate and simple. Rule 106 is a unique rule with its own mode of operation regulating the conduct of applications specified
10 therein. Rule 42 of the Rules of this Court sets out the general form in which applications to Court are to be instituted. It provides that applications to this Court shall be by motion save those which under any other rule may be made informally.

Further, it is our view therefore, with necessary modifications, that
15 the contents of a reference made under Rule 106 should include the certified proceedings before the taxing master which include the bill of costs or documents upon which the taxing officer based his taxation, the certified copy of the taxation ruling, in addition to the application for reference whether written by the applicant or verbally
20 and therefore recorded in the proceedings, as well as the grounds for which the reference is preferred which are set out in the application or with necessary modification if any in the memorandum of reference. This is the entire record of reference.

A reference to a single Judge from a taxation can be a form of an
25 appeal although less formal in presentation. The applicant must therefore file the record of reference and the registrar must ensure that an appropriate number of certified copies of the pleadings and proceedings (record of reference) are produced after which the reference is fixed for hearing before the single Justice.

5 The common practice has been that once one has filed an application
for reference to the registrar (a letter) in seven days then one has in
essence filed a reference. While this is true as per Rule 106(5) reason
being that a reference is initiated by a written application to the
registrar, the reference entails the entire record of reference. The
10 desirable practice therefore is that the record of reference should be
filed by the applicant as well together with the written application of
reference.

The written application for a reference to the registrar essentially acts
as an intention or notice of a reference to have the matter referred to
15 the single Justice but it is not a record of reference. A written
application to the registrar alone is not in our view sufficient enough
to satisfy court that the decision from which the reference was made
was wrong. Therefore, having filed the application for reference the
applicant should also file the record of reference for the Judge to
20 study and decide whether the taxing master made the right decision.

It is our opinion therefore that the letter having been filed on 1st
December, 2021 which was within seven days as required by Rule
106(5) then the reference was not filed out of time since as mentioned
earlier a reference is initiated by a written application to the registrar.
25 What was left was perfecting it by filing a record of reference. Perhaps
that was the reason for the Judge's finding that the two letters were
applications for a reference as per rule 106(5) but no timelines are
provided for the reference which in our view is essentially the entire
record of reference and we agree.

5 We wish to note that the preparation of the certified rulings and
proceedings by the registrar may not be practically readily available
within the seven days to have the record of reference filed that is why
if the application for the reference is filed within the seven days as
required under the Rules then in essence the reference is not filed
10 out of time and can be heard or adjourned by the Justice for
consideration of the Court as per Rule 106(6).

In this case the certified copies of the ruling and proceedings were
availed to the respondent on 21st December, 2021 after the seven
days subsequently the respondent filed the record of reference on
15 23rd December, 2021 which time was reasonable and explained. In
the circumstances, the respondent having complied with Rule 106(5)
as rightly found by the learned Justice, we do not agree that the
respondent's reference filed on 23rd December, 2021 was out of time
as counsel for the applicants wants Court to find since according to
20 him everything must be filed within seven days which is
misconceived.

The above notwithstanding, even if the respondent made the written
application to the Registrar giving/highlighting grounds for the
reference and requested for certified copies of the ruling and
25 proceedings, then she complied with Rule 106(5) and what was left
was for the Registrar to place the file before the single Justice with
the necessary pleadings and proceedings for study to decide whether
on the material available before the taxing master, he or she made
the right decision. The respondent in essence was prudent enough to

- 5 go a step further in preparing the entire record on behalf of the Court when she filed it on 23rd December, 2021. She needed not have filed the grounds again having filed the same in the application of reference on 1st December, 2021. The respondent's references were therefore still within time.
- 10 With respect to service, we agree with the learned Justice that given that both the references and the hearing notices were signed and sealed by the Registrar on 19th January 2022 and that the same were served upon the Law Firm of the applicants' Advocate that same day, an objection cannot arise as to time of service.
- 15 For the reasons given above, we cannot fault the learned Justice for overruling the preliminary objections and ordering that the references should proceed for hearing.

Before we take leave, we wish to note that perhaps the rules should be streamlined to set timelines for filing the record of reference in
20 order to expedite the cases otherwise the record of reference should be filed within reasonable time.

As a result, this reference is dismissed with costs to the respondent. We order that the references Nos.63 and 64 of 2021 be cause listed and heard immediately.

5 Dated at Kampala this.....12th.....day ofSept.....2023



ALFONSE C. OWINY-DOLLO

CHIEF JUSTICE



TIBATEMWA-EKIRIKUBINZA

JUSTICE OF THE SUPREME COURT



MIKE J. CHIBITA

JUSTICE OF THE SUPREME COURT