



**been served and that the statutory period had expired on 8<sup>th</sup> July 2013. On 30/7/2013 they filed this application.**

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The application is supported by an affidavit of Mathew Othieno, a process server with Ms Akampumuza & Co. Advocates which details the circumstances that led to the present application.

45 The 3<sup>rd</sup> and 4<sup>th</sup> respondents filed an affidavit in reply. The respondents contend that contrary to what the applicant states in the affidavit in support, the applicant's counsel received the record of proceedings on 26<sup>th</sup> April 2013 and filed an appeal on 1<sup>st</sup> July 2013 well out of time prescribed by the law and as such  
50 the application should be dismissed.

The fifth respondent also filed an affidavit in reply. He contended that as from 2013, the applicant had full knowledge  
55 that his counsel Mr. Kenneth Kakuru ceased being an advocate of the High Court of Uganda as he had been appointed a Justice of the Court of Appeal of Uganda and that his counsel was never served with any documents regarding the appeal in question. He contended that he will suffer injustice and be  
60 personally prejudiced if court extends the time within which to serve the memorandum of appeal.

The Applicant filed an affidavit in rejoinder. At the hearing, Dr. Akamupumuza appeared for the applicant while Mr. Ronal Oinee  
65 represented the 3<sup>rd</sup> and 4<sup>th</sup> respondent.

Mr. Tony Arinaitwe represented the 5<sup>th</sup> respondent. The 2<sup>nd</sup> respondent was in Court but did not file any affidavit in reply. The 1<sup>st</sup> respondent was not represented.

70 Counsel on both sides made forceful submissions. Mr Akampumuza applied for an adjournment to make a rejoinder. When the matter appeared for hearing on 16<sup>th</sup> July, 2014 Mr. Akampumuza sought for leave to file written submissions to  
75 save court's time. Mr Oine vehemently objected to the admission of the submissions. I reserved my ruling and stated that it would be incorporated in the main ruling.

80 Much as it was not good practice for counsel Akampumuza to file written submissions in answer to oral submissions, I have perused through the written submissions and I found nothing new. All counsel did was to reply to the points raised by the respondents in their submissions. No new matters were raised. The admission of the written submissions would therefore not  
85 prejudice the respondents in any way.

I now come to the main application. There is no dispute that the applicant filed a Memorandum and Record of Appeal in

90 Court on 1<sup>st</sup> July, 2013 as per the affidavit of Owino Mathew. It is  
also not in dispute that both documents were not served on  
the respondents on time.

95 When the respondents found out the problem, he instructed  
another firm of lawyers which filed this application on 30<sup>th</sup> July  
2013.

100 The applicant contends that the statutory period within which  
to serve the documents expired on 8<sup>th</sup> July 2013 and he filed  
this application on 30<sup>th</sup> July 2013 and as such there was no  
inordinate delay.

105 On their part, the 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> respondents contend that the  
Record of Proceedings of the High Court was served on counsel  
for the applicant on 26<sup>th</sup> April 2013 and the applicant filed the  
Memorandum and Record of Appeal on 1<sup>st</sup> July 2013 well out of  
the time prescribed by **Rule 83(1)(2) of the Rules of this  
Court.**

110 There are two conflicting versions as to when the applicant  
received the Record of proceedings.

The respondents contend that the applicant's counsel was  
served with the same on 26<sup>th</sup> April, 2013 and 60days within  
which to lodge the Memorandum and Record of Appeal expired

115 on 26 June, 2013 so the documents were filed out of time and  
as such the application cannot stand.

The respondents rely on the Affidavit of Kiconco Elivaida a  
process server of the High Court at Mabrara. The applicant on  
120 his part contends that the certified copy of proceedings was  
reserved on 14/6/2013 as per the Registrar's Certificate (See  
Annexure A to the affidavit in rejoinder sworn by Sarah Naigaga.

I have looked at the Affidavit of Kiconco Elivaida that is annexed  
125 to Mary Mugenyi's affidavit in reply. It only has a letter  
informing M/s. Kakuru & CO. Advocates that the proceedings  
were ready for collection. There is nothing to show that the  
proceedings were served on counsel Kakuru.

130 Contrary to that, the Affidavit in Rejoinder shows that the  
Registrar's certificate was signed on the 14<sup>th</sup> day of June, 2013  
and that is the date when the proceedings were collected.

This fact is not contradicted. I am convinced that the  
135 proceedings were collected on 14<sup>th</sup> June, 2013 as per the  
Registrar's certificate and the appeal was lodged on 1<sup>st</sup> July,  
2013. The appeal was therefore lodged within the prescribed  
time.

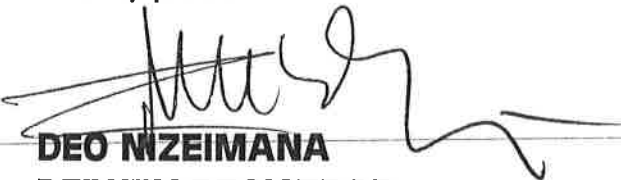
memorandum of appeal was filed on 1<sup>st</sup> July 2013. This application was filed on 30<sup>th</sup> July, 2013. There was inordinate delay on the part of the applicant after he discovered that his former counsel had not served the documents on the respondents.

It is trite law that a mistake by counsel should not be visited on an innocent litigant. The applicant was vigilant in pursuing his rights. He should not therefore be barred from pursuing his rights.

Accordingly, I allow the application for extension of time within which to serve the Memorandum and Record of Appeal on the respondents.

The documents should be served within 7 (seven) days from the date of this ruling.

On the issue of costs, I order that they abide the outcome of the appeal.

  
**DEO NZEIMANA**  
**DEPUTY REGISTRAR.**  
**10/3/2015**