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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CONSOLIDATED ELECTION PETITION APPLICATIONS

NO.23 OF 2021, NO.13 OF 2022, NO.26 OF 2021 & NO.34 OF 2022

(Arising from Election Petition Appeal No.83 of 2021)

10 *(Arising from High Court Election Petition No.009 of 2021)*

1. MUNYIRWA FREDRICK VS. WALYOMU MUWANIKA MOSES
AND THE ELECTORAL COMMISSION

15 2. MUNYIRWA FREDRICK VS. WALYOMU MUWANIKA MOSES
AND THE ELECTORAL COMMISSION

3. WALYOMU MUWANIKA MOSES VS. MUNYIRWA FREDRICK

20 4. ELECTORAL COMMISSION VS. MUNYIRWA FREDRICK

CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ

HON. JUSTICE HELLEN OBURA, JA

25 HON. JUSTICE CATHERINE BAMUGEMEREIRE, JA

RULING OF COURT

Background

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The applicant, Munyirwa Fredrick and 6 other candidates contested for the position of Member of Parliament for Kagoma County Constituency in Jinja District. The Electoral Commission declared and returned the 1st respondent, Walyomu Muwanika as the winner of the said election with 7,948 votes and
35 the petitioner as the 2nd runner up with 5,048 votes.

Being aggrieved with the election results, the applicant/petitioner filed a petition at Jinja High Court vide **Election Petition No.09 of 2021**, seeking for

5 orders that the election of the 1st respondent be nullified and an order for the Electoral Commission to organise and conduct fresh elections on grounds that the election was not conducted in compliance with the electoral laws be made.

10 The applicant/petitioner, filed **Misc. Application No.02 of 2021**, arising from **Election Petition No.09 of 2021**, in the High Court seeking for an order for extension of time within which to serve the Notice of Presentation of a Petition to the 1st respondent and an order validating service of the Petition to the 1st respondent which was served out of time.

15 At the hearing of the Petition, the trial Judge consolidated **Misc. Application No. 02 of 2021** (for extension of time within which to serve) with **Election Petition No.09 of 2021**. The trial Judge dismissed **Misc. Application No.02 of 2021**, for non-service of the 1st respondent, which ideally disposed of the Petition. The trial Judge, however, proceeded to resolve the grounds of the petition on its merits and came to the conclusion that the 1st respondent,
20 Walyomu Muwanika was validly elected and dismissed the Petition.

Dissatisfied with the decision of the trial Judge, the applicant/appellant appealed to this Court vide **Election Petition Appeal No.83 of 2021**.

25 In addition to the appeal the parties also filed four applications; **Misc. Application No.13 of 2021**; **Misc. Application No.23 of 2021**; **Misc. Application No.26 of 2021** and **Misc. Application No.34 of 2022**.

The Court fixed the appeal and the four applications for hearing on 20th March 2022.

Representation

30 At the hearing the parties were represented as below: -

Mr. Dennis Atwijukire represented the appellant.

Mr. Ambrose Tebyasa appeared for the 1st respondent while Mr. Lugolobi Hamidu was Counsel for the 2nd respondent.

5 Counsel for the parties had filed written submissions on orders of Court at the scheduling of the main appeal and the four applications for which they all sought the leave of Court and the same was granted and they all adopted their written submissions. On the agreement of counsel for all the parties the four applications were consolidated.

10 Upon the parties submissions being adopted by the Court, the appeal and the applications were adjourned for ruling on the consolidated applications and Judgment on the main appeal.

Court has chosen to dispose of the ruling on the consolidated applications first.

15 In **Miscellaneous Application No.13 of 2021, Munyirwa Fredrick versus Walyomu Muwanika Moses and the Electoral Commission**, the applicant is seeking for amendment of their grounds of appeal in a Memorandum of Appeal filed by their former lawyer with whom they had a disagreement and are seeking leave of Court to file an amended Memorandum of Appeal.

20 The application was opposed by both the 1st and 2nd respondent on a number of grounds including: -

1. That the application has been overtaken by events. That both the appellant and the respondents have already conferenced the appeal and the it is ready for hearing on the basis of the original grounds of
25 appeal. To allow this application, would necessitate the parties to argue the appeal on the basis of the amended grounds of appeal in the amended Memorandum of Appeal.

2. The proposed amendment is not specific and seeks to reintroduce the
30 appellant's whole Petition on non-compliance with no clear complaints.

5 3. The proposed application for amendment was filed over 5 months from the time the applicant filed the Memorandum of Appeal and this would prejudice the hearing of the Appeal by causing inordinate delay.

10 In **Miscellaneous Application No.23 of 2022, Munyirwa Fredrick versus Walyomu Muwanika Moses and the Electoral Commission**, the applicant is seeking for Court to issue orders that the time within which to lodge the Memorandum of Appeal and the Record of Appeal in Election Petition Appeal No. 83 of 2021 filed in this Court on 2nd December, 2021, and service of the same be extended and/or the said Memorandum of Appeal be
15 validated.

This application was opposed by both the 1st and 2nd respondents on the following reasons:-

- 20 1. According to both respondents, Judgment in the Election Petition No.003 of 2021 was delivered on 30th August, 2021 by Hon. Justice Mulangira and the applicant and his advocates promptly filed a Notice of Appeal and requested for certified copies of the Judgment and Court Proceedings on 30/08/2021.
- 25 2. That the Registrar of the High Court Jinja, availed both the Proceedings and Judgment to the applicant on the 14th October, 2021.
- 30 3. They argued that the applicant ought to have filed a Notice of Appeal within 7 days after the Judgment of the High Court against which the appeal is being made.
- 35 4. That the applicant should also have filed a Memorandum of Appeal within 7 days after the Notice of Appeal was given. The applicant ought to have filed the Memorandum of Appeal and Record of Appeal not later than 6th September, 2021 respectively.

5 5. The applicant according to the respondents has not disclosed sufficient reason for the applicant's failure to take essential steps to prosecute the appeal.

10 6. They explained that the applicant only changed advocates on 31st January, 2022 and served notice of change of Advocates on 2nd respondent on 22nd February, 2022.

15 7. The 1st and 2nd respondent's counsel prayed Court to dismiss the application with costs.

20 In **Miscellaneous Election Petition Application No.26 of 2021, Walyomu Muwanika Moses versus Munyirwa Fredrick** and **Miscellaneous Election Petition Application No.34 of 2022, Electoral Commission versus Munyirwa Fredrick**, the applicants are seeking for Court to issue orders that the Respondent's Notice of Appeal, Memorandum of Appeal filed in Court vide Election Petition Appeal No.83 of 2022 be struck out and costs for the application be provided for. The applications were brought by Walyomu Muwanika Moses and the Electoral Commission, respectively. They are based on the following grounds:-

25 a) That the Respondent's purported appeal offends the rules of this Court, the provisions of the Parliamentary Elections Act and the rules made thereunder for failure to take the essential and necessary steps in filing, serving and prosecution of the appeal and the same is as such incompetent, bad in law and barred by law.

30 b) That the respondent failed to file and serve a Memorandum of Appeal with in the time prescribed by law.

- 5 c) That the Judgment vide Election Petition No. 002/2021; Munyirwa Fredrick vs. Walyomu Muwanika Moses and Electoral Commission was delivered on 30th August, 2021, by Hon. Joseph Mulangira.
- 10 d) That the Respondent on 30th August, 2021, filed the Notice of Appeal and the letter requesting for certified copies of Court Record and Judgment.
- 15 e) That the Registrar of High Court of Uganda at Jinja availed the requested copies 14th October, 2021.
- f) That the Respondent filed both the Memorandum of Appeal and the Record of Appeal on 2nd December, 2021, in the Court of Appeal at Kampala.
- 20 g) That the Memorandum of Appeal and the Record of Appeal were both filed outside the time prescribed by the Judicature (Court of Appeal Rules) Directions.

Both applications sought for orders that the Respondent's Notice of Appeal and the Appeal vide **83 of 2021; Munyirwa Fredrick vs. Walyomu Muwanika Moses and Electoral Commission** be struck out and that Costs of the applications be provided for.

The respondent, Munyirwa Fredrick opposed the applications on the ground that his former lawyers did not get the typed and certified copy of the record of proceedings in the Petition for purposes of preparing the Memorandum of Appeal and Record of Appeal since it was not availed on the day of Judgment. He averred that the prescribed time of 7 days within which to file a Memorandum of Appeal from the date of filing the Notice of Appeal and the 30 days for filing the Record of Appeal and Memorandum of Appeal in this Court lapsed before the typed and certified record of proceedings and Judgment were availed to the appellant and his former lawyers by the High Court. The respondent also alleged that he was not

5 advised by his former lawyers on the timelines within which to file a Memorandum and Record of Appeal in this Court.

Resolution

All the four applications hinge on one important issue, the resolution of which will dispose of all the applications and eventually even the appeal.

10 The issue arising from Msc. Applications No's. 23, 26 and 34 is whether the filing of the Memorandum of Appeal and the Record of Appeal in the instant case was carried out within the time prescribed by the Law and then what was the effect of that on the competence of the appeal.

The **Parliamentary Elections (Interim Provisions) (Election Petitions) Rules** provide for the timelines for filing of the Notice of Appeal, 15 Memorandum of Appeal and the Record of Appeal.

The rules provide as follows:-

"29. Notice of appeal.

20 **Notice of appeal may be given either orally at the time judgment is given or in writing within seven days after the judgment of the High Court against which the appeal is being made.**

30. Memorandum of appeal.

A memorandum of appeal shall be filed with the registrar –

25 **(a) in a case where oral notice of appeal has been given, within fourteen days after the notice was given; and**

(b) in a case where a written notice of appeal has been given, within seven days after notice was given.

31. Record of appeal.

30 **The appellant shall lodge with the registrar the record of appeal within thirty days after the filing by him or her of the memorandum of appeal."**

5 This Court has had occasion to state the law on the time lines for filing the Notice of Appeal, the Record of Appeal and the Memorandum of Appeal in numerous decisions.

In *Election Application No.24 of 2016 (unreported), Abiriga Ibrahim vs. Musema Mudathir Bruce*, the applicant had filed a Memorandum of Appeal
10 on the 5th July 2016. The last date for filing that appeal was 1st July 2016. The Memorandum of Appeal in that case was filed only 4 days out of the time prescribed by the law. This Court held as follows in its unanimous decision at page 15-16 of the Judgment: -

15 *"This Court holds that computation of time follows the specific legislation in election matters and that is Rule 30 of the Parliamentary Elections (Interim Provisions) rules S1 141-2. This Rule provides that; a Memorandum of Appeal shall be filed with the Registrar in a case where a written notice of appeal has been given within seven (7) days after the notice was given.*

20 *In the instant application, since the Notice of Appeal was given on the 24th June 2016, the 7 days expired on the 1st of July 2016 and the respondent should have filed the Memorandum of Appeal within that time.*

25 *We accept the contention of counsel for the applicant that an intending appellant ought to actively take the necessary steps to prosecute his/her intended appeal.*

30 *We therefore hold that the respondent was not diligent as the law requires of an intending appellant in an Election Petition Appeal. We are unable to exercise our discretion otherwise in view of the clear provisions of the law relating to time within which to file the memorandum of appeal.*

In conclusion and for the reasons given above, we allow the Application and find that the appeal as filed is incompetent. It is accordingly struck out."

35 Similarly, in *Election Petition Appeal No.97 of 2016, Kubeketerya James vs. Waira Kyewalabye & Electoral Commission*, there was a preliminary

5 objection by the respondent that the appellant filed the Memorandum of Appeal 8(eight) days out of time and that the Record of Appeal was also filed out of time prescribed by law. The respondent argued that election proceedings are special and they must be expeditiously handled and timelines must be complied with. Court held:-

10 *“The rules of procedure were made to enable the expeditious disposal of election related matters and therefore the luxury provided by Rule 83 of the Court of Appeal Rules are not available, in our view, to the appellant... ..*

15 *The Judgment was delivered on 3rd October, 2016, the appellant filed the Notice of Appeal on 6th October, 2016 and the same was served on respondents on 7th October, 2016. Under Rule 30 (b) of the Parliamentary Elections Act (Interim Provisions) Rules S.I. 142-2, the Memorandum of Appeal should be filed within seven days after the Notice if given. The appellant did not comply with this provision, he*
20 *filed the Memorandum of Appeal on the 21st October, 2016 which was 8 days out of time. Rule 31 of the Parliamentary Election Act (Interim Provisions) Rules (Supra) provides that the record of appeal should be filed within 30 days after filing the Memorandum of Appeal, the appellant filed the same on 15th December, 2016 which was a*
25 *contravention of the Rules... ..*

Election Petitions have to be handled expeditiously. The rules and timeliness set for filing proceedings are couched in mandatory terms. They must be strictly interpreted and adhered to. Underlining is for emphasis.

30 In that case, Court concluded that the appellant failed to take the essential steps of filing the Memorandum and Record of Appeal within the stipulated time and struck out the appeal.

This Court had earlier on handled the issue of late filing of a Memorandum of Appeal in *Election Petition Application No.07 of 2012, Kasibante Moses*
35 *versus Electoral Commission* and held as follows:-

5 *"It is now settled as the law that it is the duty of the intending appellant to actively take the necessary steps to prosecute his or her intended appeal. It is not the duty of the Court or any other person to carry out this duty for the intending appellant. Once judgment is delivered, the intending appellant has to take all the necessary steps*
10 *to ensure the appeal is being in time See: UTEX INDUSTRIES LTD VS ATTORNEY GENERAL: CIVIL APPLICATION NO. 52 OF 1995 (SC) and S.B. KINYATTA & ANOTHER VS SUBRAMANIAN & ANOTHER: CIVIL APPLICATION NO. 108 OF 2003 (COURT OF APPEAL)*

15 *In case of an Election Petition Appeal, the intending appellant has even a higher duty to expeditiously pursue every step in the appeal so that the appeal is disposed of quickly. This is so because Section 66 (2) of the Parliamentary Elections Act and Rule 33 of the Parliamentary Elections (Election Petitions) Rules enjoin this Court to hear and*
20 *determine as appeal expeditiously and may, for that purpose, suspend any other matter pending before it. Rule 34 requires this Court to complete the appeal within thirty (30) days from lodging the record of appeal, unless there are exceptional grounds. Time is thus of the essence in Election Petition Appeals."*

25 The principles stated in all the above quoted decisions of this Court are clearly that strict timelines have to be adhered to in the filing of documents in election matters.

30 In the instant case, judgment in Election Petition No.002 of 2021 was delivered on 30th August, 2021 and the respondent filed a Notice of Appeal on the same day. The applicant also wrote a letter requesting for certified copies of the Court record and the Judgment.

 The Registrar of the High Court made available the certified copies of the Court Proceedings and Judgment on 14th October, 2021. The Registrars' Certificate was exhibited.

35 The applicant, Munyirwa Fredrick filed his Memorandum of Appeal and Record of Appeal on 2nd December, 2021. Having filed the Notice of Appeal on 30th August 2021, the applicant ought to have filed the Memorandum of

5 Appeal by the 7th of September 2021. The Memorandum of Appeal was filed 3 months outside the prescribed time.

The applicant argued that the delay to file the Memorandum of Appeal and Record of Appeal on time was caused by mistakes made by his former lawyers. He stated that his former lawyer informed him that they did not
10 have a copy of the Judgment and the record of proceedings to formulate the grounds of appeal for the Memorandum of Appeal and did not advise him on the timelines for filing. He argued that he was vigilant in pursuing his appeal by following up on the status of his appeal through his former lawyers. He therefore averred that the mistakes and lapses by his previous
15 advocate constitute sufficient reason for Court to exercise its discretion so as to allow an appeal to proceed on its merits.

The above reasons for the delay were opposed by the respondents who argued that the applicant was not vigilant in pursuing his appeal having filed the Memorandum of Appeal for over 90 days from the time he filed the
20 Notice of Appeal. They contended that applicant's claims were an afterthought and that the applicant has not furnished court with proof of any specific instructions he allegedly gave to his lawyers that were ignored and has not disclosed the names of the lawyers he allegedly consulted and none of his lawyers has deposed any affidavit to support his claims.

25 The applicant filed the Notice of Appeal on 30th August 2021, therefore, the Memorandum of Appeal should have been filed seven days thereafter which is 7th September 2021. He instead filed on 02nd December, 2021. This was 3(three) months out of time and was therefore contrary to **Rule 30 of the Parliamentary Elections (Interim Provisions) (Election Petitions) Rules.**

30 Although the applicant argued that his advocates did not have a copy of the Judgment to formulate the grounds of appeal, they received the copy of the certified Judgment and the record of proceedings on 14th October 2021 but still did not file the Memorandum of Appeal and the Record of Appeal until 2nd December 2021. No valid reason was furnished for the said late filing.

5 In our considered view, the applicant has not advanced sufficient reason to warrant Court's leave to validate the Memorandum of Appeal and the Record of Appeal that were filed out of time.

As stated in all the authorities above, time is of the essence in election matters. It is the duty of the litigant to comply with the timelines defined by
10 the law.

This Court in *Election Application No.09 of 2017, Muliro Waliga Karim versus Wakalawo Sam Paul*, held:-

15 *"Parties cannot just hide behind the curtain and allege that it was the fault of counsel. It may as well be so, in many instances, but it is not so in electoral matters. In elections, time is of the essence right from date of registration of voters, display of voter's registers nomination of candidates, voting, declaration of results and so on. All electoral activities follow a strict timeline. A person, who has participated in this whole process such as the applicant cannot be heard to say that*
20 *he was unaware of strict time frame set by the law for hearing and determination of his appeal. He ought to have known and he ought to have been more diligent and vigilant. His conduct was dilatory and grossly negligent."*

We find that the applicant, Munyirwa Fredrick failed to file the
25 Memorandum of Appeal within the time prescribed by law. The applicant has not provided any valid reasons at all for extension of time for filing the Memorandum of Appeal and Record of Appeal out of time.

In the recent decision of *Wakiyima Musoke Nsereko Hannington and the Electoral Commission vs. Hamisi Musoke Walusimbi, Consolidated*
30 *Election Petition Applications No's. 1, 2 and 35 of 2022*, Court held:-

"Election Petitions and Appeals are unique and are governed by specific rules which place constraints on the time within which they are filed. This is intended to avoid the abuse of Court and of electoral

5 *processes. If we allowed the rules to be abused, we would render them dead letter."*

We conclude that the applicant was not keen on pursuing the appeal with the necessary vigour and diligence required in election matters. He without justification, did not comply with the law.

10 We accordingly dismiss Misc. Application No.23 of 2021 and allow Misc. Applications No.26 of 2021 and No. 34 of 2022. We therefore strike out Election Petition Appeal No.83 of 2021 for being incurably defective. Costs are awarded to the respondents.

15 Having found so, we do not find it necessary to resolve the issues being raised in Misc. Application No.13 of 2022 for amendment of the Memorandum of Appeal that has now been struck out for late filing.

Dated at Kampala this *28th* day of *April* 2022.

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Richard Buteera
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RICHARD BUTEERA, DCJ

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Hellen Obura
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HELLEN OBURA, JA

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Catherine Bamugemereire
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CATHERINE BAMUGEMEREIRE, JA