

**THE REPUBLIC OF UGANDA,  
 IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
 (CORAM: EGONDA NTENDE, MADRAMA AND LUSWATA JJA)  
 ELECTION PETITION APPLICATION NO 6 OF 2021**

**KASIBO JOSHUA OMAYENDE} .....APPELLANT**

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**VERSUS**

**1. MBOIZI ARTHUR WAAKO}**

**2. THE ELECTORAL COMMISSION} ..... RESPONDENT**

**AND**

**ELECTION PETITION APPLICATION NO 6 OF 2022**

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**THE ELECTORAL COMMISSION} ..... APPLICANT**

**VERSUS**

**KASIBO JOSHUA OMAYENDE} ..... RESPONDENT**

**ALL ARISING FROM ELECTION PETITION NO. 17 OF 2021 IN THE HIGH  
 COURT AT MBALE**

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**RULING OF CHRISTOPHER MADRAMA, JA**

In Election Petition Application No. 06 of 2021, the applicant who is also the appellant filed an application under Rule 5 of the Judicature (Court of Appeal Rules) Directions and are 19 of the Parliamentary (Interim Provisions) (Election Petition) Rules for an order that the time within which to file a memorandum of appeal in the above referred appeal be extended or enlarged. Secondly, the memorandum of appeal which was filed out of time be validated. Lastly, the applicant prays that the costs of the application be provided for. This application was filed on 23<sup>rd</sup> September 2021 at 10:50 AM in the morning and was only issued by the registrar of the Court on 16<sup>th</sup> March, 2022.

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5 On the other hand, the Electoral Commission in the Election Petition  
Application No. 06 of 2022 filed another application for orders that Election  
Petition Appeal No. 17 of 2021 be struck out and for costs of the application  
to be borne by the respondent, Mr Kasibo Joshua Omayende. This  
application was filed on 28<sup>th</sup> January 2022 about 3 ½ months after the  
10 respondent's application to validate the appeal filed out of time and  
strangely this application was also issued by the registrar on 16<sup>th</sup> of March  
2022.

The obvious question is which application should be heard first. Having  
considered the fact that the opposition to the first application filed in 2021  
15 was to dismiss the application for extension/or validation of the appeal filed  
out of time, if that application is granted, then the second application filed  
in 2022 cannot be granted and would be dismissed. On the other hand, if the  
application for extension of time is dismissed, there would be no appeal and  
the object of the second Application No. 06 of 2022 would have been  
20 achieved since it seeks to strike out the appeal for being filed out of time.  
The above notwithstanding, what is in issue in both applications is the  
question of whether the applicant should be granted an extension of time  
by validation of the memorandum of appeal filed on court record or whether  
the appeal should be struck out on the same grounds that it is filed out of  
25 time.

In the premises, exercising the powers of this court under rule 2 (2) of the  
Rules of this court to make such orders as may be necessary for attaining  
the ends of justice or to prevent abuse of the process of court, because the  
applications are inextricably interrelated, Election Petition Application No.  
30 06 of 2021 and Election Petition Application No. 06 of 2022 will be considered  
together to enable the court address the question of costs in any event.

Election Petition Application No. 06 of 2021 was filed prior in time for  
extension of time and therefore Election Petition Application No. 06 of 2022  
which was filed in January 2022 cannot be heard first because it would pre-  
35 empt and render nugatory the right of hearing in Election Petition



5 Application No. 06 of 2021 for validation of the memorandum of appeal filed out of time.

In the premises I would first consider the grounds and arguments in favour of extension of time in Election Petition Application No. 06 of 2021 before dealing with the outcome thereof that consequentially seals or determines the fate of Election Petition Application No. 06 of 2022 in terms of whether the prayers therein are granted or not.

In the Miscellaneous Application No. 06 of 2021 arising from Election Appeal No. 17 of 2021 as well as High Court Election Petition No. 17 of 2021, the applicant Mr Kasibo Joshua Omayende seeks for an order that the time within which to file the memorandum of appeal in election petition appeal No. 17 of 2021 be extended or enlarged. Secondly, for an order that the memorandum of appeal which was filed out of time be validated and lastly for costs of the application to be provided for. The grounds of the application are stated in the notice of motion and are that:

- 20 1. The Applicant was the petitioner in Election Petition No. 17 of 2021 in the High Court of Uganda at Mbale and the respondents were respondents therein.
2. The applicants petition was dismissed on 7<sup>th</sup> September 2021 and the applicant being aggrieved by the decision instructed his lawyers to appeal against the said decision.
- 25 3. Pursuant to the instructions, the appellant's counsel filed a notice of appeal in the High Court Mbale, and requested for proceedings which notice and letter which were duly served on the respondents.
- 30 4. Unfortunately, the applicant's lawyers erroneously did not file the memorandum of appeal within the time prescribed by the Parliamentary (Interim Provisions) Election Petition Rules.
5. The applicant has since changed lawyers who have filed the memorandum of appeal out of time and have also filed the record of appeal.
- 35 6. The failure and/or inability to file the memorandum of appeal in time was occasioned by the mistake or error of the applicant's lawyers and

5 should not be visited on the applicant who on discovery of the mistake and or error of his counsel, has acted diligently and without undue delay.

7. Lastly he averred that the justice of the case demands that the applicant who has been diligent should not be penalised for his lawyers mistakes and or errors and that the appeal which has already  
10 been filed be heard on its merits.

The application is further supported by the affidavit of the applicant Mr Kasibo Joshua Omayende that substantially confirms the facts averred in the notice of motion. Specifically, he confirms that pursuant to the  
15 instructions he gave his lawyers to file the notice of appeal in the High Court, they requested for proceedings according to copies of the notice of appeal and letter requesting for proceedings duly filed and served as attached to the affidavit. Secondly, his lawyers Messieurs Ojambo & Ojambo advocates erroneously did not file the memorandum of appeal within the  
20 time prescribed by the Parliamentary (Interim Provisions) Election Petition Rules. That his lawyers had earlier advised him that he had 14 days from the date of filing of the notice of appeal within which to file his memorandum of appeal. He only became aware that it had not been filed when he went with his lawyer's clerk on 17<sup>th</sup> September 2021 to file his memorandum of  
25 appeal believing he still had time. He was advised by the clerk at the Court of Appeal registry that he was out of time for filing the memorandum of appeal which was supposed to be filed 7 days from the date of the notice, where notice is in writing. He left the court without filing the memorandum of appeal and confronted his lawyers who acknowledged that they had  
30 erroneously mistaken the time within which to file the appeal to be 14 days from the date of the filing of the notice of appeal instead of the 7 days. He noted that these 14 days only applies where an oral application was made after the delivery of the judgment. Further he immediately changed lawyers and engaged the firm of Tumwebaze Kasirye and company advocates who  
35 immediately filed the memorandum of appeal on his behalf though it was filed out of time. Further and pursuant to his instructions, his new lawyers also filed the record of appeal which is attached and marked. Finally, he



5 contends that his inability to file the memorandum of appeal in time was occasioned by mistake and error of his lawyers whom he had instructed in time.

10 In reply, the first respondent Mr Mboiza Arthur Waako opposed the application and filed an affidavit in reply in which he states that he is well versed with the facts and had read the application together with the affidavit in support with his lawyers. In reply, he stated that the application of the applicant for extension of time is tainted with deliberate falsehoods which is intended to mislead the court and is therefore fundamentally defective and ought to be struck out with costs.

15 In reply he states that the lawyers of the applicant knew very well that the election petition is time barred and everything must be done within the time limits prescribed by laws for elections.

20 Further and in reply to the contention that the applicant's lawyers advised him that he had 14 days from the date of filing of the notice of appeal, he contends that the knowledge of timelines is the preserve of mainly lawyers who are filing court documents among which included a memorandum of appeal. He contends that it is a lame excuse and deception to hoodwink this court to give lame excuses for the applicant's failure to file the memorandum of appeal within the time prescribed by law. He contended  
25 that the applicant's lawyers ought to have read the rules for filing a memorandum of appeal before doing so. Lastly, he contended among other things that the applicant lacked the grounds of appeal because he knew that the appeal had no merit and it would be a waste of courts time and was using the courts of law as a vehicle of delaying and causing backlog.

30 In reply, Mr Mwassa Jude, an advocate employed by the Electoral Commission deposed to an affidavit in opposition in his capacity as an advocate for the Electoral Commission. He states that the applicant's affidavit has glaring falsehoods and is devoid of merit and is intended to mislead the court. That both the applicant and his lawyers have always  
35 participated in the applicant's Election Petition filed in the High Court from



5 the beginning up to the time of receiving judgment in the same. He pointed  
out the applicants Annexure "C" which is a letter from the Mbale High Court  
registrar dated 8<sup>th</sup> of September 2021 indicated that the record of  
proceedings in the judgment was delivered on 7<sup>th</sup> September 2021 and was  
readily available well within the seven days of filing the memorandum of  
10 appeal. That it was not necessary for the applicant and his lawyers to wait  
for the 14 days even if they were under the impression that they were  
required to file the memorandum within that period. He contends that the  
failure to file the memorandum within 7 days when the record which was  
not yet required for forming grounds of appeal was readily available by 8<sup>th</sup>  
15 of September 2021 was dilatory conduct on the part of the applicant and his  
counsel.

Mr Mwassa further deposed that the record of proceedings was ready on  
8<sup>th</sup> September 2021, a day after Judgment in Election Petition No. 17 of 2021  
was delivered. Secondly, the grounds of appeal emanate from the Judgment  
20 which was at all times available to both the applicant and his lawyers from  
the day it was delivered. He also states that he knows that the applicant had  
in his possession, within less than 7 days from the date the judgment was  
delivered, all the documents necessary to pursue an appeal.

On the question of the negligence of the applicant's lawyers, Mr Mwassa  
25 deposed that the applicant never withdrew instructions from Messieurs  
Ojambo & Ojambo advocates and both the applicant and his lawyers are  
guilty of dilatory conduct, abusing court process and ought not to hide  
behind the lawyers. Finally, that there are no special circumstances for  
sufficient cause to warrant the grant of an extension of time set by statute.

30 In rejoinder, Mr. Kasibo Joshua deposed to an affidavit in response to the  
affidavit in reply of Mwassa Jude, that he instructed his advocates in time  
and was not aware of the appeal procedures until 17<sup>th</sup> September 2021 when  
a court clerk at the Court of Appeal informed him that his appeal was out of  
time. Secondly, it is his lawyers who picked the judgment and record of  
35 proceedings and he was not in any way involved in doing legal works  
towards his appeal. Thirdly, he only instructed Messieurs Tumwebaze,



5 Kasirye and Co Advocates to file the current application. He discovered that the appeal was out of time in court when following up the progress of his appeal and immediately instructed them to file the application before the court.

10 On 24<sup>th</sup> February 2022, the parties to the Election Petition Appeal No. 17 of 2021, appeared before the registrar of the Court of Appeal who directed the parties to file conferencing notes in the main appeal and this application was served on the first respondent's lawyers in the presence of the first respondent who is not opposing the same because they have not filed any reply. He contends that the second and third respondent are not prejudiced  
15 by the application for extension.

At the hearing of the application, learned counsel Mr Ojambo Robert Mugeni appearing jointly with learned counsel Mr Simon Musana and learned counsel Mr Bernard Mugeni appeared for the Applicant. The first respondent was represented by learned counsel Mr Idambi Paul. The  
20 second respondent was represented by learned counsel Ms Gilda Katutu. The applicant and the first respondent were present in court when the counsel and the learned counsel for the Electoral Commission informed court that they adopted their written submissions on record as their address to the court in this application. In the premises, the court was  
25 addressed by way of written submissions and ruling was reserved on notice.

### **Submissions of the applicant's counsel.**

The applicant's counsel submitted that the applicant was aggrieved by the decision of the trial court upon dismissal of Election Petition No. 17 of 2021  
30 on 7<sup>th</sup> September 2021 whereupon he promptly instructed Messieurs Ojambo & Ojambo & company advocates to prosecute his appeal. The lawyers filed a notice of appeal on the date of the instructions which was 7<sup>th</sup> of September 21 and also requested for the record of proceedings on the same date. By letter of the registrar of the High Court, it was confirmed that  
35 the record of proceedings was ready and issued on 8<sup>th</sup> of September 2021.

5 Under rule 30 of the Parliamentary Elections (Election Petitions) Rules, the  
applicant was supposed to file the memorandum of appeal within 7 days  
after the giving of the notice of appeal or obtaining the letter confirming  
readiness of proceedings which was by 15<sup>th</sup> September 2021. However,  
Messieurs Ojambo & Ojambo advocates inadvertently did not file the  
10 memorandum of appeal as stipulated in the rules. While following up his  
notice of appeal on 17<sup>th</sup> of September 2021, the applicant was advised by the  
clerk at the Court of Appeal registry that he was out of time by two days  
since he ought to have filed his memorandum of appeal by 15<sup>th</sup> of September  
2021. The applicant subsequently promptly contacted his lawyers Messieurs  
15 Ojambo & Ojambo advocates who agreed with the position but contended  
that their not having filed the memorandum of appeal in time was  
inadvertent.

Further, the applicant's counsel submitted that the applicant immediately  
instructed Messieurs Tumwebaze, Kasirye & company advocates who filed  
20 a memorandum of appeal the very day the applicant discovered that the  
anomaly and subsequently on 23<sup>rd</sup> September 2021 filed an application for  
extension of time to file the memorandum of appeal or to validate the  
appeal. The memorandum and record of appeal were filed in court on 17<sup>th</sup>  
September 2021 and on 22<sup>nd</sup> September 2021 it was served on the  
25 respondents. The applicant is an ordinary litigant who was vigilant enough  
to discover the default in the appeal process and took action upon discovery.

The applicant relies on rule 5 of the Judicature (Court of Appeal Rules)  
Directions which gives the court wide discretion to extend time for sufficient  
cause. He relied on **Crane Finance Co Ltd v Makerere Properties; Supreme  
30 Court Civil Application No. 1 of 2001** for the holding that rule 5 of the  
Supreme Court rules which is similar to rule 5 of the Court of Appeal Rules  
envisages four scenarios in which extension of time may be granted.  
Extension of time may be granted before expiry of the time limited.  
Secondly, it may be granted after expiration of the period of limitation.  
35 Thirdly, it may be granted before the act is done. Fourthly, it may be granted  
after the act is done. The applicant's counsel submitted that the issue is



5 whether sufficient cause has been shown to warrant the exercise of the courts discretion to extend time. For sufficient cause, counsel relied on the grounds stated in the notice of motion and the affidavit in support that I need not regurgitate here.

10 Secondly, the applicant's counsel submitted that the errors or omissions of counsel should not be visited on the applicant. He relied on **Capt. Phillips Vs Catherine Nyero Owoda; Supreme Court Civil Appeal No 14 of 2001** where an earlier decision of the Supreme Court in **Sepira Kyamulesire Vs Justine Bikanchurika Bagambe; Civil Appeal No. 20 of 1995** was cited for the proposition that the errors, omissions and negligence of counsel should not  
15 be visited on the client unless there is evidence that the applicant was also guilty of dilatory conduct in instructing his lawyer. That the Court of Appeal being a final court of appeal, would not be dispensing justice if the citizens' rights of appeal are blocked on the ground of the lawyer's negligence by failure to take essential steps necessary under the rules. Counsel also  
20 relied on **Patrick Wilshire Kavuma Vs Ismail Dabule; Civil Application No. 16 of 2016**. Further in **Patrick Kassajja Vs Fredrick K. Ngobi and another Court of Appeal Civil Application No. 56 of 2016**, this court held that once a litigant instructs his or her counsel to handle the matter, he cannot again share the conduct of the case with him or her.

25 In the premises, and the on the basis of the facts, the applicant's counsel submitted that the applicant was vigilant in that the memorandum of appeal was filed two days late after the applicant followed up the matter upon establishing the default of his lawyers. Consequently, there was no dilatory conduct on the part of the applicant.

30 For any contrary submission is that rule 5 of the Court of Appeal rules is not applicable to election petitions, or that rule 19 of the Parliamentary (Election Petitions) Rules only applies to petitions in the High Court. Secondly, the time fixed by the Parliamentary Elections (Election Petition) Rules for doing or performing certain necessary acts cannot be extended  
35 by the Court of Appeal (see **Abiriga Ibrahim Y.A. v Musema Mudathir Bruce, Election Petition Application No 24 of 2016** and **Muliro Wanga Karim v**



5 **Wakalawo Sam Paul, Court of Appeal Election Petition Application No. 9 of 2017** that time lines fixed by the rules for doing of performing certain acts or things cannot be extended by court.).

10 In rebuttal to anticipated arguments of the respondent's counsel, the applicant's counsel submitted that section 66 (1) of the Parliamentary Elections Act 2005 does not fix or give time within which an appeal is to be lodged. The time within which to Lodge an appeal is provided for under rules 29 and 30 of the Parliamentary Elections (Election Petitions) Rules. Counsel submitted that on the authority over **Sitenda Sebalu v Sam Njuba and another; Election Petition Appeal No 26 of 2007**, the Supreme Court held  
15 that the relevant rules were directory and not mandatory and that the time fixed by statute and not just the rules in an election petition can be extended.

20 Further, counsel noted that the decision of the Supreme Court in **Sitenda Sebalu v Sam Njuba and another; Election Petition Appeal No 26 of 2007** had not been brought to the attention of the court when it delivered its ruling in in **Abiriga Ibrahim (supra)** and **Muliro Wanga Karim (supra)**. In the premises, time can be extended in election petitions.

25 For the contention that rule 5 of the Court of Appeal Rules does not apply to election petitions, the applicants counsel submitted that this court has in several instances relied on rule 5 of the Court of Appeal Rules to enlarge time in election petition appeals (for illustrations see **Hon Ebil Fred v Ocen Peter, Election Petition Application No. 0017 and 24 of 2017** and **Peter Muramira v Brian Kaggwa; Civil Application No. 104 of 2009**). Further, counsel submitted that if rule 5 is found inapplicable, rule 2 of the Court of Appeal Rules would still apply.

30 For any submission that the court is enjoined by rule 34 of the Parliamentary Elections (Election Petitions) Rules to hear an appeal within 30 days from the lodging of the record of appeal, in the absence of exceptional grounds for extension of time, that position was altered by the Parliamentary Elections (Amendment) Act, 2010 and section 14 thereof  
35 which amended section 66 of the Principal Act by providing that the Court



5 of Appeal shall proceed to hear and determine the appeal within 6 months from the date of the filing of the appeal.

10 Further on any submission that the Court of Appeal has no power to extend time under the Parliamentary Rules and it is only the High Court which can extend time in petitions, the applicants counsel submitted that rule 3 (b) of the Parliamentary Elections (Election Petition) Rules defines court to include the High Court and the Court of Appeal. He contended that it follows that any reference to court in the rule 19 also includes the Court of Appeal where applicable. He emphasised that Rule 19 of the Parliamentary Elections (Election Petitions) Rules is applicable to the Court of Appeal with  
15 equal force because it is an appellate court which is vested with the same powers of the court of original jurisdiction when determining an appeal from the trial court under section 11 of the Judicature Act. He relied on **Kajara Aston Peterson v Mugisha Vincent; Civil Miscellaneous Application No. 58 of 2016** for the proposition that rule 19 mandates the Court of Appeal to extend the remedy of extending time within which an essential step can be carried out provided sufficient cause has been shown and that sufficient cause amounts to special circumstances. The applicants counsel submitted that the applicant did not know that his lawyer was supposed to file the memorandum of appeal within 7 days.

25 Counsel further noted that in the respondent's; **Election Petition Application No. 6 of 2022, Electoral Commission vs Kasibo Joshua**, the second respondent conceded that this court can enlarge time. He noted that the first respondent though served with the application did not file a reply opposing the application and in effect has no objection to it.

30 In conclusion, the applicant's counsel submitted that any contention that the Court of Appeal has no power to extend time is misconceived and intended to ensure that the appeal is not heard on its merits and ought to be rejected. Secondly the interest of justice is in the public interest which is that extension of time to be granted so that the court determines the appeal on  
35 the merits on the issue of whether the first respondent was validly elected. Last but not least the applicant's counsel submitted that rule 5 of the Rules



5 of this court provides a clear discretion to enlarge or abridge time in the exercise of inherent powers of the court to meet the ends of justice. The applicants counsel submitted that this court is bound to follow its previous numerous decisions inclusive of the ones cited by the applicant's counsel in which the court enlarged time.

10 **Submissions of the first Respondent's Counsel in reply**

In reply, the first respondents counsel with reference to the facts which are not in dispute submitted that section 66 of the Parliamentary Elections Act 2005 as amended provides for an appeal by an aggrieved party from the decision of the High Court in an election petition to the Court of Appeal and  
15 subsection 2 thereof requires the Court of Appeal to hear and determine the appeal expeditiously with power to suspend any other matter pending before the Court of Appeal for that purpose. Further he submitted that rule 33 of the Parliamentary Elections (Election Petition) Rules as amended requires the Court of Appeal to hear and determine election appeals  
20 expeditiously and gives it power to suspend any matter pending before the court. Further, rule 34 (supra) requires the Court of Appeal to dispose of an election appeal within 30 days from the lodging of the record of appeal. In addition, rule 30 of the Rules (supra) provides that a memorandum of appeal shall be filed with the registrar in a case where a written notice of appeal  
25 has been given, within 7 days.

The first respondents counsel submitted that election petition appeals have to be filed within the time limits set by law. The applicant filed his memorandum of appeal outside the time lines set by law rendering the memorandum of appeal incompetent. Further that the law allows extension  
30 of time for doing anything on exceptional grounds and for sufficient reasons under Rule 5 of the Judicature Court of Appeal Rules. In the premises, the issue to be determined is whether or not sufficient grounds or reasons have been adduced by the applicant for the grant of orders to extend time within which to file the memorandum of appeal out of time.



5 He contended that failure by the applicant and his counsel to file the memorandum of appeal was entirely due to their dilatory conduct and inexcusable failure to take the necessary steps to prosecute the appeal and further the applicant failed to demonstrate sufficient cause why the application should be granted. He submitted that the applicant had no valid  
10 grounds of appeal which raises serious questions of law and fact for consideration by the Court of Appeal with a high chance of success. He relied on **Paul Omara v Acon Julius Bua & 3 others; Court of Appeal Miscellaneous Application No. 346 of 2016** for the observation of Hon. Justice Kenneth Kakuru, JA that the applicant and his counsel were guilty  
15 of dilatory conduct. The failure to comply within the timeframe set by the law was inexcusable and the reasons advanced for the applicant's failure to comply with the law were laughable as they were a joke. Court held that article 126 (2) (e) of the Constitution is not a magical wand in the hands of defaulting litigants according to the observation of the Court in **Abiriga Ibrahim v Musema Mudathir Bruce; Court of Appeal Election Application No. 24 of 2016**.

The first respondent's counsel prayed that the court is persuaded by the rulings of the Court of Appeal in the above to appeals and to find that the applicant is guilty of dilatory conduct for failure to comply with the time  
25 lines set by the law. Further rule 11 of the Judicature (Court of Appeal Rules) Directions makes it a mandatory requirement that whenever any document is lodged in the registry or sub registry, it must immediately be endorsed showing the date and time when it was lodged. Further rule 13 of the Rules of this court allows the registrar of court to accept documents lodged out  
30 of time which should be marked with the words "lodged out of time" to inform the person lodging it. The first respondents counsel contends that the Court of Appeal Rules are couched in mandatory language and by implication the document is properly lodged before court after an endorsement by the registrar showing the date and time of lodgement.  
35 Short of that, the document is not properly before the court.

5 He submitted that by 24<sup>th</sup> of February 2022 of the applicant purported to  
serve the respondent with his letter dated 23<sup>rd</sup> September 2021 but the same  
has never been endorsed by the court. The applicant never served this on  
the first respondent with his application for extension of time within which  
to file a memorandum of appeal out of time. The first respondent has been  
10 prejudiced in his reply to the application of the applicant in line with the  
principles of fair hearing guaranteed under article 28 of the 1995  
Constitution of the Republic of Uganda which is a non-derogable right under  
article 44 of the Constitution.

On the contention of the applicant that he became aware that the  
15 memorandum of appeal was filed out of time upon going to the court of  
appeal registry on 17 September 2021 to file the memorandum of appeal,  
and that he immediately changed lawyers and engaged another firm, the  
first respondents counsel contends that this is a deliberate falsehood  
because there is no court record showing notice of instructions from the  
20 new lawyers or notice of change of advocates.

The first respondents counsel further submitted that the registry stamp of  
the Court of Appeal shows that the application was filed on 23<sup>rd</sup> of  
September 2021 but there is no evidence on court record to show that the  
applicant took steps or that his lawyers took steps to have the same  
25 endorsed by court and served on the first respondent. It is on 24<sup>th</sup> February  
2022 when the first respondent heard that the applicant had an application  
but the same had not yet been endorsed by the court contrary to the Rules  
of this court. Further, the applicant had no grounds of appeal to help him  
file a memorandum of appeal.

30 Further, the first respondent's counsel submitted that even if the applicant  
had grounds of appeal, after realising the errors by 17<sup>th</sup> September 2021 that  
his memorandum was out of time, he should have immediately sought the  
leave of court to allow the same be filed out of time which he did not do and  
that the delay defeats equity.



5 In the premises, the first respondents counsel submitted that the  
applicant's application was an afterthought after being served with an  
application by the second respondent to strike out the memorandum of  
appeal which was lodged out of time. He contended that this explains why  
by 24<sup>th</sup> February 2022 despite the Court of Appeal received stamp, the same  
10 had not been endorsed by the registrar of the court as required by law.

Further in **Peter Muramira Vs Kaggwa; Civil Application No. 104 of 2009**, the  
Court of Appeal held that it is the duty of every appellant to take active steps  
within the time stipulated by the rules to prosecute his or her appeal. The  
intending appellant has the legal obligation to pursue the essential steps  
15 necessary to prosecute the appeal without any dilatory conduct on his or  
her part (See **Sulaiman Vs Bwekwaso Magenda (1989) HCB 140** and **UTEX  
Industries Ltd Vs Attorney General SCCA No 52 of 1995**).

Further the first respondent's counsel submitted that the competence of an  
appeal is an issue of legality of the appeal an appeal instituted out of time  
20 is incompetent. Further, the applicant has not satisfied the court on  
sufficient grounds required by rule 5 of the Court of Appeal Rules for grant  
of extension of time within which to lodge a memorandum of appeal out of  
time. This is based on the fact that the application is an afterthought  
considering the delay of the applicant to lodge the same before the court  
25 after realising the mistakes of his counsel on 17<sup>th</sup> September 2021 to date  
without service to the first respondent.

In the premises, the first respondents counsel submits that on the basis of  
the facts and legal principles submitted, there is no proper application for  
which extension of time to file the memorandum of appeal should be  
30 ordered. Further, the first respondent believes that the applicant has no  
plausible grounds of appeal before the Court of Appeal through a  
memorandum of appeal and in any event if this court is inclined to order for  
the same, the applicant will have nothing to resort to as the appeal has no  
merit. He for the appeal to be dismissed with costs to the first respondent.

35 **Second respondents written submissions in reply.**

5 The second respondents counsel submitted that the application was brought under the provisions of Rule 5 of the Judicature (Court of Appeal Rules) directions and Rule 19 of the Parliamentary (Election Petitions) Rules for orders that the time within which to file a memorandum of appeal in Election Petition Appeal No. 17 of 2021 be enlarged or validated and for costs  
10 of the application. She submitted that the issue from the pleadings for determination are firstly whether the court has powers to extend time fixed by statute and secondly whether or not the applicant has demonstrated the existence of special circumstances or sufficient cause to warrant the grant of the application.

15 On the issue of whether the court has powers to extend time fixed by statute, the second respondents counsel submitted that the second respondent objects to the clause under which the application is brought. She submitted that Rule 5 of the Rules of this court is not applicable to election petition appeals. Election petitions are governed by the special  
20 regime of laws providing a unique procedure where the general rules of civil practice ((civil appeals) cannot be invoked save where there is no procedure provided for in the electoral laws. Even when applicable, they are applicable mutatis mutandis (see **Kubeketerya James vs Waira Kyewalabye and Electoral Commission; Election Petition Appeal No 97 of 2016**).

The second respondent's counsel submitted that rule 19 of the Parliamentary (Election Petitions) Rules under Part II of the Rules has the short title "Proceedings in the High Court", which begins with the rule 4 up to rule 27 of the rules. She submitted that rule 19 is only limited to  
30 proceedings before the High Court and is not applicable to the Court of Appeal and therefore this court has no powers to extend the time fixed by rules 29, 30 and 31 using Rule 19 of the Parliamentary (Election Petitions) Rules.

On the second issue of whether or not the applicant has demonstrated  
35 existence of special circumstances or sufficient cause to warrant the grant of the application, the second respondents counsel submitted that rule 29



5 of the Parliamentary Elections (Election Petitions) Rules provides that a  
notice of appeal may be given either orally at the time judgment is given or  
in writing within 7 days after the judgment of the High Court against which  
the appeal is being made. Further rule 30 of the Parliamentary Elections  
10 (Election Petitions) Rules requires the respondent to file the memorandum  
of appeal with the registrar of the court in cases where a written notice of  
appeal has been given, within 7 days after notice had been given. Further,  
that this court is enjoined by rule 34 of the Parliamentary Elections (Election  
Petitions) Rules to hear an appeal within 30 days from the lodging of the  
15 record of appeal in the absence of exceptional grounds warranting  
extension of time. The sum total import of the above provision is that rules  
make time of essence in hearing and determination of election petition  
appeals and as such court should not entertain unnecessary delays.

The respondent's counsel submitted that it is disclosed in the applicant's  
application that the notice of appeal was filed well within time and the  
20 certified record of proceedings was ready by 8<sup>th</sup> of September 2021 one day  
after Judgment was delivered on 7<sup>th</sup> September 2021. Apart from exhibiting  
laziness and abuse of court process by bringing unnecessary applications,  
there is no reasonable explanation for the dilatory conduct of the applicant  
and his lawyers.

25 The second respondents counsel submitted that the procedure set out in  
the law must be strictly followed. That in election petitions, the notice of  
appeal must be filed within 7 days from the date of the judgment and the  
memorandum of appeal is filed within 7 days from the date of filing of the  
notice of appeal. Further in election petitions, a document is effective at the  
30 time it is filed. She relied on the **Abiriga Ibrahim Y.A. Vs Musema Mudathir  
Bruce; Election Petition Application No 24 of 2016** and **Muliro Wanga Karim  
Vs Wakalawo Sam Paul; Court of Appeal Election Petition Application No 9  
of 2017**, in which the Court of Appeal struck out an appeal because the  
memorandum of appeal had been filed one day out of time. Further the court  
35 held that to allow an intending appellant to take his or her time to file the  
record of appeal outside the set time in the rules without exceptional



5 circumstances being shown would defeat the purpose of the timeframe in the Constitution, the Parliamentary Elections Act and the rules made thereunder for expeditious disposal of election matters.

Further the second respondent's counsel submitted that an intending appellant has even a higher duty to expeditiously pursue every step in the appeal so that the appeal is disposed of expeditiously. This is so because  
10 article 140 (1) and (2) of the Constitution as well as section 63 (2) and 66 (2) & (4) of the Parliamentary Elections Act as well as Rule 33 of the Parliamentary Elections (Election Petitions) Rules, are for this court to hear and determine an appeal expeditiously and for that purpose suspend any  
15 other matter pending before it. Further rule 34 (supra) requires the Court of Appeal to complete an appeal within 30 days from the lodging of the record of appeal unless there are exceptional or special circumstances. The second respondents counsel relied on **Bakaluba Mukasa Peter & another Vs Nalugo Mary Margaret Sekiziyivu; Court of Appeal Election Petition Application No. 24 of 2011.**  
20

Counsel emphasised that the duty was on the applicant to pursue his intended appeal and to take all necessary steps to ensure that the appeal is filed in time because time is of essence in election petition appeals. The second respondents counsel relied on **Utex Industries Ltd versus Attorney General SCCA No 52 of 1995** for the proposition that the performance of an  
25 act by a party whose duty it is to perform the fundamentally necessary action demanded by the legal process if not done renders any subsequent proceedings a nullity. Counsel also relied on **Muliro Wanga Karim Vs Wakalawo Sam Paul** (supra) on the question of whether the negligence of  
30 counsel ought not to be visited on the applicant. The court found that a party who has actively participated in the process cannot be heard to say that he was unaware of the strict timeframe set by the law for hearing and determination of his appeal. The duty is on that party to be more vigilant and diligent.

35 As far as the facts are concerned, the respondent's counsel submitted that Judgment was delivered on 7<sup>th</sup> September 2021 whereupon the applicant



5 filed the notice of appeal on 7<sup>th</sup> September 2021 within time. Further, the applicant had in his possession, within less than 7 days from the date judgment was delivered, all the documents necessary to pursue an appeal. Even if the record of proceedings was not yet ready, Judgment was already in possession of the applicant to enable him to formulate the grounds of  
10 appeal. In the premises, the second respondent's counsel maintains that the applicant has not demonstrated the existence of special circumstances to warrant extension of time or to validate the memorandum of appeal already filed on court record. The appellant according to the evidence on 17<sup>th</sup> September 2021 had a memorandum of appeal from his lawyers Messieurs  
15 Ojambo & Ojambo advocates and he was informed by the Court of Appeal registry that the memorandum of appeal was late or out of time and he chose to return it without filing it. It is after this that he engaged another law firm Messieurs Tumwebaze, Kasirye and company advocates who immediately filed the same on 17<sup>th</sup> September 2021. By that act the applicant  
20 did not cure anything.

Lastly counsel submitted that the applicant chose to exhibit dishonesty in the affidavit which is a statement on oath that ought not to be allowed according to paragraph 9 of the second respondents affidavit in reply. Counsel relied on **Hon George Patrick Kassaja Vs Frederick Ngobi Gume & Anor EPA No 68 2016** and **Kiiza Besigye v Yoweri Kaguta Museveni and another Election Petition No. 1 of 2001** for the proposition that an affidavit which contains a parent. Or exaggerations should not be relied upon. See also **Joseph Mulenga Vs Photon Focus (U) Ltd [1996] KALR 19**. The second respondents counsel submitted that the applicant chose to exhibit  
25 dishonesty by lying on oath that he instructed new lawyers to pursue the appeal whereas it was simply an addition to boost his legal team.  
30

In the premises, the second respondent maintains that the applicant is guilty of dilatory conduct and is not entitled to the remedies sought in this application which should be dismissed with costs to the respondents and  
35 the appeal struck out with costs.

**Submissions of the applicant's counsel in rejoinder.**

5 In rejoinder to the submissions of the first respondent's counsel, the  
applicants counsel submitted that the Supreme Court authority of **Sitenda  
Sebalu Vs Sam K. Njuba and Another; Election Petition Appeal No 26 of 2007**  
settles the matter and provides that extension of time lines in election  
petition appeal can be allowed where sufficient reason or special  
10 circumstances exist. Secondly, **Sitenda Sebalu Vs Sam K. Njuba and  
Another** (supra) was approved in **Edward Byaruhanga Katumba Vs Daniel  
Kiwalabye Musoke; Civil Appeal No 10 of 1991**. Secondly, the authority of  
**Besweri Lubuye Kibuuka v Electoral Commission and another;  
Constitutional Appeal No. 8 of 1998** is to the effect that the provisions of the  
15 Local Government Act which provided that the court shall proceed to hear  
and determine an election petition within three months after the date on  
which the petitioners filed it was not intended to be mandatory.

In the premises, the applicant's counsel submitted that the authorities relied  
by counsel for the respondents are not good law in light of the Supreme  
20 Court authorities. Further the first respondent concedes that time can be  
extended.

With regard to rule 19 of the Parliamentary (Election Petitions) Rules, they  
are not limited to the High Court and the submissions that they are limited  
to the High Court are misconceived.

25 With regard to the land endorsement of the application by court pursuant to  
rules 11<sup>th</sup> & 13 of the Rules of this court, all the parties including the first  
respondent and his lawyers appeared before the registrar of the Court of  
Appeal and it was resolved that in the interest of time, submissions will be  
made in all applications even if they are not signed or stamped.

30 Further, the application was filed on 23<sup>rd</sup> September 2021 according to the  
embossed receiving stamp and requisite fees according to the signature of  
the cashier were paid on the same day. The parties had applied for hearing  
dates earlier than 28<sup>th</sup> of February 2022 and the second respondent filed its  
application for striking out when there was already a pending application



5 for extension of time. The respondents had been served with the application on 24<sup>th</sup> of September 2021 and the Court of Appeal premises.

Further, with regard to the issue as to whether the applicant ought to have filed a notice of change of advocates, that is academic and untenable since the memorandum of appeal and record of appeal were in fact prepared by  
10 the same law firm and the affidavit in reply and submissions filed by the second respondent was filed by the new firm of Tumwebaze, Kasirye & company advocates whose address for service is also given. No prejudice was occasioned in any event.

Counsel reiterated submissions that timelines can be extended by the Court  
15 of Appeal in election petition appeals. Secondly, the authorities relied on by the respondents were about lawyers who were guilty of dilatory conduct but in the instant application, the applicant is not guilty of any dilatory conduct.

Lastly counsel submitted that the affidavit in reply of the first respondent is  
20 fatally defective because it is based on matters of law and information not within the knowledge of the second respondent. He submitted that rule 44 of the Judicature (Court of Appeal Rules) Directions requires deponents of applications on matters before the court to be made by people knowledgeable of the facts. One cannot swear on information on matters of  
25 law unless one is competent in matters of law. In the premises, he prayed that the affidavit of the first respondent in support of the reply to the application be struck out.

### **Consideration of application**

I have carefully considered the applicant's application and the submissions  
30 of counsel of all the parties for and against the grant of the orders sought in the application.

Starting with the points of law, the first question is whether the Court of Appeal has power to extend the time within which to file a memorandum of appeal which is required to be filed in accordance with rule 30 of the

5 Parliamentary Elections (Interim Provisions) Rules that provides that where a written notice of appeal has been given, the memorandum shall be filed with the registrar within 7 days after notice was given.

The facts which are not in dispute are that the applicant's petition in the High Court against the election of the first respondent was dismissed on 7<sup>th</sup> 10 September 2021 and being aggrieved by the dismissal, filed a notice of appeal on 7<sup>th</sup> September 2021. The notice of appeal was received by the High Court on 7<sup>th</sup> September 2021 and was also lodged in the Court of Appeal of Uganda on 7 September 2021. Seven days after notice of appeal was given would be on 15 September 2021. Further on 7<sup>th</sup> of September 2021, the 15 applicant applied to the High Court of Uganda at Mbale requesting for a certified copy of the judgment delivered in the record of proceedings both written and audio for purposes of pursuing an appeal. The letter was written by Messieurs Ojambo & Ojambo advocates and was received in the High Court registry on 7<sup>th</sup> September 2021. By letter dated 8<sup>th</sup> of September 2021 20 addressed to Messieurs Ojambo & Ojambo advocates, the deputy registrar of the High Court with reference to the letter of 7<sup>th</sup> of September 2021 informed the said firm that the record of proceedings and judgment requested for and were ready for collection upon payment of the requisite fees. Further, paragraphs 6, 7, 8 and 9 of the affidavit of the applicant in 25 support of the application deposes as follows:

6. That unfortunately Messieurs Ojambo & Ojambo advocates, my aforesaid lawyers erroneously did not file the memorandum of appeal within the time prescribed by the Parliamentary (Interim Provisions) Election Petition couples.

7. That my above said lawyers had earlier advised me that I had 14 (fourteen) days 30 from the date of the filing of the Notice of Appeal, within which to file my Memorandum of Appeal.

8. That I only became aware that that was not the case when I went with my lawyer's clerk on 17<sup>th</sup> September 2021 to file my memorandum of appeal believing I still had time, only to be advised by a clerk at the Court of Appeal Registry that I 35 was out of the time for filing the memorandum of appeal which he stated was 7 (seven) days from the date of the Notice, if the Notice is in writing.



5 9. That I left court without filing the Memorandum of Appeal and confronted  
counsel who read the rules in my presence and acknowledged that he had  
erroneously mistaken the time within which to appeal to be 14 (fourteen) days  
from the filing of the Notice of Appeal instead of 7 (seven) days and he confirmed  
10 that the 14 days only applies where an oral application has been made at the time  
of delivery of judgment.

The affidavit discloses that the applicant went with the clerk of Messrs  
Ojambo & Ojambo advocates on 17<sup>th</sup> of September to file the memorandum  
of appeal. From the above facts, this was about two days late. The applicant  
further deposed that he changed his lawyers and engaged the firm of  
15 Tumwebaze, Kasirye & company advocates who immediately filed the  
memorandum of appeal on his behalf. A copy of the memorandum of appeal  
attached to the affidavit is drawn by Messieurs Tumwebaze, Kasirye &  
company advocates and was endorsed on 17<sup>th</sup> September 2021 by counsel.  
A stamp of court showing receipt of the memorandum of appeal shows that  
20 it was filed in the registry at Kampala on 21<sup>st</sup> September 2021. Subsequently  
the record of appeal was filed on 22<sup>nd</sup> September 2021.

In the submissions of the applicant's counsel, it was an error on the part of  
the applicant's lawyers to apply the timelines meant for an oral notice of  
appeal under rule 30 of the Parliamentary Elections (Interim Provisions)  
25 Rules which provides that the memorandum of appeal shall be filed with  
the registrar where oral notice of appeal has been given, within 14 days  
after the notice was given. Rule 29 of the Parliamentary Elections (Interim  
Provisions) Rules provides that notice of appeal may be given either orally  
at the time judgment is given or in writing within 7 days after the judgment  
30 of the High Court against which the appeal is made. Clearly no oral notice  
of appeal was given and instead a written notice of appeal was given the  
same day as the judgment of the court dismissing the petitioner's petition  
to the High Court.

From the submissions and facts, the controversy of law disclosed in the  
35 respondent's submissions is whether rule 19 of the Parliamentary Elections

5 (Interim Provisions) Rules applies for purposes of extension of time to appeals arising from election petition judgments. Rule 19 provides that:

19. Enlargement or abridgement of time.

10 The court may of its own motion or on an 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.

15 According to the applicant's counsel, the word "court" under rule 19 (supra) has to be interpreted to mean as stated in rule 3 (b) which provides that "court" means the High Court or the Court of Appeal in case of an appeal to the Court of Appeal. However, it is clear from the rules that Part II of the Rules, applies to proceedings in the High Court. The rules applicable to proceedings in the High Court are rules 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27. Thereafter the Parliamentary Elections (Interim Provisions) rules makes provision for PART III which clearly indicates that it applies to appeals to the Court of Appeal. This Part of the rules specifically deals with appeals are in rules 28, 29, 30, 31, 32, 33, 34 and 35. Clearly rule 19 applies to proceedings in the High Court. The possible provision for enlargement of time in appeals is only under rule 34 of the Parliamentary Elections (Interim Provisions) Rules which provides that:

34. Time limit for hearing appeals.

Unless the court extends the time on exceptional grounds, the hearing of an appeal shall be completed within 30 days after the lodging of the record of appeal.

30 There is no provision in Part III of the rules which deals with appeals for extension of time to lodge a memorandum or record of appeal. Rule 34 deals with extension of the time of the 30 days for the hearing of the appeal which time is reckoned from the date of lodging of the record of appeal. The above notwithstanding, rule 36 deals with the procedure generally and provides as follows:

35 36. Procedure generally.



5           Subject to such modifications as the court may direct in the interest of justice and expedition of the proceedings, any rules regulating the procedure and practice on appeal from decisions of the High Court to the Court of Appeal in civil matters shall apply to appeals under this Part of these Rules.

10           The Part of the rules specifically referred to under rule 36 are those rules under Part III which deal with appeals. Clearly the Parliamentary Elections (Interim Provisions) Rules and rule 34 thereof only deals with extension of time prescribed for the hearing of appeals under rule 33 and 34. Rule 33 provides that the court shall proceed to hear and determine an appeal under the rules expeditiously and may for that purpose suspend any matter  
15           pending before the court. Secondly, rule 34 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 record of appeal. Time is reckoned from the lodging of the record of appeal for purposes of hearing an appeal which shall be completed within 30 days. The question therefore  
20           is whether Rule 36 of the Parliamentary Elections (Interim Provision) Rules incorporates rules regulating the procedure and practice on appeal from decisions of the High Court to the Court of Appeal which are embodied in the Judicature (Court of Appeal Rules) Directions. This includes rule 5 of the Judicature (Court of Appeal Rules) Directions that provides that the Court  
25           of Appeal may for sufficient reason extend the time limited by the rules.

          The question of whether the Judicature (Court of Appeal Rules) Directions applies by virtue of importation under Rule 36 of the Parliamentary Elections (Interim Provision) Rules to applications for enlargement of time is of public importance, the determination of which need to proceed from a  
30           clear contextual understanding of the rules before making reference to any case law. The Parliamentary Elections (Interim Provisions) Rules are issued under section 121 of the Parliamentary Elections (Interim Provisions) Statute, 1996, Statute No. 4 of 1996. Statute No 4 of 1996 was repealed by the Parliamentary Elections Act, Act 8 of 2001 which was later repealed by Act  
35           17 of 2005, the Parliamentary Elections Act, 2005 which is the law in force. Further it is disclosed that the Parliamentary Elections Act, section 100 (3)

5 saved the statutory instruments made under the Parliamentary Elections (Interim Provisions) Statute 1996.

I have carefully considered the enabling provisions for issuing of court regulations for purposes of proceedings under the Act. Some regulations are supposed to be made under section 93 of the Parliamentary Elections Act, cap Act 17 of 2005 for purposes of election petition regulations. Section 93 gives powers to make Rules of Court to the Chief Justice in consultation with the Attorney General as follows:

93. Rules of court

15 (1) The Chief Justice, in consultation with the Attorney General, may make rules as to the practice and procedure to be observed in respect of any jurisdiction which under this Act is exercisable by the High Court and also in respect of any appeals from the exercise of that jurisdiction.

(2) Without prejudice to subsection (1) any rules made under that subsection may make provision for –

20 (a) regulating the practice and procedure of the High Court, the Court of Appeal and the Supreme Court for the purposes of hearing and determining petitions under section 85 or as the case may be, for hearing and determining appeals from decisions of the High Court under that section;

25 (b) the practice and procedure to be observed in the hearing and determination of election petitions;

(c) service of an election petition on the respondent;

(d) priority to be given to the hearing of election petitions and other matters coming before the courts under this Act.

30 (3) Rules made under this section may, in the case of the High Court, the Court of Appeal and the Supreme Court, apply to the proceedings the rules of practice and procedure applicable to civil proceedings in the High Court, the Court of Appeal or the Supreme Court as the case may be, subject to such modifications as may be specified in the rules.

35 The above section gives the Chief Justice in consultation with the Attorney General power to regulate the practice and procedure of the Court of Appeal



5 for purposes of an appeal from the exercise of the Jurisdiction of the High  
Court under the Act and to further make rules to enforce section 85 of the  
Parent Act. Section 85 deals with the right and procedure of recall and not  
with election petitions pursuant to general elections or bye elections.  
Secondly, it also enables the making of rules for the practice and procedure  
10 to be observed in the hearing and determination of questions of recall.  
Thirdly, it provides for the making of rules for the service of an election  
petition on the respondent. Lastly, it provides that rules may be made on  
the question of priority to be given to the hearing of election petitions and  
other matters coming before the courts under the Act. It is proper to  
15 emphasise that this part of the rules deals with hearings and not with the  
filing of election petitions or appeals. Thirdly, rule 93 (3) provides that rules  
made under section 93 in the case of the High Court the Court of Appeal and  
the Supreme Court apply to the proceedings, the rules of practice and  
procedure applicable to civil proceedings. However, applicable rules have  
20 been carried forward from the repealed Acts and none have been issued  
under section 93 of the Parliamentary Elections Act, 2005.

The above notwithstanding, careful analysis of section 93 of the  
Parliamentary Elections Act shows that it gives a wide discretion to the  
Chief Justice under 93 (1) but a narrower power to make rules for  
25 implementing section 85 which deals with the right of recall of members of  
Parliament. Secondly, it enables promulgation of rules regulating the  
practice and procedure of the High Court for hearing and determining  
appeals from decisions of the High Court in the exercise of any jurisdiction  
under the Act. Section 85 provides that:

30 85. Right and procedure of recall.

(1) Subject to article 84 of the Constitution, the electorate of any constituency and  
of any special interest group referred to in article 78 of the Constitution have the  
right to recall their member of Parliament before the expiry of the term of  
Parliament.

35 (2) The right to recall a member of Parliament only applies when the movement  
political system is still in force.

5 Parts of the subsections of section 85 deal with the procedure for the recall  
of a member of Parliament. Under section 85 (2), the recall of a member of  
Parliament only applies when the movement political system is still in force.  
The movement political system is provided for under article 70 of the  
Constitution of the Republic of Uganda 1995 and is no longer in force for the  
10 time being. Instead, the political system in Uganda currently is the  
multiparty political system provided for under article 71 of the Constitution.

Going back to section 93 which gives powers to the Chief Justice in  
consultation with the Attorney General to make rules prescribed for the  
matters thereunder, section 93 (2) clearly provides for the hearing and  
15 procedure of the High Court, the Court of Appeal and the Supreme Court for  
purposes *inter alia* of appeals from exercise of jurisdiction of the High Court  
under the Act. Thereafter subsections (b) (c) and (d) are construed *ejusdem  
generis* to refer to proceedings for the hearing of petitions or appeals  
whether by way of a petition in the High Court or appeal *inter alia* from the  
20 decisions of the High Court. Part of the law as enforces the right of recall  
under section 85 of the Parliamentary Elections Act 2005 is redundant  
pursuant to the adoption of a multiparty political system under article 71 of  
the Constitution as stated above. Going specifically to section 93 (3) of the  
Parliamentary Elections Act 2005, it again applies *ejusdem generis*. Section  
25 93 (3) of the Parliamentary Elections Act 2005 read in context enables the  
Chief Justice in consultation with the Attorney General to make rules which  
may incorporate in case of the High Court, the Court of Appeal or the  
Supreme Court, the rules of practice and procedure applicable to civil  
proceedings in the High Court, the Court of Appeal or the Supreme Court as  
30 may be subject to such modifications as may be specified in the rules. In  
other words, it still deals with proceedings in the High Court and no longer  
applies to recall of members of Parliament under section 85 of the  
Parliamentary Elections Act 2005 and the provisions of article 84 of the  
Constitution. Article 84 (7) of the Constitution provides as follows:

35 (7) The right to recall a member of Parliament shall only exist while the movement  
political system is in operation.



5 In conclusion, the powers of the Chief Justice in consultation with the Attorney General under section 93 of the Parliamentary Elections Act 2005 is only exercisable to make rules for petitions filed in the High Court and for appeals from decisions of the High Court.

10 Further, Section 86 of the Parliamentary Elections Act deals with the issues of determination of questions of membership and provides under section 86 (2) that a person aggrieved by the determination of the High Court may appeal to the Court of Appeal. Section 86 of the Parliamentary Elections Act applies to election petitions challenging the election of a member of Parliament and to appeals from the decision of the High Court. For purposes  
15 of clarity, I shall quote section 86 of the Parliamentary Elections Act and try to establish whether any rules were made to enforce the procedure for the jurisdiction to hear and determine petitions and appeals therefrom where questions of membership are in issue. Section 86 of the Parliamentary Elections Act, 2005 provides that:

20 86. Determination of questions of membership.

(1) The High Court shall have jurisdiction to hear and determine any question whether -

(a) a person has been validly elected member of Parliament or the seat of a member of Parliament has become vacant; or

25 (b) a person has been validly elected as Speaker or Deputy Speaker or having been so elected, has vacated that office.

(2) A person aggrieved by the determination of the High Court under this section may appeal to the Court of Appeal.

30 (3) Subject to the provisions of this Act in relation to election petitions, and to the provisions of article 137 of the Constitution, the Attorney General may petition the High Court under article 26 of the Constitution for the determination of the question referred to in that article.

35 (4) If upon application to the Attorney General in writing signed by not less than fifty registered voters stating that a question referred to in subsection (1) has arisen stating the grounds for coming to the conclusion the Attorney General

5 failed to petition to the High Court within thirty days after receipt of the application, any one or more of the persons who made the application may petition the High Court for determination of the question.

(5) Any party aggrieved by the decision of the High Court may appeal to the Court of Appeal against the decision and subsequently appeal to the Supreme Court.

10 (6) The High Court, the Court of Appeal or the Supreme Court shall proceed expeditiously to hear and determine any question or as the case may be, any appeal before it under this section and may for that purpose suspend any matter pending before it.

15 (7) in any case the High Court shall determine the question under this section within 12 months after the petition in relation to the question was lodged in that court.

Determination of questions of membership of members of Parliament as may be relevant to this appeal is derived from the Constitution under article 86 thereof which provides that:

20 86. Determination of questions of membership.

(1) the High Court shall have jurisdiction to hear and determine any question whether –

(a) a person has been validly elected member of Parliament or the seat of member of Parliament has become vacant; or

25 (b) a person has been validly elected as a Speaker or Deputy Speaker or having been so elected, has vacated that office.

(2) A person aggrieved by the determination of the High Court under this article may appeal to the Court of Appeal.

(3) Parliament shall by law make provision with respect to –

30 (a) the persons eligible to apply to the High Court for determination of any question under this article; and

(b) the circumstances and manner in which and the conditions upon which any such application may be made.



5 The article demonstrates that it is upon Parliament under article 86 (3) of  
the Constitution to make law with respect to eligible persons who may  
petition the High Court inter alia for nullification of an election result and  
the circumstances and manner in which and the conditions upon which the  
10 application may be made. The question of whether Parliament could  
delegate that power to make the above regulations to the Chief Justice was  
not considered in this appeal and may be raised before the Constitutional  
Court. It is however not crucial to the determination of this appeal without  
a challenge to the regulations which were imported from 1996 before the  
enactment of the Parliamentary Elections Act, 2005.

15 Last but not least on the question of the applicable law enabling the making  
of the rules of court, I have further considered section 66 of the  
Parliamentary Elections Act that specifically deals with appeals from  
decisions of the High Court pursuant to election petitions challenging the  
outcome of an election of a member of Parliament. Section 66 is the specific  
20 provision that deals with appeals rather than section 85 or 86 of the  
Parliamentary Elections Act and the before concluding I need to set out  
section 66 of the Parliamentary Elections Act, 2005 which provides that:

66. Appeals.

25 (1) A person aggrieved by the determination of the High Court on the hearing of  
an election petition may appeal to the Court of Appeal against the decision.

(2) The Court of Appeal shall proceed to hear and determine an appeal under this  
section within 6 months from the date of filing of the appeal and may for that  
purpose suspend any other matter pending before it.

30 (3) notwithstanding section 6 of the Judicature Act, the decisions of the Court of  
Appeal pertaining to parliamentary election petitions shall be final.

(4) *Repealed.*

For historical reasons, and upon purposes of tracing the development of  
the law, the Parliamentary Elections Act (Interim Provisions) Statute,  
Statute No 4 of 1996 and section 121 thereof enabled the making of rules by

5 the Chief Justice. Section 121 of the Parliamentary Elections (Interim Provisions) Statute 1996 (repealed) provided that:

10 121.(1) The Chief Justice, in consultation with the Attorney General, may make rules as to the practice and procedure to be observed in respect of any jurisdiction which under this Statute is exercisable by the High Court and also in respect of any appeals from the exercise of such jurisdiction.

(2) Without prejudice to subsection (1) any rules made under that subsection may make provision for –

(a) the practice and procedure to be observed in the hearing of election petitions;

(b) service of an election petition on the respondent;

15 (c) priority to be given to the hearing of election petitions and other matters coming before the courts under this Statute.

Pursuant to section 121 of the repealed Statute of 1996 (supra), the Chief Justice made the **Parliamentary Elections (Election Petitions) Rules, 1996** which provided for proceedings in the High Court. The above section 121 of the repealed Statute of 1996 has been re-enacted under section 93 (1) of the Parliamentary Elections Act, 2005. The rules promulgated by the Chief Justice specifically provided for appeals from the decision of the High Court and that part of the rules is the one we are concerned with in this application for extension of time or validation of the memorandum of appeal filed out of time. These rules continued in force as they were incorporated by the Parliamentary Elections Act, 2001. Section 100 (3) of the Parliamentary Elections Act provided that:

100. Repeal and savings

(1) The Parliamentary Elections (Interim Provisions) Statute, 1996 is repealed.

30 (2) ...

(3) Without prejudice to the provisions of the Interpretation Decree, 1976, any statutory instrument, form or other document made under the Parliamentary Elections (Interim Provisions) Statute, 1996 shall continue in force until revoked or replaced under this Act.



5 Last but not least on the continuation of the Parliamentary Elections (Election Petitions) Rules, 1996, section 101 (3) of the of the Parliamentary Elections Act, 17 of 2005 incorporated and maintained the same statutory instrument when it provided that:

101. Repeal and savings

10 (1) The Parliamentary Elections Act, 2001 is repealed.

(2) ...

(3) Without prejudice to the provisions of the Interpretation Act, any statutory instrument, form or other document made or existing under the Parliamentary Elections Act, 2001, shall, with the necessary modifications, continue in force until  
15 revoked or replaced under this Act.

At the time of determination of this application, the rules have remained in force and have not been revoked or replaced save by statutory provisions to the contrary which would override any, in case of any conflict. For instance, section 66 (2) of the Parliamentary Elections Act, 2005, modifies  
20 regulation 34 because it provides that an appeal shall be determined within six months from the time the appeal is filed whereas regulation 34 provides for 30 days from the time of lodging the appeal. Regulation 34 is no longer good law.

Just like in the year 1996, the rules were made to enforce the law then and were restricted to the practice and procedure to be observed in the hearing  
25 of election petitions. Secondly, they were restricted to the service of an election petition on the respondent. Thirdly, the rules provided for the priority to be given to the hearing of election petitions and other matters coming before the courts under the Statute by giving timelines for taking  
30 certain steps and the time within which the matters should be completed.

When the rules were made in 1996, Part III which applied to appeals to the Court of Appeal from the decision of the High Court on determination of election petitions gave timelines for the filing of any notice of appeal, the lodging of the memorandum of appeal and the record of appeal. Specific  
35 rules were made for extension of time on exceptional grounds for the time

5 prescribed of 30 days from the lodging of the record of appeal, to hear and  
determine the appeal. Unlike the current rules, the 1996 rules did not import  
the Court of Appeal Rules. Rule 34 envisages extension of the 30 days  
hearing limitation period in the rule but this has necessarily been modified  
10 by Parliament providing for a wider period of six months from the time the  
appeal is filed for hearing and determination of an appeal.

It should further be observed that section 66 of the Parliamentary Elections  
Act 2005 does not prescribe any timelines for the lodging of the  
memorandum of appeal or the notice of appeal after the decision of the High  
Court against which it is desired to appeal, is delivered. This is unlike the  
15 Local Government Act which gave timelines within which the eligible  
person may challenge the election of the councillor. On the other hand,  
section 66 (2) of the Parliamentary Elections Act, 2005 gives the timelines  
to proceed to hear and determine the appeal within a period of 6 months  
from the date of filing of the appeal and the rules have to be read with this  
20 modification or timelines in mind.

While there are specific rules giving the grounds for the enlargement of  
time of 30 days for the completion of an appeal from the time of the lodging  
of the record of appeal under rule 34 of the Parliamentary Elections Act  
(Interim Provisions) Rules, there is no corresponding rule for enlargement  
25 of the time prescribed in rules 29 and 30 as well as 31 of the Parliamentary  
Elections (Interim Provisions) Rules. The only remaining rule gives the  
general procedure to be applied with the necessary modifications under  
rule 36 which provides that:

30 Subject to such modifications as the court may direct in the interests of justice  
and expedition of the proceedings, any rules regulating the procedure and  
practice on appeal from decisions of the High Court to the Court of Appeal in civil  
matters shall apply to appeals under this Part of these Rules.

The power encapsulated in the rule to apply the High Court rules or the  
Court of Appeal rules in civil matters is subject to modifications directed by  
35 the court in the interest of justice and expedition of the proceedings. It  
therefore follows that the rules have to be read within the context of the



5 Parent Act which is the Parliamentary Elections Act, the regulations and where the regulations are silent one may apply the Rules of this court with the necessary modifications introduced by the Parent Act and regulations made thereunder. The procedural question is whether rule 5 of the Rules of this court can be applied. Rule 5 provides that:

10 5. Extension of time.

The court may, for sufficient reason, extend the time limited by these Rules or by the 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 expiry of that time and whether before or after the doing of the act; and any reference in these rules to  
15 such time shall be construed as a reference to the time as extended.

Unless it is read with the necessary modifications, rule 5 of the rules of this court cannot be applied because it specifically deals with any time for doing any act required to be done under the Rules. It should however be strictly construed to mean extension of time under the Parliamentary Elections  
20 (Interim Provisions) Rules and applies to rule 30 which gives the time to file the memorandum of appeal. To me the question is whether rule 5 of the Rules of this court can be applied to extend time contrary to section 66 (2) of the Parliamentary Elections Act? The smaller issue is whether time can be extended as prescribed by the rules. This has been the subject of  
25 numerous decisions by the Court of Appeal and before I deal with section 66 (2) of the Parliamentary Elections Act, I shall examine a few precedents.

In **Paul Omara v Acon Julius, the Electoral Commission, the Uganda National Examination Board and the National Council for Higher Education; Election Petition Appeal Miscellaneous Application No 346 of 2016**, there  
30 was an application for validation of the memorandum of appeal filed in the Court of Appeal out of time. Judgment had been delivered on 15<sup>th</sup> of May 2016 and the memorandum of appeal was filed on 6<sup>th</sup> September 2016 after a period of 114 days. After considering the rules, the circumstances were that there was an application for extension of time to serve the notice of appeal  
35 out of time which was granted. However, the applicant did not use the same application to seek leave to file the memorandum of appeal out of time. The



5 Court did not consider the question of whether extension of time could be  
granted and took it for granted that the Court of Appeal has jurisdiction to  
grant extension of time in appropriate cases. The question considered was  
whether or not sufficient reasons had been adduced by the applicant for the  
grant of the orders sought and court found that the applicant was guilty of  
10 dilatory conduct and disallowed the application.

Further the decision in **Peter Muramira Vs Brian Kaggwa; Civil Application  
No 104 of 2009** was cited for consideration by counsel but it arose from an  
application for the appeal to be struck out. That decision did not concern  
election petition appeals and the question of jurisdiction of this court to  
15 grant an extension of time was not considered in the context of the election  
petition appeals. In **Asuman Mugenyi Vs M. Buwule, the Supreme Court**  
considered the record which disclosed that judgment was delivered on 28<sup>th</sup>  
of May 2003. The memorandum of appeal was filed on 10<sup>th</sup> November 2005.  
The decree on record was dated 11<sup>th</sup> of June 2003. There was undue delay in  
20 filing the disputed appeal and the question was whether the court could  
proceed when the appeal was time barred. The issue of jurisdiction was  
raised in the context of the duty of the court to ensure that the rules of  
procedure and the law are upheld.

In **Kabeketerya James Vs Waira Kyewalanye and the Electoral Commission;  
25 Election Petition Appeal No 97 of 2016**, the High Court delivered Judgment  
on 3<sup>rd</sup> of October 2016 dismissing the petition of the appellant. The appellant  
was dissatisfied and filed a notice of appeal on 6<sup>th</sup> October 2016 and further  
filed a memorandum of appeal on 21<sup>st</sup> October 2016. Subsequently he filed a  
record of appeal on 15<sup>th</sup> of December 2016. There was a preliminary  
30 objection that the appeal was incompetent and should be struck out  
because the memorandum and record of appeal were filed out of time. The  
Court of Appeal considered the preliminary objection and relied on article  
140 (2) of the Constitution for the law that in hearing and determining  
appeals, the Court of Appeal shall proceed to hear and determine the appeal  
35 expeditiously and may suspend any matter pending before it. Most  
importantly to the point in issue, the court held that:



5 The wording of this article are reproduced in similar terms in sections 63 (2) and 66 (4) of the Parliamentary Elections Act. The rules of procedure which were made under the Act also use similar words of expeditious disposal of election matters; See: rules 13 and 33 of the Parliamentary Elections Petitions Rules.

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 Relying on the decision of the Court of Appeal in **Civil Application No 22 of 2011; The Electoral Commission and Another Vs Piro Santos Eruaga** where the court found among other things that election petition law is unique and intended for election and does not admit other laws and procedures governing other types of disputes, unless it provides for it itself. In that case it was found that the petition must be presented and served within 28 days of the publication of the election results and anything outside the time is invalid. Relying on the above holding, the Court of Appeal in **Kabeketerya James Vs Waira Kyewalanye and the Electoral Commission** (supra) held that:

25 We agree with the above stated legal principles and shall apply them to the facts of this appeal. The judgment was delivered on 3<sup>rd</sup> October, 2016.... the appellant did not comply with this provision, he filed a memorandum of appeal on 2<sup>nd</sup> first October, 2016 which was 8 days out of time. Rule 31 of the Parliamentary Elections Act (Interim Provisions) Rules (supra) provides that the record of appeal shall be filed within 30 days after filing the Memorandum of Appeal. The appellant filed the same on 15<sup>th</sup> of December, 2016 which was a contravention of Rules of the Rules. It is conceded by the appellant that he failed to comply with the above provision. 30 However, he appears to rely on Rule 83 of the Rules of this court, which grants an automatic extension of time. The question as to whether Rule 83 of the rules of this court is applicable to Parliamentary Election Petition matters has been considered and determined by this court in a No. of petitions similar to this one before us...rule 83 of the rules of this court is applicable only in respect of Local Council Elections and not in Parliamentary Election Petitions. 35

... Election petitions have to be handled expeditiously. The rules and timelines are set for filing proceedings are couched in mandatory terms. They must be strictly interpreted and adhered to.



5 We find that the appellant failed to take the essential step of filing the memorandum and record of appeal within the stipulated time. Consequently, the notice of appeal herein is struck out..."

The applicant's counsel disagreed with the above authorities and submitted that the rules are not mandatory but directory as held in **Sitenda Sebalu vs. Sam K Njuba and another Election Petition Appeal No. 26 of 2006) [2008] UGSC 7 (22 May 2008)**. I have carefully considered the issue and the fact that there are several decisions that seem to conflict on the question of jurisdiction to enlarge time in election petition appeals.

The timeline stipulated in the Parent Act with regard to appeals is that under section 66 (2) of the Parliamentary Elections Act, 2005 which provides that the Court of Appeal shall proceed to hear and determine the appeal within six months from the date of the filing of the appeal. In my interpretation, the date of the filing of the appeal is inclusive and commences on the date of the lodging of the Notice of Appeal but at most within seven days after lodging the notice of appeal or the memorandum of appeal. Therefore, going by the rules, considering the maximum period that is enabled in the rules, a notice of appeal is to be presented within 7 days of the date of the decision. Thereafter, the memorandum of appeal shall be filed within 7 days where a written notice of appeal has been given or within 14 days where oral notice was given. The total amount of days would be 14 days from the date of the notice of appeal. Oral notice can be given at the time the decision is made and therefore, the 14 days within which the memorandum of appeal should be lodged is reckoned from the date of the decision. Thereafter, the record is lodged within 30 days giving a period of about 44 days for pleadings. That leaves the court about 4 ½ months within which to prepare for, hear and determine the appeal. The time for preparation include the time needed to summon the parties to make written briefs and to schedule the hearing and enable time for service. The interest of justice and expedition of proceedings do require that the pleadings are completed within a reasonable time to enable the court to comply with section 66 (2) of the Parliamentary Elections Act, 2005 that gives a time of six months for the appeal to be heard and determined.



5 For that purpose, it is necessary to consider when the application for extension of time was filed. As noted above, the decision desired to be appealed was delivered on 7<sup>th</sup> September 2021. Thereafter, notice of appeal was given on 7<sup>th</sup> September 2021. The Notice of Motion for extension of time was filed on 23<sup>rd</sup> September 2021 about two weeks and two days later. 10 However, the memorandum of appeal had been filed on court record on 17<sup>th</sup> September 2021 and was lodged in the registry at Kampala on 21<sup>st</sup> of September 2021. This is 2 days late. The record of appeal on the other hand was lodged in time. The notice of motion for extension of time was only issued on 16<sup>th</sup> March 2022 a period of about 6 months from 17<sup>th</sup> of September 15 2021. It may be argued that this was the fault of the judicial officer who issues the Notice of Motion. However, the notice of motion can be issued without a scheduled date and a hearing notice issued subsequently. Alternatively, the applicant who is required to serve the notice should follow up and retain evidence that they tried to have it fixed and served and the 20 court was at fault. The point is that issuing the Notice of motion about six months later is in violation of section 66 (2) of the Parliamentary Elections Act. When the notice of motion seeking extension of time was issued by the Registrar, it fixed the hearing date for 24<sup>th</sup> of March 2021 well beyond the 6 months required for the hearing of appeals.

25 The problem is compounded by terminologies used for the filing of documents at the registry of the Court of Appeal. Documents are filed with the registrar under the Parliamentary Elections (Interim Provisions) Rules. Particularly it is necessary to make reference to rule 30 which provides *inter alia* that "a memorandum of appeal shall be filed with the registrar – 30 "

The question is whether the notice of motion in this application was filed with the registrar. The rule does not show anywhere that documents shall be filed in the registry. If this rule is read in harmony with the Judicature (Court of Appeal Rules) Directions, the filing of documents should be 35 evidenced by the endorsement of the registrar indicating the date and time when they were lodged or filed with the registrar. Under rule 3 (d) of the

5 Parliamentary Elections (Interim Provisions) Rules, the word “registrar”  
means the registrar of the court. If this is read in harmony with the  
Judicature (Court of Appeal Rules) Directions, the expression “registrar”  
under rule 3 (n) means the registrar of the court and includes a deputy and  
an assistant registrar of the court. On the other hand, under rule 3 (p) the  
10 word “registry” is separately defined to mean the registry of the court.

The ramification of the definitions is that filing a document with the  
“registrar” does not mean an endorsement generally by the registry but  
must specifically mean an endorsement reflecting the filing with the  
“registrar”. This can be seen by perusal of rules 10 & 11 of the Judicature  
15 (Court of Appeal Rules) Directions where under rule 10 (3) it is provided  
that:

(3) Every civil appeal shall be given a serial No. in the registry, which No. shall be  
allotted as soon as the memorandum of appeal is received; and for that purpose,  
a series of numbers shall be maintained for each calendar year.

20 Rule 9 (1) (b) provides that the registrar of the court shall maintain a register  
of applications in civil matters wherein shall be entered particulars of every  
application lodged in the appropriate registry or sent to the registrar by any  
deputy registrar relating to a civil appeal. Similarly, a register of civil  
appeals is maintained under rule 9 (1) (d) of the Judicature (Court of Appeal  
25 Rules) Directions. With regard to documents which are provided for under  
the Judicature (Court of Appeal Rules) Directions, documents have to be  
endorsed after they are lodged. Rule 11 of the Rules of this court provides  
that:

30 Whenever any document is lodged in the registry or in a sub registry or in the  
registry of the High Court under or in accordance with rule 10 of these rules,  
Rules, the registrar or deputy registrar or registry of the High Court, as the case  
may be, shall immediately cause it to be endorsed showing the date and time  
when it was lodged.

35 With regard to the applicant’s application, which is under consideration in  
this ruling, it is governed by rule 46 of the Judicature (Court of Appeal  
Rules) Directions which provides that:



5           46. Applications to be lodged in the registry.

(1) An application to the court shall be lodged in the registry, except that where the matter is one of urgency, an application may be lodged either in the registry or a subregistry notwithstanding that the subregistry is not the appropriate registry.

10           (2) All subsequent documents required to be lodged in relation to an application shall be lodged in the registry.

Further, 43 (1) and (2) provides that all applications to the court shall be by motion and the motion shall substantially be in Form A. For ease of reference it provides that:

15           43. Form of applications to court.

(1) Subject to subrule (3) of this rule and to any other rule allowing informal application, all applications to the court shall be by motion, which shall state the grounds of the application.

20           (2) A notice of motion shall be substantially in Form A in the First Schedule to these Rules and shall be signed by or on behalf of the applicant.

What is material in that Form "A" in the First Schedule to the Rules of this court shows in the form of the motion are included the words "lodged in the registry/sub registry at - on the - day of -20 - ". Most importantly, the motion is endorsed by the registrar. The form shows that a document is properly lodged when it is endorsed by the registrar. When this is read in harmony with the rule 30 of the Parliamentary Elections (Interim Provisions) Rules, the memorandum of appeal shall be filed with the registrar. In the circumstance of this appeal, the applicant filed an application by motion which is provided for under the Judicature (Court of Appeal Rules) Directions, which has to be lodged in the manner provided for as set out above and it has to be endorsed by the registrar. I do not accept the applicant submissions that documents are filed and not lodged. It is not sufficient to file a document commencing an application or moving court as such a documents is prescribed and has to be filed with the registrar of the court who is required under the rules to endorse the

25

30

35

5 document. That means that after the document is received by the registry,  
it has in addition to be endorsed indicating the date and time when it was  
lodged in the registry. This is proved by rule 11 of the Rules of this court  
which require the document to be endorsed showing the date and time  
when it was lodged. Unfortunately for the applicant, Form A referred to  
10 above requires the lodgement of the document to be endorsed by the  
registrar. In other words, it is not sufficient to merely file a document and  
leave it at the registry. The document in addition must be forwarded to the  
registrar for endorsement.

In my ruling, the main controversy in the applicant's application is whether  
15 the court can make an order whose effect of extension of time would be in  
violation of section 66 (2) of the Parliamentary Elections Act which gives a  
period of six months to proceed and determine the appeal from the time of  
filing the appeal. The Constitutional Court pronounced itself on the issue in  
**Ayena Odongo Krispus Charles vs Attorney General; Constitutional Petition**  
20 **No 38 Of 2017**. After considering the authorities in in **Sitenda Sebalu vs. Sam**  
**K Njuba and another Election Petition Appeal No. 26 of 2006) [2008] UGSC 7**  
(22 May 2008) and **Makula International Ltd Vs His Eminence Cardinal**  
**Emmanuel Nsubuga [1982] HCB 11** the Constitutional Court stated that:

25 Clearly the Supreme Court found it to be of importance in arriving at its decision  
that the procedural limitation period in the statute was meant for expedition of  
the resolution of the dispute which takes priority over other matters pending  
before the courts in a fair trial. Secondly, it was of importance too that election  
petitions are heard on the merits so that the courts inquire into the allegations of  
electoral malpractice or malpractices. This objective is also in the public interest.

30 For that reason, a judgment ought not to be declared a nullity for coming out after  
the six month's period as this would work serious injustice and inconvenience to  
innocent persons who have nothing to do with the delay and cannot influence the  
judiciary. The above cited Supreme Court in **Sitenda Sebalu vs. Sam K Njuba and**  
**another** (supra) is binding authority for holding that the requirement to hear cases  
35 within a period of 6 months as stipulated by section 66 (2) of the Parliamentary  
Elections Act as amended is a procedural and directory requirement and the  
failure by the court or the parties to complete the hearing and determination of  
the appeal within a period of 6 months would not render any decision made in



5 breach of the 6 months' limitation period a nullity. Further, there is an equally important public interest objective in the enactment of enquiring into alleged electoral malpractices thereby enhancing the rule of law by having the matter resolved by the highest appellate court prescribed by Parliament.

10 The imperative/directive to conduct the appeals within a period of 6 months is a just and reasonable directive meant to ensure that justice is done within a reasonable time. The reasonable time imports in it the concept of fairness so that a dispute as to who should be or not be a Member of Parliament representing a constituency is determined within a reasonable period to enable the MP duly elected to represent the constituents. This is also in relation to the periodic time to serve in Parliament and the fact that the term of each period is only five years before the next general elections. Obviously, any person who fails to comply with the statutory period can be considered to be in breach of section 66 (2) of the Parliamentary Elections Act as amended (the tort of breach of statute) and the question is what are the consequences of non-compliance especially in the  
15 circumstances of this petition. As noted above, judicial officers are immune from civil action for acts or omissions in the performance of judicial functions though they are required to comply with and uphold laws enacted by Parliament. More so the Constitution stipulates that election matters shall be handled expeditiously under article 140. Further, Parliament exercising its mandate under Article 86 (2) and (3) to enact section 66 (2) of the Parliamentary Elections Act as amended operationalized the requirement for expeditious hearing by giving a time frame to do so.  
20

25 Granted the officials who could be responsible for failure to complete the hearing and resolution of the election petition within a period of 6 months may be held accountable and found culpable if the fault is on their or his/her side. Parliament has already directed the courts to prioritise election petitions and suspend the hearing of other matters through commands in the law. The law represents the will of the people who are sovereign and exercise their sovereignty through the people they have elected to represent them in Parliament as stipulated by Article  
30 1 (4) of the Constitution. Failure to complete appeals in time may make the judicial officials concerned culpable but it does not make a decision issued after a period of 6 months a nullity.  
35

40 The courts concerned should seriously address the issue of delays in hearing and determining electoral appeals and reflect on the possible mischief that would be occasioned by delays in hearing election appeals. Serious mischief would have been occasioned if the court finds that the person challenging the election is the



5           duly elected member of Parliament or that the person elected ought not to be the  
duly elected member of Parliament and a re-election ought to be done. Yet if the  
decision comes after the term of Parliament has expired or is about to expire,  
serious mischief has been occasioned that Parliament in its wisdom tried to avert  
by enacting section 66 (2) of the Parliamentary Elections Act, 2005 as amended.

10       There are two matters. Where the provision for extension of time is enabled  
by regulations and the period of limitation is in the rules, such period of time  
can be extended by powers for extension in the rules. However, where the  
limitation period is in an Act of Parliament, it cannot be extended in breach  
of the period in the Act for want of jurisdiction of the Courts. The want of  
15       jurisdiction was considered in **Makula International Ltd v His Eminence  
Cardinal Nsubuga & Anor (Civil Appeal 4 of 1981) [1982] UGSC 2 (08 April  
1982)** where the Court of Appeal, which was the highest appellate court in  
Uganda held that:

20           it is well established that a court has no residual or inherent jurisdiction to  
enlarge a period of time laid down by statute. See: Osman v. United India  
Insurance Co. Ltd [1968] EA 102 at p. 104 and Pritan Kaur v. Russel & Sons Ltd.  
[1973] 1 All E.R. 612 at p. 622. Consequently, Manyindo J's order extending the time  
within which to appeal, several months after the expiry of the statutory period,  
was made without jurisdiction. It is a nullity and must be set aside.

25       This holding is echoed by the Supreme Court in in **Kyagulanyi Ssentamu Vs  
Yoweri Museveni Tibuhaburwa & 2 Others; Election Petition Appeal  
Miscellaneous Application 1 of 2021 [2021] UGSC 1 (0 9 February 2021)**. In that  
application, there was a proposed amendment to raise another ground in  
the petition and the court found that the proposed ground in the amendment  
30       was outside the limitation period provided for the filing of a presidential  
petition and disallowed it. The issue was whether the amendment can be  
made after the expiry of time fixed by statute. The Supreme Court held that  
the petitioner was introducing new grounds and prayers contrary to the  
principles governing amendment of pleadings such as the law that an  
35       amendment will not be allowed if it introduces a new cause of action or  
grounds, as the case may be, which would otherwise be time barred. The  
Supreme Court cited several precedents for the proposition that an



5 amendment to pleadings introducing new grounds of claim or action cannot be allowed to defeat the law of limitation.

10 I emphasise that amendments to pleadings in the High Court are made under the rules of court just like extension of time prescribed under rule 29 and 30 of the Parliamentary Petition (Interim Provisions) Rules. In **Auto Garage Vs Motokov (1971) EA 514** the East African Court of Appeal held that an amendment to a plaint will not be allowed where the cause of action is barred by the law of limitation. Further in **Opio v Attorney General** reported in **(1990 – 1991) 1 KALR 66** the law that a plaint and cause of action therein barred by statute must be rejected was applied. In **Iga Vs Makerere University [1972] EA 65** the proposition that a plaint barred by law should be rejected under Order 7 rule 11 (d) of the Civil Procedure Rules was applied.

15 By analogy, these principles apply to extension of time allowed by the rules which if allowed would be in violation of an Act of Parliament which gives the timelines within which to hear an appeal with six months and which is couched in mandatory language. For emphasis section 66 (2) of the Parliamentary Elections Act provides that:

66. Appeals. ...

20 (2) The Court of Appeal shall proceed to hear and determine an appeal under this section within 6 months from the date of filing of the appeal and may for that purpose suspend any other matter pending before it.

The time of 6 months to proceed to hear and determine the appeals is reckoned from the date of filing the appeal. According to **H.W.R. Wade** in, **Administrative Law Fifth Edition** at page 218:

30 Acts of Parliament conferring powers on public authorities very commonly impose conditions about procedure, for example by requiring that the notice shall be served or that action shall be taken within a specified time or that the decision shall state reasons. If the authority fails to observe such a condition, is its action ultra vires? The answer depends on whether the condition is held to be mandatory or directory. Non-observance of a mandatory condition is fatal to the validity of the action. But if the condition is held to be merely directory, its non-observance

5 will not matter for this purpose. In other words, it is not every omission or defect which entails the drastic penalty of invalidity.

The distinction is not quite so clear-cut as this suggests, since the same condition may be both mandatory and directory: mandatory as to substantial compliance, but directory as to precise compliance.

10 The above passage suggests that the question of whether a provision is mandatory or directory is only answered after the breach. In my ruling, to do otherwise would be to suggest that the court can go ahead to consciously violate a statutory provision couched in mandatory language by giving a period within which the appeal shall be heard by extension of time. The  
15 actual matter in controversy is whether an extension of time can be made so as to extend the period of 6 months within which to proceed to hear and determine an appeal from an election petition decision made by the High Court. Courts can only hold a provision to be directory after breach of it. However, the court cannot direct the provision to be breached as for  
20 purposes of compliance, section 66 (2) of the Parliamentary Elections Act is mandatory. It can be held directory where the breach cannot be avoided and not when the breach can be avoided. This position is bolstered by the decision of the Court of Appeal in **Makula International Ltd Vs His Eminence Cardinal Emmanuel Nsubuga** (supra). In that appeal, time within which to  
25 appeal was enacted by Parliament under section 62 (1) of the Advocates Act cap 267 provides that:

30 Any person affected by an order or decision of a Taxing Officer made under this Part of the Act or any regulations made under this Part of this Act may appeal within 30 days to a judge of the High Court who on that appeal may make any order that the Taxing Officer might have made.

The issue before the Court of Appeal arising from the section was whether the Court has jurisdiction to enlarge time prescribed by section 62 (1) of the Advocates Act to enable an aggrieved party to appeal out of time. The Court of Appeal held *inter alia* that a court has no residual or inherent jurisdiction  
35 to enlarge a period of time laid down by statute and the judge's order extending the time within which to appeal, several months after the expiry



5 of the statutory period, was made without jurisdiction. This decision is consistent with that of the Supreme Court in **Kyagulanyi Ssentamu Vs Yoweri Museveni Tibuhaburwa & 2 Others; Election Petition Appeal Miscellaneous Application 1 of 2021 [2021] UGSC 1 (0 9 February 2021)**. The Supreme Court stated inter alia:

10 We agree but must add that, this court has no authority to extend the time within which a party would file the petition challenging the results of the presidential election. This court is in agreement with the decision in **Dhartpakar Madan Lal Agarwal v Rajiv Gandhi, 11<sup>th</sup> May 1987 AIR 1577, 1987 SCR (3) 369** wherein J Byron observed;

15 *“... there is a long line of authority for the proposition that there can be no amendment to the petition after the expiration of the time limit, commencing with Maude versus Lowley (1874) L.R. 9 C.P. 165, then Lowley (1883) 48 L.T. 762, where the court indicated that an amendment would not be allowed where there was a rigid limit of time for the presentation of the*  
20 *petition. To allow otherwise would have the practical effect of extending the time for filing the petition”.*

We are persuaded by the above decision in as far as the limitation imposed on this court by the Constitution to entertain a petition filed within the acceptable time frame. The court has no powers to extend that timeline.

25 Finally, the decision of the Supreme Court in **Sitenda Sebalu Vs Sam K Njuba and another Election Petition Appeal No 26 of 2006 [2008] UGSC 7 (22 May 2008)** is distinguishable. The issue for consideration was *inter alia* whether or not Court had jurisdiction to extend time within which to serve the notice of presentation of petition under section 62 of the Parliamentary Elections  
30 Act. The Court of Appeal upheld the decision of the trial judge that the court had no jurisdiction to extend time fixed by statute and this was considered by the Supreme Court.

The Court considered the equivalent of the current rule 6 (1) of the Parliamentary Elections (Interim Provisions) which limited the time to serve  
35 the petition on the respondent to a period of within seven days. Secondly, the court considered rule 19 of the Election Petition Rules which provides allows the court to extend time. The Supreme Court held that the

5 requirement to serve the petition within 7 days though, couched in  
mandatory language is a procedural requirement. Thirdly, that there was no  
penalty prescribed for noncompliance with the requirement to serve within  
seven days and the requirement is a directory one. Further, failure to  
10 comply with the rule did not render the act done in disregard of the rule a  
nullity. In reaching its final conclusion, the court considered a statutory  
instrument and not provisions of the Parent Act.

In the circumstances of this application the delay to issue the notice of  
motion and to serve it put the court at cross purposes with an Act of  
Parliament namely; section 66 (2) of the Parliamentary Election Act, 2005.

15 Secondly, the applicant or his counsel did not ensure that the motion for  
extension of time was filed with the registrar or lodged in the court as  
stipulated in the rules of court. The delay was of a period of about six  
months with effect from September 2021 to March 2022 and amounted to  
dilatory conduct. The dilatory conduct cannot be explained by the  
20 misconstruction or misapprehension of the time stipulated being 14 days  
instead of 7 days under rule 30 of the Parliamentary Elections (Interim  
Provisions) Rules. The delay from filing the motion in September 2021 and  
it being endorsed by the Registrar on 16<sup>th</sup> March, 2022 amounted to dilatory  
conduct in breach of section 66 (2) of the Parliamentary Elections Act, 2005.

25 In the premises, the court has no jurisdiction to apply rule 5 of the Rules of  
this Court to enlarge time because the enlarged time sought would end up  
enlarging the period of six months set by Parliament under section 66 (2).  
On that ground alone, this application has no merit and is dismissed. Given  
the fact that the notice of motion is supposed to be issued by court and for  
30 that reason partial blame may rest on the registrar, I would make an order  
that the application is dismissed with each party to bear his/its own costs  
of the application.

In light of the above decision, I would allow **Election Petition Application No. 6 of 2022 between Electoral Commission and Kasibo Joshua Omayende and**



5 would make an order that Election Petition Appeal No 17 of 2021 be struck out with costs.

Dated at Kampala the 15<sup>th</sup> day of May 2022



**Christopher Madrama**

10 **Justice of Appeal**

**THE REPUBLIC OF UGANDA,**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**(CORAM: Egonda-Ntende, Madrama & Luswata, JJA)**  
**ELECTION PETITION APPEAL APPLICATION NO. 06 OF 2021**  
**(Arising from Election Petition Appeal No. 17 of 2021)**

**BETWEEN**

**Kasibo Joshua Omayende**=====Appellant

**AND**

**Mboizi Arthur Waako**=====Respondent No. 1

**The Electoral Commission**=====Respondent No.2

**AND**

**ELECTION PETITION APPEAL APPLICATION NO. 06 OF 2022**

**BETWEEN**

**Electoral Commission**=====Applicant

**AND**

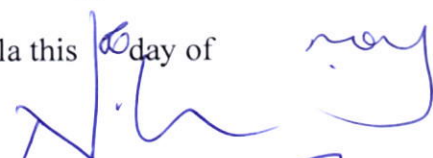
**Kasibo Joshua Omayende**=====Respondent

*(On Appeal from the Judgment of the High Court of Uganda (Matovu, J.), delivered on 7<sup>th</sup> September 2021)*

**RULING OF EVA K. LUSWATA, JA**

- [1] I have had the opportunity to read in draft the ruling of my brother, Madrama, JA. I do agree with his findings and decision and have nothing to add.
- [2] I would strike out Election Petition Appeal No. 17 of 2021 with costs.

Dated, signed and delivered at Kampala this 10 day of May 2022

  
Eva K. Luswata  
**Justice of Appeal**



**THE REPUBLIC OF UGANDA,**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
(CORAM: Egonda-Ntende, Madrama & Luswata, JJA)  
**ELECTION PETITION APPEAL APPLICATION NO. 06 OF 2021**  
(Arising from Election Petition Appeal No. 17 of 2021)

**BETWEEN**

**Kasibo Joshua Omayende=====Appellant**

**AND**

**Mboizi Arthur Waako=====Respondent No. 1**

**The Electoral Commission=====Respondent No.2**

**&**

**Election Petition Appeal Application No. 06 of 2022**

**BETWEEN**

**Electoral Commission=====Applicant**

**AND**

**Kasibo Joshua Omayende=====Respondent**

*(On Appeal from the Judgment of the High Court of Uganda (Matovu, J.),  
delivered on 7<sup>th</sup> September 2021)*

**RULING OF FREDRICK EGONDA-NTENDE, JA**

- [1] I have had the opportunity to read in draft the ruling of my brother, Madrama, JA. I agree that Application No. 06 of 2021 is incompetent as this court is not seized with the jurisdiction to extend the time sought to be extended. The appeal in this matter was filed out of time.

[2] As Kawuma Luswata, JA, agrees, Application No. 06 of 2021 is struck out with each party bearing its own costs. Election Petition Appeal Application No. 06 of 2022 is allowed with costs and Election Petition Appeal No. 17 of 2021 is struck out with costs.

Dated, signed and delivered at Kampala this 05 day of May 2022

  
Fredrick Egonda-Ntende  
**Justice of Appeal**