

**THE REPUBLIC OF UGANDA.**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPLA**

**IIN THE MATTER OF PARLIAMENTARY ELECTIONS ACT, 2005**

**ELECTION PETITION APPLICATION NO. 16 OF 2022**

**(ARISING FROM ELECTION PETITION APPEAL NO. 37 OF 2021)**

**(ARISING FROM ELECTION PETITION NO. 002 OF 2021 AT  
MASINDI HIGH COURT)**

**ELECTORAL COMMISSION::: APPLICANT.**

**VERSUS**

**MUHEIRWE DANIEL MPAMIZO:::RESPONDENT.**

**RULING**

**BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA**

**Introduction and Background**

- 1] The applicant preceded by notice of motion under Rules 43 (1) & (2), 78, 82, 88 of the Judicature (Court of Appeal Rules) Directions (SI 13-10) and Rule 29, 30, 31 & 36 of the Parliamentary Election (Interim Provision) Rules (SI 141-2) seeking an order that Election Petition Appeal No. 36/2021 be struck out with costs. The grounds advanced are that:
  - i. there is no valid appeal on record, by the respondent
  - ii. The respondent failed to take an essential step of serving the applicant with a notice of appeal in accordance with the law, and,
  - iii. The respondent failed to file the record of appeal in accordance with the law

- 2] Mr. Jude Mwassa an advocate of the 1<sup>st</sup> respondent filed an affidavit in support of the application stating that the judgment in Election Petition No. 002/2021 (hereinafter the petition) was delivered on the 28/9/2021. That on the 4/10/2021, the respondent filed a notice of appeal (hereinafter the notice) and served the applicant on the 14/10/2021. He contended then that the respondent did not serve the notice within 7 days from its filing date, as required by law. He contended further that the respondent filed the record of appeal (hereinafter the record) on 11/11/2021 after filing the memorandum of appeal on 4/10/2021, meaning that the respondent did not file his record within 30 days from filing of the memorandum of appeal, as required by the law. He added that the respondent has not exercised due diligence in the prosecution of the intended appeal, and as such, there is no valid appeal on court record, and the same ought to be struck off the record with costs.
- 3] Muheirwe Daniel Mpamizo, the respondent, filed an affidavit in reply. In brief, he deposed that the application is incompetent, frivolous, vexatious, misconceived, barred in law and only intended to abuse court process. He conceded that the judgment in the petition was delivered on the 28/9/2021 and he immediately instructed his lawyers to expeditiously appeal against the same judgment and orders. He added that the notice was filed on 4/10/2021 within the statutory seven days. Further that, the Registrar Masindi High Court (hereinafter the Registrar), made his endorsement on the notice on 12/10/2021, and the same was served upon the applicant on 14/10/2021.
- 4] Muheirwe continued that being absent from his chambers between 4/10/2021 and 11/10/2021, the Registrar did not sign the notice. He dispelled the allegation by the Electoral Commission (hereinafter EC), that the memorandum of appeal was filed on 4/10/2021, because the filing date evident on the record is 11/10/2021. That the record was subsequently filed on 11/11/2021 and served upon the EC on the same day,



which in his estimation, was within the thirty days stipulated by the law. Muheirwe contended then that he has a valid appeal and prayed for dismissal of the application with costs.

### **Submissions of parties**

- 5] Counsel for the applicant submitted that the respondent failed to take certain essential steps in the prosecution of the petition. He referred to Rule 29 of the Parliamentary Elections (Interim Provisions) Rules SI 141 -2 (hereinafter the PE Interim Rules) that provides time for filing the notice and Rule 30 that directs the time lines for filing a memorandum of appeal. He then drew court's attention to Rule 78(1) of the Judicature (Court of Appeal) Rules SI 13-10 (hereinafter Court of Appeal Rules) that directs an appellant to serve the Notice of Appeal upon the respondent before, or within seven days after it's lodging/filing.
- 6] Citing substantial authority, EC's counsel contended that the timelines above are mandatory. They in particular drew our attention to the decision in **Utex Industries Ltd Vrs Attorney General SCCA NO. 52/1995**, cited with approval in the case of **Abiriga Ibrahim Y.A Vrs Musema Mudathir Bruce Election Petition Application No. 24/2016** where court held that:-  
  
*“taking an essential step is the performance of an act by a party whose duty is to perform that fundamentally necessary action demanded by the legal process, so that subject to the permission by court, if the action is not performed by law prescribed, then whatever legal process had been done before becomes a nullity, as against the party who has the duty to perform that act”*
- 7] Counsel then contended that the respondent who filed his notice on 4/10/2021, failed to effect service within the prescribed seven days after its filing. He explained that Rule 4 Court of Appeal Rules allows for the exclusion of the date of filing, and thus, the time for service should be computed from 5/10/2021 until 13/10/2021 as the final day. Therefore that, the respondent could not, and was not at liberty to serve the

notice on 14/10/2021, as he did, and the said service was out of time.

- 8] With respect to the record of appeal, the EC's counsel referred to Rule 31 of the PE Interim Rules which allows an appellant 30 days within which to file a record of Appeal immediately after filing their Memorandum of Appeal. That since Muheirwe filed his Memorandum of Appeal on 10/10/2021, he had up to 10/11/2021 to file the record, which he failed to do when he filed it on 11/11/2021, one day outside the time permitted under the law. Counsel argued and showed that that this Court has previously struck out an appeal where it was proved that the notice was filed one day late. See: **Kasibante Moses V Electoral Commission Election Petition Appln No.07/2012**. He continued that this Court in her decision of **Abiriga Ibrahim Y.A V Musema Mudathir Bruce (supra)** relied on that decision to strike out an appeal where it was confirmed that the memorandum of appeal was filed eight days late.
- 9] Counsel continued that in her decision of **Kubeketerya James V Waira Kyenalabye & Anor Election Petition Appeal No. 97/2016**, this court rejected an appeal whose record was filed late in contravention of the rules as prescribed. The Court then confirmed the decision in **Kasibante Moses (supra)** to emphasize the requirement of compliance with the timelines given in the PE Interim Rules.
- 10] Counsel reasoned that intending appellants against election petition decisions have a higher duty to expeditiously pursue every step in the appeal because Section 66 (2) of the Parliamentary Elections Act (hereinafter EP Act) and Rules 33 and 34 of the Parliamentary Elections (Election Petitions) Rules (hereinafter PE Rules) enjoin this court to hear and determine an appeal expeditiously and complete it within 30 days and may, for that purpose, suspend any other matter pending before it.



## Submissions for the respondent

- 11] Muheirwe Mpamizzo's counsel submitted that on 4/10/2021 he wrote to court requesting for certified copies of the judgment and record of proceedings, and on the same day filed a notice of appeal, the latter which was endorsed by the Registrar on 12/10/2021. He then effected service of the notice upon the applicant on 14/10/2021. That the memorandum of appeal was filed on 11/10/2021 and not 4/10/2021, and served the same day within the prescribed time. Similarly that, the record was filed and served within time on 11/11/2021. Therefore that, the record having been filed 30 days after filing of the memorandum of appeal, the respondent took all the essential steps in the prosecution of his appeal, and the applicant's arguments were a result of miss computed time.
  
- 12] With regard to the notice of appeal, it was contended that although it was filed in court on 4/10/2021 (on the 6<sup>th</sup> day following the judgment), the Registrar endorsed it on 12/10/2021 and service on the EC was effected on 14/10/2021. Citing this court's decision in **Kubeketerya James (supra)**, Mpamizzo's counsel argued that election petitions law and its legal regime excluded the application of other laws and procedures and as such, Rule 78(1) Court of Appeal Rules would not apply to this petition. Counsel continued that the **Kubeketerya James (Supra)** decision was cited out of context because the facts there are that the notice was filed eight days after the lapse of time, while the notice here was filed within the prescribed time. That since both the memorandum and record of appeal were filed in time, the application lacked merit and was only an intention to delay disposal of the appeal.
  
- 13] Mpamizzo's counsel then prayed that the application be dismissed with costs.

## **Decision of the Court**

- 14] The main bone of contention in this application is that both the notice of appeal and memorandum of appeal were filed late in contravention of election laws. Counsel for the EC, has moved the Court to construe late filing as a fatal flaw that renders the appeal a nullity. Mr. Muheirwe Mpmamizo the respondent, contended in reply that both the notice and record of appeal were filed on time. He considers the EC's arguments the result of wrong computation and thus, their application with no merit. We shall therefore proceed to resolve the dispute, first by investigating the laws upon which this application is based.

### **Ground one**

- 15] The application was presented under Rules 78, 82, and 88 Court of Appeal Rules and Rules 29, 30, 31 and 36 PE Interim Provision Rules S1 141-2. It is provided in Rule 29 PE Interim Provisions Rules, that:

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

Further, Section 36 of the PE Interim Provisions Rules provides that:

*“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 the Rules.”*

- 16] The record indicates that the judgment of the High court was delivered on 28/9/2021. Muheirwe as the intending appellant duly filed a Notice of appeal on 4/10/2021. The notice was endorsed by the Registrar on 12/10/2021 and served on the EC's counsel on 14/10/2021. The EP Interim Rules make no provision for service of the notice and as such, the EC relied on the provisions Rule 78(1) Court of Appeals Rules to submit that



it should have been served within seven days from the date it was filed.

17] Rule 36 PE Interim Rules permits this court to apply the Court of Appeal Rules with modifications where the former are silent and where the justice of the matter requires it. I find no justification for applying Section 78(1) in this case. The notice was filed within time and as explained by Muheirwe and confirmed on the record, the Registrar did not endorse it until 12/10/2021. Muheirwe explained and it was not rebutted that the Registrar was absent from his chambers between 4<sup>th</sup> and 11<sup>th</sup> October 2021. The notice could only be served after the Registrar endorsed it. The EC did not show that they suffered any prejudice for being served on 14/10/2021, and in my view, there was no undue interruption that affected the expeditious disposal of the appeal.

18] Accordingly I find no merit in the second ground.

### **Grounds one and three**

19] Rule 31 Parliamentary Elections (Interim Provisions) (Election Petitions) Rules provides as follows:

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

20] The record indicates that on 30/9/2021, Muheirwe’s counsel wrote to the Deputy Registrar requesting for a typed and certified copy of the proceedings. The letter was received by Court on 4/10/2021 and the proceedings were certified by the registrar on 28/10/2021. The memorandum of appeal was filed on 11/10/2021 and subsequently, the record of appeal on 11/11/2021.

21] In her decision of **Kasibante Moses Vs EC EP (supra)**, this Court adopted the provisions of both the Interpretation Act and the Court of Appeal Rules to compute time of days relating to a

memorandum and record of appeal that were filed late. It is provided in Rule 4 of the Court of Appeal Rules that:

*“Any period of time fixed by these Rules or by any decision of the court for doing any act shall be reckoned in accordance with the following provisions:*

*(a) A period of days from the happening of an event or the doing of any act or thing shall be taken to be exclusive of the day on which the event happens or that act or thing is done”*

- 22] It would follow then that the day the record was filed would be excluded when computing the 30 days within which it should have been filed. Counting from 11/10/21 (one day after the memorandum was filed), the record was filed on 11/11/21 after 31 days, one (1) day outside the time prescribed by Law. Thus, the EC’s computation was correct.
- 23] It is not clear from the evidence here when Muheirwe received the certified record of proceedings. However, it is evident that his lawyers were able to file and serve the memorandum of appeal in time. No reasons were advanced to explain the late filing of the record of appeal. In fact according to Muheirwe and his counsel, the record was filed in time, which was not the case.
- 24] It is evident through her previous decisions that this Court has emphasized the importance of respecting time lines given to file and prosecute election petitions. There is good reason for this because according to Article 140(1) and (2) of the Constitution, this Court is mandated to hear and determine an appeal expeditiously, with a directive that all other matters are suspended to give such actions priority. That mandate is repeated in section 66 (2) of the EP Act and Rules 33 and 34 of the PE Interim Provision Rules in which a time of 30 days is given. It would then be wrong for parties not to consider time lines as a very serious matter and act upon them accordingly.



25] The Court has placed that duty squarely on the shoulders of the appellant. It was held in **Kubeketerya James V Waira Kyenalabye & Anor (supra)** that:

*“It is now settled as the law that it is the duty of the intending appellant to actively take the necessary steps to prosecute his/her intended appeal. It is not the duty of the court or any other person to carry out his duty for the intending appellant. Once judgment is delivered, the intending appellant has to take all the necessary steps to ensure the appeal is filed in time See also: **Utex Industries Ltd Vrs Attorney General (supra)** and **S.B. Kinyatta & Anor Vrs Subramanian & Anor: Civil Application NO. 108/2003 (Court of Appeal)**”*

26] I note that in this case the record was filed only one day late. Even then, the rules and timelines set for filing proceedings in election petition appeals is couched in mandatory terms and must therefore, be strictly adhered to. In **Bakaluba Mukasa Peter and Electoral Commission Vrs Nalugo Mary Margaret Sekiziyivu Election Petition Application No. 24 of 2011**, this court allowed a similar application to strike out the appeal and stated that:

*“Delay in taking the right step in the litigation at the right time hinders successful parties from enjoying the fruits of their judgment which was obtained in their favour”.*

Similarly in **Kubeketerya James Vrs Waira Kyenalabye & EC (supra)**, this court was of the view that elections are serious matters of a state with its citizens. That once elections are concluded and announced, the electorate must know their political leader. If the election is challenged, that challenge must be moved along expeditiously to end swiftly enough to restore certainty. This court finds no reason to depart from her earlier decisions to allow an appeal to remain on record when part of its proceedings was filed late. This was not a frivolous application, but one filed on merit on that ground.

27] In the result, the third ground of the application succeeds.


28] This court in her decision of **Kasibante Moses Vrs EC (supra)** found that an appeal can be valid only if all the essential steps have been taken in time. It was held:

*Taking an essential step is the performance of any act by a party, whose duty is to perform that fundamentally necessary action demanded by the legal process, so that, subject to permission by court, if the action is not performed as by law prescribed, then whatever legal process has been done before, becomes a nullity, as against the party who has the duty to perform the act*

In this case, he failed to take an essential step in this appeal which would permit this court to strike out the appeal, and the first ground succeeds as well.

29] Accordingly, I would allow the application. I would strike out Election Petition Appeal No. 37 of 2021 with costs to be met by the respondent.

**SIGNED,** dated and delivered at Kampala <sup>6<sup>th</sup></sup> this <sup>may</sup> day of 2022.

  
Eva K. Luswata  
**Justice of Appeal**



**THE REPUBLIC OF UGANDA,**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**(CORAM: EGONDA NTENDE, MADRAMA AND LUSWATA JJA)**  
**ELECTION PETITION APPEAL APPLICATION NO 16 OF 2022**  
**(ARISING FROM ELECTION PETITION APPEAL NO 37 OF 2021)**  
**(ARISING FROM ELECTION PETITION NO 002 OF 2021 AT MASINDI HIGH COURT)**

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

**VERSUS**

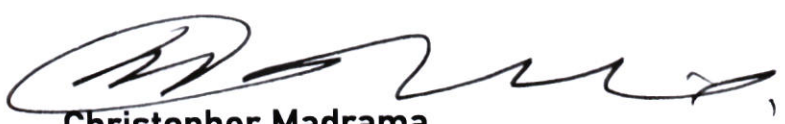
**MUHEIRWE DANIEL MPAMIZO} .....RESPONDENT**

**RULING OF CHRISTOPHER MADRAMA, JA**

I have had the benefit of reading in draft the ruling of my learned sister Hon. Lady Justice Eva K. Luswata, JA, granting the Applicant's application and striking out the Respondent's appeal in Election Petition Appeal No. 37 of 2021.

I agree with the reasons and orders proposed in the ruling and I have nothing useful to add.

Dated at Kampala the 06<sup>th</sup> day of may 2022



**Christopher Madrama**

**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 16 OF 2022**  
(ARISING FROM ELECTION PETITION APPEAL NO 37 OF 2021)

**BETWEEN**

**ELECTORAL COMMISSION=====APPLICANT**

**AND**

**MUHEIRWE DANIEL MPAMIZO=====RESPONDENT**

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

- [1] I have had the opportunity to read in draft the judgment of my sister, Luswata, JA. I agree with her and have nothing useful to add.
- [2] As Madrama, JA, agrees, this application is allowed. The appeal in this matter is struck out with costs.

Dated, signed and delivered at Kampala this *08* day of *may* 2022



Fredrick Egonda-Ntende  
**Justice of Appeal**