

5 THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
MISCELLANEOUS ELECTION PETITION APPLICATION NO.43 OF 2022
(Arising from Election Petition Appeal No.81 of 2021)
(Arising from High Court Election Petition No.10 of 2021)

10 BRIGHT TOM AMOOTI.....APPLICANT

VERSUS

15 BIRIHAIRWE ERYEZA.....RESPONDENT

CORAM: HON. JUSTICE RICHARD BUTEERA, DCJ
HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JA
HON. LADY JUSTICE IRENE MULYAGONJA, JA

20 RULING OF COURT

Introduction

25 The applicant instituted this application by Notice of Motion under **section 98 and 100 of the Civil Procedure Act, Order 52 Rule 1 and 3 of the Civil Procedure Rules and Rule 82 of the Judicature (Court of Appeal Rules) Directions S.I 13-10**, seeking for the following orders;

1. Election Petition Appeal No.81 of 2021 be struck out.
2. Costs of the Application be provided for.

30 The application is supported by an affidavit sworn by the applicant, Bright Tom Amooti. It is opposed by the respondent, Birihairwe Eryeza who swore an affidavit to support his objection to the Application.

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5 **Background**

The applicant together with the respondent and other contestants participated in the 2021 Parliamentary Elections held on 14th January 2021 for the position of Member of Parliament for Kyaka Central County constituency, Kyegegwa District. The Applicant was announced as the duly
10 elected Member of Parliament for Kyaka Central County, Kyegegwa District by the Returning Officer of Kyegegwa District.

Aggrieved by the result of the election, the respondent instituted Election
15 Petition No.10 of 2021 at the High Court in Fort Portal, challenging both the nomination and declaration of the applicant as the validly elected Member of Parliament for Kyaka Central County, Kyegegwa District. The Petition was decided in favour of the applicant by Hon. Justice Byaruhanga Jesse Ruyema on the 29th of October 2021.

20 The respondent being dissatisfied with the judgment of the trial Judge filed a Notice of Appeal on the 3rd of November 2021. The respondent then filed the Memorandum of Appeal together with the record of proceedings on the 22nd of December 2021 and served the same on the applicant on the 17th January 2022.

25 The Election Appeal No.81 of 2021 and Miscellaneous Application No.43 of 2022 were scheduled by the Registrar of this Court. Counsel for the parties were given a schedule for which they were ordered to file written submissions in both the main appeal and in the Miscellaneous Application.
30 Counsel for the parties complied and filed their written submissions.

Hearing of both the Election Petition Appeal and the Miscellaneous
Application arising from the main appeal were fixed for hearing on 24th
35 March, 2022.



5 **Representation**

At the hearing, the applicant was represented by Mr. William Kyobe while the respondent was represented by Mr. Vicent Mugisha.

The applicant and the 1st respondent were both in Court.

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Counsel for all the parties applied to Court to adopt and rely on their written submissions which Court granted.

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Court found it prudent to dispose of the Application first since it is an Application seeking to strike out the Election Petition Appeal and could as a consequence dispose of the Appeal.

Grounds of the Application

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The grounds in support of the application are contained in the affidavit in support deponed by the applicant, Bright Tom Amooti, and were briefly as follows:-

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1. That the respondent instituted Election Petition No. 10 of 2021 challenging both the nomination and declaration of the applicant as the validly elected Member of Parliament for Kyaka Central Kyegegwa District which was rules in favour of the applicant.

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2. That the respondent being dissatisfied with the judgment of the trial Judge Hon. Justice Jesse Ruyyema filed a Notice of Appeal on 2nd November, 2021.

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3. That the record of proceedings was availed to the respondent on 17th December, 2021.

4. That the respondent filed the memorandum of appeal on 22nd December, 2021 and served the applicant on 17th January, 2022.

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- 5 5. That the respondent filed and served the record of appeal out of time as it wasn't brought within 7 days of the filing of the Notice of Appeal.
- 10 6. That there is no consequential extension of time provided for both the filing of the memorandum of appeal and record of appeal.
7. That an essential step in the proceedings has not been taken within the prescribed time.
- 15 8. That it is in the interest of justice that Election Petition Appeal No.81 of 2021 is struck out.

Submissions of counsel for the applicant

20 Counsel submitted that the respondent filed and served the Memorandum of Appeal out of time as it was not filed within 7 days of filing of the Notice of Appeal. He noted that election petition appeals have specific procedure as provided for in the **Parliamentary Elections Act 2005 as amended** and the **Parliamentary Elections (Election Petitions) Rules S.I 141-2**.

25 He submitted that **Rule 30(b) of the Rules** states that "a memorandum of appeal shall be filed with the registrar in a case where a written notice of appeal has been given within 7 days after notice was given."

30 Counsel relied on the case of *Kasibante Moses vs. Electoral Commission, Election Petition Appeal No,07 of 2012*, where Court struck out the appeal as the Memorandum of Appeal had been filed one day late.

35 Counsel submitted that the respondent in the present case filed a Notice of Appeal on the 3rd of November 2021 and the 7 days started to run from the 4th of November 2021. He relied on **Rule 4(a) of the Rules of this Court** to support his argument.

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5 He argued that the respondent had to file the Memorandum of Appeal by the 10th of November 2021, but instead filed the same on the 22nd of November 2022, which was 19 days from the date of filing the Notice of Appeal.

10 Counsel further contended that the respondent also failed to serve the applicant within the prescribed time of service of Court documents as provided under **Order 5 Rule 1 & 2 of the Civil Procedure Rules S.I 71-1**, which provides for service to be done within 21 days.

15 Counsel submitted that the respondent served the applicant with the Record of Appeal on the 17th of January 2021. He argued that the record of proceedings had to be served within 21 days from the date of its filing, which was 22nd December 2022. He noted that the record of proceedings had to be served on the applicant by the 13th of November 2021.

20 Counsel further contended that, having filed the Memorandum of Appeal out of time, there was need for the respondent to apply for leave of Court for extension of time within which to file the Memorandum of Appeal and the Record of Appeal. He argued that service of the same documents after the
25 time within which to serve expired makes the said service unlawful. See; **Order 51 Rule 6 of the Civil Procedure Rules**.

He maintained that the respondent failed to take essential steps in the proceedings of his appeal within the prescribed time. He relied on **Rule 82**
30 **of the Rules of this Court**.

Counsel relied on the case of *Abiriga Ibrahim Y.A vs. Musema Mudathir Bruce, Election Petition Appeal Application No.24 of 2016*, where the justices quoted the case of *Utex Industries Ltd vs. Attorney General, S.C.C.A*
35 *No.52 of 1995*, where the Court stated:-

"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

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5 *process, so that subject to permission by Court, if the action is not performed
by law prescribed, then whatever legal process has been done before becomes a
nullity, as against the party who has the duty to perform that act."*

10 Counsel contended that, in election petitions, the intending appellant has a
higher duty to promptly take all the necessary steps to ensure that the appeal
is heard and determined as quickly as possible because matters regarding
Election Petitions are supposed to be heard expeditiously as required by
Article 140(1) and (2) of the Constitution. The requirement and wording are
reproduced in similar terms in **sections 63(2) and 66(2) (4) of the**
15 **Parliamentary Elections Act and Rule 33 of the Parliamentary Elections
(Elections Petitions) Rules.**

20 Counsel emphasized that the respondent did not take any steps to ensure
that the Memorandum of Appeal was filed within 7 days after filing the
Notice of Appeal and/or that the Record of Appeal was filed within 30 days
after filing the Memorandum of Appeal.

25 He argued that the law states time limits for filing election petitions given
their political nature and it is unjust for the respondent not to adhere to the
rules set for filing election petition appeals. Counsel noted that there is no
evidence on record in form of a letter or an application by the respondent
taking any step to seek for extension of time within which to file the
Memorandum of Appeal or serve the applicant with the same and the record
of appeal.

30 Counsel argued that equity aids the vigilant, and in this case, the respondent
is not vigilant.

35 Counsel therefore prayed that Election Petition Appeal No.81 of 2021 be
struck out for failure to file the Memorandum of Appeal within the
prescribed time. He prayed that costs be awarded to the applicant.

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5 **Submissions of counsel to the respondent**

Counsel contended that the application was brought under a wrong law, i.e section 98 and 100 of the Civil Procedure Act Cap 71. According to counsel, the law applicable should have been Rule 2(2), 43(1) and (2), 44, 76,78,82,86,87 or 88 of the Judicature (Court of Appeal Rules) Directions
10 S.I 13-10 and Rule 29,31,30,33,34 and 36 of the Parliamentary Elections (Elections Petitions) Rules. He argued that the rules of Court must be observed in filing and making of an application of this nature, among others. He therefore argued that the application is incompetent and should not be entertained by this Court, having been brought under a non-applicable law
15 and non-compliance with the rules of this Court.

Counsel further contended that counsel for the applicant failed to attach a summary of evidence, a list of authorities, list of witnesses and a list of documents to be relied on in this application's Notice of Motion. He argued
20 that this is unfair and prejudices the respondent who is expected to prepare his defence based on the defective application.

He argued that counsel for the applicant erred when he submitted that the Memorandum of Appeal was filed on 22nd December 2021 whereas it was
25 filed on 22nd November 2021. He argued that this falsehood is a grave offence that Court should not condone.

Counsel contended that counsel for the applicant also erred when he stated in ground 2 of the Notice of Motion that the Notice of Appeal was filed on
30 2nd November 2021, whereas the same was filed on 3rd November 2021. He added that it was improper for counsel for the applicant to deviate from the earlier stated date of 2nd November 2021 and correcting the same to 3rd November 2021 in his submissions, without leave of Court to amend his pleadings.

35 Counsel further submitted that counsel for the applicant stated that the Record of Appeal was served on 17th January 2021, a date before even the

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5 petition was instituted in the High Court and that the record of proceedings was filed on 22nd December 2022, a date which is impossible as we have not yet reached December 2022.

10 Counsel thus argued that the above stated contradictions are a clear indication that the application is fatally defective, based on falsehoods, vixations, lacks merit and amounts to an abuse of Court process.

15 He argued that counsel for the applicant's attempt to correct/amend an incurable application through his submissions is not acceptable as it is trite law that parties are bound by their pleadings. He relied on *Painento Senalulu vs. Nakito, Civil Appeal No.04 of 2008* to support his argument.

20 Counsel contended that the said contradictions in the applicant's pleadings are intended to mislead Court with the intent to strike out the main appeal of a law abiding litigant who has taken all procedural legal steps to file his appeal.

25 According to counsel, **Rule 31 of the Parliamentary Elections (Elections Petitions) Rules** is to the effect that an appellant shall lodge with the registrar the Record of Appeal within 30 days after filing the Notice of Appeal and not 7 days as argued by counsel for the applicant. He therefore argued that the respondent/appellant had 30 days within which to file the Record of Appeal but not 7 days.

30 Counsel further contended that the applicant delayed to institute this application. According to counsel, he should have filed the application before conferencing. He filed on 11th March 2022 just before the main appeal came up for hearing on 24th March 2022. He argued that this application is an afterthought and therefore an abuse of Court process.

35 Counsel prayed that Court finds that this application is time barred as the He relied on **Rule 82 of the Rules of this Court**, which states:-

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5 "A person on whom a notice of appeal has been served may at any
time, either before or after the institution of the appeal, apply to the
court to strike out the notice or the appeal, as the case may be, on the
ground that no appeal lies or that some essential step in the
proceedings has not been taken or has not been taken within the
10 prescribed time."

According to counsel, a reading of the above provision means that anyone
who wishes to make an application for striking out an appeal like the instant
case, must institute it before or after the institution of the appeal but not
during hearing or even after Judgment.

15 Counsel therefore argued that this application should have been filed at the
close of filing the record of appeal, rather it was filed 79 days after filing of
the record of appeal. He relied on the case of *Kasibante Moses vs. Electoral
Commission (supra)* to support his argument.

20 Counsel prayed that Court finds that the applicant delayed to file this
application and he too required an application for extension of time within
which to file this application after conferencing.

25 Counsel concluded that this application was brought under a non-applicable
law, lacks facts in pleadings, full of falsehoods and it suffers from inordinate
delay due to negligence. He prayed that this application be dismissed with
costs to the respondent.

30 **Rejoinder**

Counsel for the applicant submitted that while the application cites **section
98 and 10 of the Civil Procedure Act**, it also cites **section 82 of the Judicature
(Court of Appeal Rules) Directions S.I 142 -2** which empowers a party on
whom a notice of appeal has been served to apply to strike out the notice of
35 appeal for failure to take necessary steps or that the step has not been taken
within the prescribed time. He prayed that Court considers this application
under **s.82 of this Courts Rules**.

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Counsel prayed that this Court invokes **Article 126(2) (e) of the Constitution** which enjoins it to administer justice without undue regard to technicalities. He argued that this is a mere technicality which Article 126(2) (e) intended to do away with.

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Counsel relied on *Utex industries Ltd vs. Attorney General, S.C.C.A No. 59 of 1997, Kasirye & Byaruhanga & Co. Advocates vs. Uganda Development Bank, S.C.C.A No.2 of 1997, Mulindwa George William vs. Kisubika Joseph, S.C.C.A No.12 of 2014* and *Horizon Coaches vs. Edward Rurangaranga, S.C.C.A No.18 of 2009*, where it was held as follows;

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“Where the effects of adherence to technicalities may have the effect of denying a party substantive justice, the court should endeavor to invoke that provision of the constitution.”

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Counsel emphasized that, in his submissions, he submitted that Election Petition Appeals have a specific procedure provided for in the **Parliamentary Election Act 2005** and the **Parliamentary Elections (Election Petitions) Rules SI 141-2** and quoted **Rule 30 (b) of SI 141-2** and also referred to the case of *Kasibante Moses vs. Electoral Commission* and **Rule 82 of the Judicature (Court of Appeal) rules** for the grounds on which this application was premised.

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He submitted that the parliamentary elections appeals are of great national importance to the parties and the nation at large and where a party has taken the necessary steps to prosecute their case, they should not be condemned unheard for a mere technicality of citing a wrong law especially where the same is cited together with the right law which in this case was the Court of Appeal (Judicature Court of Appeal) rules SI 141-2).

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Counsel argued that it is the duty of an advocate to draft documents and cite the relevant law and where the advocate makes a mistake in drafting such

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5 as in this case, court should disregard the mistakes and not hold the applicant accountable for the mistakes of his advocates. He noted that is trite law that mistake of counsel should not be visited on an innocent litigant as was held in *Horizon Coaches Ltd vs. Edward RurangaRanga and Another, Supreme Court Civil Application No.18 of 2009.*

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Counsel contended that the respondent has not been prejudiced in any way as he contends that he filed the appeal within time. He argued that, if indeed the respondent filed the appeal within time, there is no reason Court should not consider its merits and determines whether or not the same was filed

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On counsel for respondent's argument that the applicant is trying to depart from his pleadings through submissions, counsel for the applicant submitted that the said error on the part of the applicant when they typed 22nd November instead of December 2021 was explained in the applicant's affidavit in reply.

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Counsel argued that since the respondent in both the affidavit in reply and submissions claims he filed the Memorandum of Appeal on 22nd November 2021 having filed the Notice of Appeal on 2nd November 2021, he therefore admits filing the memorandum of appeal out of time.

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Counsel contended that the respondent's counsel simply seeks to divert this Court from the real issue in determination as to whether or not the Memorandum of Appeal was filed in time.

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He submitted that the respondent cites applicable law and **S.82 Judicature (Court of Appeal Rules) directions S.I 141-2** which the applicant cited in his application, whereas he also cites **Rules 29, 30, 31, 33, 34 and 36 of the Parliamentary (Election Petition) Rules** whereunder the foregoing a Memorandum of Appeal is supposed to be filed within 7 days from the date of filing the Notice of Appeal and a Record of Appeal served within 30 days

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5 from the date of filing of the Memorandum of Appeal.

Counsel submitted that it is deceitful for counsel for the respondent submit that they complied with the said rules yet they acknowledge that they filed a Notice of Appeal on 2nd November 2021, filed the Memorandum of Appeal
10 on 22nd November 2021, filed the Record of Appeal on 22nd December 2021 and served it on 17th December 2021, which was clearly out of time.

Counsel agreed with the counsel for the respondent about the urgency of this appeal and added that it should first have been filed on time to be heard
15 expeditiously and therefore the delay especially without reasonable explanation for failure to file the memorandum on time is inexcusable and it is just that Court dismisses it at this point without any further action.

Counsel argued that the delay to file a Memorandum of Appeal from the 2nd
20 day of November 2021 to the 22nd day of November points to the fact that the respondent was not decided as to whether he still wanted to file the appeal therefore it was therefore an afterthought. Counsel prayed that the appeal be struck out.

25 On the submission of counsel for the respondent that the applicant wishes to submit fresh evidence, counsel for the applicant argued that the applicant relies on the Memorandum of Appeal and Record of Appeal which are also relied on by the respondent and are on Court record. He noted that it is the same documents that the applicant invites court to consider before making
30 a finding as to whether the Memorandum of Appeal was filed in time and the Record of Appeal served in time. He therefore argued that this is therefore no new evidence that they seek to rely on.

On the counsel for respondent's submission that the application contravenes
35 **order 6 rule 2 of the Civil Procedure Rules** for not having a summary of evidence and that this amounts to trial by ambush and contravenes Articles 28(i) and Article 44 (c) of the Constitution, counsel for the applicant

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5 submitted that this position is wrong as affidavit evidence is itself a pleading and thus there is no need for a summary of evidence to be attached to the application. He relied on the decision of Alfonse Chigamoy Owiny-Dollo as he then was in the cause of *Miramira David vs. Centenary Rural Development Bank, Miscellaneous Application No. 1849 of 2013.*

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Counsel maintained that the absence of a summary of evidence on the application does not in any way cause a trial by ambush as the affidavit sworn by the applicant was itself a pleading and contains all the evidence.

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On counsel for the respondents' submission that this application was filed out of time because it was filed after conferencing, counsel for the applicant argued that the issue that Election Petition Appeal No.81 of 2021 was filed out of time is a point of law which seeks to challenge the legality of the appeal and it is trite law that an illegality once brought to the attention of
20 Court overrides all questions. See: *Makula International ltd vs. His Eminence Cardinal Nsubuga & Anor (1982) HCBII* and *Sorowen James Kapsus vs. Cherop Stephen HCT-04-C V-CR-067-2015.*

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Counsel contended that this issue being a point of law can be raised at any
25 time before judgment is made with or without a formal application.

Counsel concluded that the point of law raised on the legality of Election Petition Appeal No.81 of 2021, is therefore the most urgent issue to be determined by this Court. He averred that counsel for the respondent has
30 not convinced this Court that the appeal was filed within time. He prayed that the appeal be dismissed with costs to the applicant.

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5 **Determination by Court**

We have considered the submissions of both counsel for the parties, the evidence, the law and the authorities cited.

10 The applicant instituted this application by Notice of Motion under **section 98 and 100 of the Civil Procedure Act, Order 52 Rule 1 and 3 of the Civil Procedure Rules and Rule 82 of the Judicature (Court of Appeal Rules) Directions S.I 13-10**, seeking for orders that Election Petition Appeal No.81 of 2021 be struck out with costs.

15 The respondent raised a preliminary objection on a point of law stating that this application was brought under the wrong law i.e. **section 98 and 100 of the Civil Procedure Act Cap 71**. According to counsel, the law applicable should have been **Rule 2(2), 43(1) and (2), 44, 76,78,82,86,87 or 88 of the Judicature (Court of Appeal Rules) Directions S.I 13-10 and Rule**
20 **29,31,30,33,34 and 36 of the Parliamentary Elections (Elections Petitions) Rules.**

It is trite law that the rules of procedure must be complied with. However, each case has to be decided on its facts.

25 On various occasions, Court has emphasized that citation of the wrong law or procedure does not in itself invalidate proceeding. This Court in *Saggu vs. Road Motor Cycles (U) Ltd. [2002] I E.A 258*, held:-

30 *"The general rule is that where an application omits to cite any law at all or cites the wrong law, but the jurisdiction to grant the order sought exists, then the irregularity or omission can be ignored and the correct law inserted."*

35 This Court went on to restate the law that the Court should not treat any incorrect act as a nullity with the consequence that anything founded thereon is itself a nullity unless the correct act is of the most fundamental nature. See *Nanjibhi Prabhudas and Company Limited vs. Standard Bank Limited [1968] EA*.



5 The Court further held that the administration of justice required that the substance of a dispute should be investigated and decided on the merits. Court emphasized that that failure to cite the correct law or any law at all are mere errors and lapses which should not necessarily debar a litigant from the pursuit of his rights.

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In the instant case, although the applicant brought this application under **section 98 and 100 of the Civil Procedure Act**, he also correctly brought the same under **Rule 82 of this Court's Rules**, which provides that:

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"82. Application to strike out notice of appeal or appeal.

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A person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time."

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In our view, counsel for the applicant's error was not fundamental in nature to render the whole application a nullity. The said error did not prejudice any of the parties.

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Counsel for the respondent also argued that Court should find that this application is time barred as it was filed after conferencing. He relied on **Rule 82 of the Rules of this Court**. According to counsel, a reading of Rule 82 means that anyone who wishes to make an application for striking out an appeal like the instant case, one must institute it before or after the institution of the appeal but not during hearing or even after Judgment.

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We find the above argument by counsel for the respondent to be misconceived. **Rule 82 of the Rules of this Court** is stated in clear terms that "**A person on whom a notice of appeal has been served may at any time,**

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5 either before or after the institution of the appeal, apply to the court to strike out the notice or the appeal" Underlining is for emphasis.

10 The said section does not place any limitation on any such applications made during the hearing as argued by counsel for the respondent. The instant application raises a preliminary point of law that can be raised at any time before or after the institution of the appeal.

15 Counsel for the respondent further faulted counsel for the applicant for failure to attach a summary of evidence, a list of authorities, list of witnesses and a list of documents to be relied on in this application's Notice of Motion. We agree with counsel for the applicants that, in the instant case, there was no need for a summary of evidence to be attached to the application as affidavit evidence is itself a pleading. See *Miramira David vs. Centenary Rural Development Bank, High Court Miscellaneous Application No. 1849*
20 *of 2013*, where the Court stated:-

25 *"The provision for summary of evidence in our rules of procedure, arises from the need to give due notice to the opposite party, of the evidence such party should expect against him or her; and thus avoid taking such party by surprise at the hearing. However where a pleading is accompanied by affidavit evidence, as the full evidence, or where the affidavit evidence is itself the pleading, as is the case here, I think the pleading is removed from the ordinary rule of procedure and placed in a special category. This application was canvassed entirely on affidavit evidence. Accordingly, the absence of a summary of*
30 *evidence would not occasion any injustice. Similarly, neither of the parties hereto would derive any further benefit from a summary of evidence."*

35 In any case, the applicant, in the Notice of Motion, attached the affidavit in support of the application, the Judgment of the High Court, in Election Petition No.0010 of 2021, the Notice of Appeal and the Memorandum of Appeal in question. The applicant's affidavit was a pleading itself and the above stated documents contained all the evidence needed for the

5 respondent to formulate his defence. The respondent was therefore not prejudiced.

We find that the instant application was competently brought before this Court. We accordingly dismiss all the preliminary objections raised by counsel for the respondent for they lack merit.

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We shall therefore proceed to determine the application on its merits.

The issue arising from this application is whether the Memorandum of Appeal was filed out of the time prescribed by law.

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

The rules provide as follows:-

"29. Notice of appeal.

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

30. Memorandum of appeal.

A memorandum of appeal shall be filed with the registrar –

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

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

31. Record of appeal.

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



5 This Court had occasion to handle the issue of late filing of the Memorandum of Appeal in *Kasibante Moses vs. Electoral Commission, Election Petition Application No.07 of 2012*. Court held as follows:-

10 *“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 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 that act.*

15 In the instant case, judgment in High Court Election Petition No.0010 of 2021 was delivered on 29th October 2021 and the Notice of Appeal was filed on the same day.

The Memorandum of Appeal was supposed to have been filed by the 5th of November 2021.

20 The respondent filed the Memorandum of Appeal on 22nd November 2021, 24 days after filing the Notice of Appeal. This was outside the 7 days time prescribed under **section 30 (b) of the Parliamentary Elections (Interim Provisions) (Election Petitions) Rules**.

25 This Court in *Kasibante Moses vs. Electoral Commission (supra)* emphasized that:-

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

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

15 This Court was faced with a similar matter in *Abiriga Ibrahim vs. Musema Mudathir Bruce, Election Petition Application No.24 of 2016 (unreported)*, where the respondent filed the Memorandum of Appeal out of the prescribed time and did not bother to file an application for extension of time within which to file the Memorandum of Appeal or seek leave of Court to
20 validate the same. Court struck out the respondent's appeal on grounds that the respondent was not diligent as he ought to have actively taken the necessary steps to prosecute his appeal.

25 In the instant case, the respondent has not provided any sufficient reason for filing the Memorandum of Appeal out of time. Both the respondent and his counsel emphasized that the Memorandum of Appeal was filed on time whereas not. The respondent did not find it pertinent to file an application for extension of time within which to file the Memorandum of Appeal or seek for leave of Court to validate the same. The respondent rather placed
30 emphasis on the typographical errors made by counsel for the applicant in the Notice of Motion and his written submissions, which we find irrelevant in resolution of the issue at hand as the evidence on record is clear that the Memorandum of Appeal was filed out of time.

35 In the instant case, we find no evidence from the respondent to support a finding of sufficient reason to explain his failure to take the necessary steps to file the Memorandum of Appeal within the time stipulated by law.

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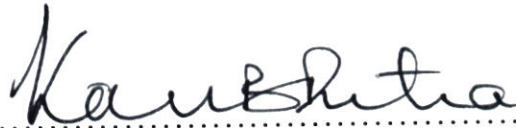
5 We therefore find that the respondent was not diligent in pursuing his appeal as the law requires in election petition appeals.

10 In the result, we allow the Application and strike out Election Petition Appeal No.81 of 2021 for being incompetent. Costs of this Application and in the Court below shall go to the applicant.

We so order.

Dated at Kampala this^{26th}..... day of ^{April}..... 2022.

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RICHARD BUTEERA, DCJ

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CATHERINE BAMUGEMEREIRE, JA

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IRENE MULYAGONJA, JA