

5 THE REPUBLIC OF UGANDA,
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
(CORAM: MADRAMA, MULYAGONJA, MUGENYI, JJA)

CIVIL APPEAL NO 315 OF 2019

- 10 1. DR. LUKA OKECH ABE}
2. DR. BENJAMIN OMARA ABE}
3. FRANK OKELLO ABE}
4. AMURU/NWOYA DISTRICT LOCAL GOVERNMENT} APPELLANTS

VERSUS

- 15 1. DR. WOKORACH JUSTINE}
2. OCAYA GEORGE}
3. ANGEE DEROSIA AND 337 OTHERS}RESPONDENTS

*(Appeal against the judgment and orders of the High Court of Uganda
Holden at Gulu before Justice Stephen Mubiru dated 9th May 2019 in Civil
Suit No. HCT. 02 – CV – C5 – 002 OF 2013)*

20 JUDGMENT OF CHRISTOPHER MADRAMA, JA

25 The respondents to this appeal and who were the plaintiffs in the High Court
had brought a suit against the appellants who were the defendants in the
High Court on behalf of 337 others jointly and severally for a declaration
that they are the rightful customary owners of the various holdings,
constituted within land comprised in LRV 1077 Folio 22 situated at Apok
Kalanga Amar Parish, Koch Goma Sub County, Nwoya District. They sought
inter alia an order for cancellation of that title, general damages for
trespass to land, a permanent injunction, interest and costs. On the other
hand, the appellants who were the defendants denied the plaintiffs claim
30 and contended that their late father, Julius Peter Abe acquired the land
measuring approximately 2628 ha and a leasehold title deed was lawfully
issued thereto by the Uganda Land Commission. The land was vacant at the
time it was acquired and it was only during the insurgency of the Lord's

5 Resistance Army that the plaintiffs trespassed on the land. They denied any fraudulent acts of their predecessor in title. They counterclaimed against the plaintiffs for a declaration that the land belongs to them, general damages for trespass to land, a permanent injunction, interest and costs.

10 The High Court declared that the plaintiffs who are the respondents to this appeal are entitled to remain in possession of their respective holdings of the land in dispute and the possession was protected by a permanent injunction issued against the 1st, 2nd and 3rd defendants who are now the appellants, their agents, employees or persons claiming under them, restraining each of them from interference with the quiet possession and
15 enjoyment of the respective holdings of respondents. The counterclaim of the defendants who are now the appellants in this appeal was dismissed and judgment was entered for the plaintiffs as follows:

- (a) A declaration that the plaintiffs are entitled to retain possession of their respective current holdings of the land in dispute.
- 20 (b) A permanent injunction against the 1st to the 3rd defendants, their agents, employees or persons claiming under them, restraining each of them from interference with the plaintiff's quiet possession and enjoyment of their respective current holdings.
- (c) An order directed to the Commissioner Land Registration for
25 cancellation of the defendant's title to the land comprised in LRV 1077 Folio 22.
- (d) The costs of the suit and of the counterclaim.

The judgment was delivered on the 9th of May 2019. The defendants being aggrieved, appealed to this court on 8 grounds of appeal namely:

- 30 1. The learned trial judge erred in law and fact when he ordered for cancellation of title of the 1st to 3rd appellants to the suit land in the absence of any acts of fraud, dishonesty committed by them and also in the absence of any proof of customary ownership as ever obtained by the respondents on the same.

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2. The learned judge erred both in law and fact when he held that the suit land was not inspected by the Area Land Committee, whereas the same was actually inspected and the report and letters thereto as attached and annexed to the pleadings of the appellants "Annexure 1" were on record.
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3. The learned judge erred in law and fact when he decided that the suit filed by the respondents/plaintiffs was not time barred as they were merely seeking declaratory orders contrary to the specific pleadings/plaint on record, thereby coming to a wrong conclusion.
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4. The learned trial judge erred in law and fact when he failed to conduct a proper locus visit of the subject matter when he decided to visit only 2 locations on the suit land and made assumptions of the presence of the respondents on the other areas thereby wrongfully deciding that all the respondents were on the disputed land contrary to the evidence adduced by the respondents that the original six families had previously left the suit land only to return subsequently.
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5. The learned trial judge erred in law and fact when he went on to decide the matter which was conducted through a representative action for three hundred and forty (340) individuals where each of them claimed a distinguishable right/interest in the suit land, without subjecting all of the plaintiffs to the specific evidence and right of ownership/interest in the suit land, thereby coming to a wrong conclusion.
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- 30
6. The learned judge erred in law and fact when he held that much as the respondents did not adduce evidence as to the customary ownership of the suit land and even fraud on the part of the appellants, there being scattered on parts of the land gave them a better title to the land contrary to the legal and equitable interests of the appellants.
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5 7. The learned trial judge erred in law and fact when he held that the
extension of the lease of the appellants by the District Land Board to
a full term was wrongful, as his decision ignored the appellant's legal
and equitable rights of the suit land thereby coming to a wrong
10 decision which has occasioned to the appellants a substantial loss
and miscarriage of justice, and thus affecting all the numerous other
lease extensions accorded by the 4th appellant.

15 8. The learned trial judge erred in law and fact when he failed to put into
consideration the evidence adduced by the appellants of the effect of
the numerous insurgencies that greatly affected their interest in the
suit land and the proper utilisation and timely extensions of their
lease terms on the suit land, thereby coming to a wrong conclusion
that the respondents had always used the suit land.

20 When the appeal came for hearing learned counsel Mr. Walter Okidi Ladwar
represented the 4th Appellant while the first, second and third appellants
were represented by learned counsel Mr. Moses Oyet jointly with learned
counsel Mr. Mark Nuwamani. On the other hand, learned counsel Mr.
Geoffrey Boris Anyor represented the respondents. The first appellant, Dr.
Luka Abe Okech was present in court with Susan Mildred Abe and also
25 present were Wokorach Justin, the first respondent and Mr. George Ocaya,
the second respondent. Leave to file a supplementary record of appeal was
granted and written submissions scheduled for filing as the address of the
parties to court and the appeal was adjourned for judgment on notice.

30 In the written submissions, the respondent's counsel objected to the appeal
on the ground that the memorandum of appeal was lodged out of time. That
being a preliminary matter, I have deemed it fit to handle the preliminary
issue whose outcome will determine whether to proceed with
determination of the appeal on the merits or not.

35 In the written submissions of the respondent's counsel, the respondents
submitted that the appeal was filed out of time. He relied on rule 83 (1) and
(2) of the Court of Appeal Rules which provides the time frame within which

5 an appeal shall be filed. An appeal shall be filed within 60 days after the date when the notice of appeal was lodged or where an application for a copy of the proceedings in the High Court was made within 30 days after the date of the decision, in computing the time within which the appeal is to be instituted, there shall be excluded such time as may be certified by the Registrar of the High Court as having been required for the preparation and delivery to the appellant of the proceedings.

The respondents contend that the record of appeal shows that the appellants lodged in the lower court a letter requesting for certified copies of the record of proceedings on 14th May 2019. This was availed to the appellants on 16th September 2019. The appellant thereafter filed their record of appeal in this court on 20th of November 2019 5 days outside the 60 days stipulated in rule 83 (1) of the Rules of this court. He contended that the appeal is incompetent and should be struck out with costs and the judgment of the High Court upheld.

20 In the rejoinder submissions of the appellants, the appellants counsel submitted that by letter dated 14th of May 2019, the appellants requested for certified copies of the judgment and record of proceedings. Thereafter according to the Registrar's Certificate dated 12th of November 2019, it is certified that the preparation of the record of proceedings and judgment in this case was completed on 12th November 2019. Immediately on receipt of the record of appeal, the appellants filed the appeal at the registry of the Court of Appeal on 20th of November 2019, eight days after they received the record and judgment and were within time. The respondents counsel emphasised that the time started running on 12th of November 2019 when they received the record of appeal. Further, he noted that the respondent's submissions seem to rely on the date of 16th of September 2019 when the certification of the judgment and record of proceedings of the High Court was done. The appellant's counsel further submitted as follows:

35 the certification of the judgment and record of proceedings of the High Court is just one of the processes done by the Registrar in preparation of the records. It is our submission that what is of essence to commence the time factor is the

5 registrar certificate and not the certification of the judgment and proceedings. The registrar clearly stated in her certificate that the preparation of the record of proceedings and judgment in this case was completed on 12th November, 2019.

10 The appellants counsel relied on **Maviri v Jomayi Property Consultants Ltd (Civil Application 2014/274) [2015] UGCEA 178 (07 July 2015)** where the Court of Appeal observed that the time started running on 30th of June 2014 when the record of proceedings was supplied to the respondent.

15 Counsel submitted that the record of proceedings was ready for collection after the registrar certificate flagged them off. That the arguments of the respondents that the record of appeal was ready at the certification of the judgment and record of proceedings of the High Court is completely out of context. He contended that it is clear from the provisions of rule 83 (1) of the Rules of this court that appeals are filed within 60 days of the date of the initial decision or under rule 83 (2) and 83 (3), the time taken by the registrar to prepare and deliver copies of the proceedings to the appellant are excluded from the computation of the 60 days. The respondents counsel submitted that the respondents in their preliminary point of law, premised their submissions on the date of certification of the record of proceedings and judgment in the High Court and it was greatly misconceived and should be disregarded and dismissed by this court.

25 **Resolution of the preliminary point of law.**

I have carefully considered the preliminary objection and as carefully put by the respondent's counsel, the issue is whether time should be computed from the time of certification of the proceedings or the time certified and disclosed in the certificate of the registrar indicating that the record of proceedings and judgment in the case was completed on 12th November 2019.

35 The facts which are not in dispute are that the decision of the High Court was delivered on 9th May 2019. Thereafter the appellants filed a notice of appeal which was lodged in the High Court of Uganda at Gulu on 14th of May 2019 and it is indicated as lodged in the registry on the 16th of May 2019. In a

5 letter dated 13th of May 2019, the appellants wrote to the registrar by a letter
filed in the High Court of Uganda at Gulu on 14th May 2019 asking the Deputy
Registrar to avail them with certified typed copies of the proceedings and
judgment in the case. The record reveals that judgment was certified on 25th
10 July 2019 with the stamp of the Registrar Gulu High Court indicating that "I
certify that this is a true copy of the original". The judgment runs from pages
10 to 48 of the record of proceedings. Thereafter at page 49 there is a
document entitled "proceedings" and first page thereof is the typed
proceedings certified as a true copy of the original dated 16th of September
2019. The stamp of the Registrar indicates as follows: "I certify that this is a
15 true copy of the original, 16th Sep 2019, Registrar Gulu High Court". The
record of proceedings ends at page 137 of the record of appeal and page 89
of the proceedings. Thereafter the record contains the plaintiffs written
submissions and other documents such as the pleadings and exhibits. Most
crucially, the last page of the proceedings is also certified by the stamp of
20 the Registrar of the High Court which states that it is a true copy of the
original and is dated 16th September 2019.

The question *inter alia* is what amounts to the certificate of the registrar?
Both counsel rightly, in my view, relied on 83 (2) and (3) of the Rules of this
court for the proposition that an appeal may be filed within 60 days from the
25 date the copy of the proceedings in the High Court has been made provided
that the appellant applied for the record of proceedings within 30 days from
the date of the decision of the High Court and served a copy of the
application for the record of proceedings on the respondent with retained
proof of that service. Rule 83 provides as follows:

30 83. Institution of appeals.

(1) Subject to rule 113 of these Rules, an appeal shall be instituted in the court by
lodging in the registry, within sixty days after the date when the notice of appeal
was lodged—

(a) a memorandum of appeal, in six copies, or as the registrar shall direct;

35 (b) the record of appeal, in six copies, or as the registrar shall direct;

5 (c) the prescribed fee; and

(d) security for the costs of the appeal.

10 (2) Where an application for a copy of the proceedings in the High Court has been made within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the High Court as having been required for the preparation and delivery to the appellant of that copy.

15 (3) An appellant shall not be entitled to rely on subrule (2) of this rule, unless his or her application for the copy was in writing and a copy of it was served on the respondent, and the appellant has retained proof of that service.

(4) The period prescribed by subrules (1) and (2) of this rule for the institution of appeals shall also apply to appeals from the High Court in the exercise of its bankruptcy jurisdiction.

20 Of particular concern in the above rule is rule 83 (1) which provides that an appeal shall be instituted by lodging in the registry, within 60 days after the date when the notice of appeal was lodged, the record of appeal, the prescribed fees and the security for costs of the appeal. I wish to highlight rule 83 (1) (b) which provides for the lodgement of the record of appeal in six copies or as the registrar shall direct. The word "record of appeal" can
25 be used interchangeably but does not necessarily mean "the proceedings". Rule 83 (2) specifically deals with an application for a copy of the proceedings in the High Court. The word "proceedings" means the record of what transpired in the High Court. This can be discerned from rule 87 of the Rules of this court which provides for the contents of the record of appeal.
30 The contents of the record of appeal includes the index of all documents in the record, a statement of the address for service of the appellant and the respondent, the pleadings, the trial judge's notes of the hearing, the transcript of any short hand notes taken or any other notes howsoever recorded at the trial and also the affidavits and all documents, the judgment
35 and other documents which are necessary for the proper determination of the appeal. Going back to rule 83 (2), it specifically deals with an application for a copy of the proceedings in the High Court. To my mind the copy of

5 proceedings does not mean the record of appeal but the record of what
transpired at the hearing of the suit or at the hearing of the appeal in the
High Court. This is proved by rule 87 which deals with the contents of the
record of appeal. Those contents merely are inclusive of the copy of
10 proceedings of the trial court or the High Court as the case may be even if
it exercised appellate jurisdiction. Particularly the rule 87 (3) makes a
separate reference on the contents of the record of appeal where the
appeal emanates from the High Court in its appellate jurisdiction to the
Court of Appeal and provides that the record of appeal shall contain
15 documents relating to the proceedings in the trial court corresponding as
nearly as may be to those set out in sub rule 1 of rule 87 but particularly
shall contain the following documents:

- (a) the order, if any, giving the leave to appeal;
- (b) the memorandum of appeal;
- (c) the record of proceedings;
- 20 (d) the judgment or order;
- (e) the notice of appeal; and
- (f) in case of a 3rd appeal to the court, the corresponding documents in relation
to the 2nd appeal to the High Court, the certificate of the High Court that a point
of law of general public importance is involved.

25 It is provided that documents adduced in evidence shall be put in order of
the dates adduced or when undated, the date when they were believed to
have been made, without regard to the order in which they were produced
in evidence. Clearly, the copy of proceedings is a subset of the record of
appeal. It follows that rule 83 (2) of the Rules of this court deals with an
30 application for a copy of proceedings in the High Court which has to be made
within 30 days after the date of the decision against which it is desired to
appeal. Secondly in computing time within which the appeal is to be
instituted, the time taken for preparation of the copy of proceedings in the
High Court has to be considered.

35 I have further considered rule 90 of the Rules of this court which provides
for preparation and service of supplementary record. The supplementary
record may contain a copy of the proceedings or any other part of the record

5 of the lower court. Finally, the respondent's counsel relied on the certification of the registrar of the proceedings which is dated 16th September 2019. On the other hand, there is a certificate entitled "registrars certificate" which indicates that the preparation of the record of proceedings and the judgment in this case was completed on 12th November 10 2019 and collected by the appellants on 12th November 2019. It attempts to give the impression that the record of proceedings was prepared and completed on the same day as when the appellant's counsel collected it. I need to state that the record of appeal is prepared by the appellant's counsel and not the registrar. The duty of the registrar is to prepare a copy 15 of the proceedings in terms of rule 83 (2) of the Rules of this court. It is quite logical for the parties to have the pleadings and documents in their possession inclusive of the written submissions. Oral submissions will be included in the copy of proceedings.

I have carefully considered the forms used in the Judicature (Court of 20 Appeal Rules) Directions and the "Registrar's Certificate" is not one of the forms. Clearly, the "Registrar's Certificate" issued in this matter was meant to circumvent rule 83 (2) which provides that there shall be excluded, in computing the time within which the appeal is to be instituted, such time as may be certified by the registrar of the High Court as having been required 25 for the preparation and delivery to the appellant of a copy of the proceedings of the High court.

What are "proceedings"? Rule 87 (8) of the Rules of this Court provides that:

Each copy of the record of appeal shall be certified to be correct by the appellant or by any person entitled under rule 23 of these Rules to appear on his or her 30 behalf.

The record of appeal is prepared by the Appellant while the proceedings are prepared by the registrar. It is the duty of the registrar, to certify the time that was required for preparation and delivery of the proceedings. Clearly the record of proceedings was ready by 16th of September 2019. The 35 proceedings are part of the record. What was the time required for delivery of the record of proceedings? The same registrar certified the same

5 proceedings which were ready by 16th of September 2019. I find it odd that she certified the 12th November, 2019 which is the date when counsel picked the documents as the date when it was ready. This was about 56 days after she had certified another copy of proceedings.

10 There is no particular format for certification and what is required is to indicate the time that was needed to prepare the copies of proceedings of the High Court and the time needed to deliver the same to the appellant. There is no indication as to what time was needed to deliver a copy of the proceedings to the appellant.

15 Going by the certification of 16th of September 2019, a copy of the proceedings of the High Court was ready for collection in the minimum by 16th September 2019 when the registrar certified a true copy thereof. It could have been ready earlier but we do not have evidence. We only have evidence that the judgment was certified as ready by 25th of July 2019.

20 The appellants lodged this appeal on 20th of November 2019 out of time. The certificate of the registrar cannot be relied upon to establish the time taken to prepare the record of proceedings or avail it to the appellants.

In the premises, the preliminary objection of the respondent is sustained.


25 The appellants appeal ought latest to have been filed by 15th of November 2019. It was filed 5 days out of time and no application was made for extension of time. Instead the appellant's purported to obtain a certificate of the registrar showing a different date of 12th of November 2019 which does not disclose to court what is required by rule 83 (2) of the Rules of this court.

30 The copy of the proceedings had been certified as true by 16th September 2019. It could not by any stretch of imagination have been ready for collection only for delivery by 12th of November 2019.

In the premises, I would make an order that the appellants' appeal is struck out with costs for being filed out of time.

5 As my learned sisters Hon. Lady Justice Irene Mulyagonja, JA and Hon. Lady Justice Monica Mugenyi, JA also concur, the appellants' appeal is struck out with costs.

Dated at Kampala the 12th day of July 2022



10 **Christopher Madrama**

Justice of Appeal

THE REPUBLIC OF UGANDA,
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
(Coram: Madrama, Mulyagonja, Mugenyi, JJA)

CIVIL APPEAL NO 315 OF 2019

BETWEEN

1. DR. LUKA OKECH ABE 2. DR. BENJAMIN OMARA ABE 3. FRANK OKELLO ABE 4. AMURU/NWOYA DISTRICT LOCAL GOVERNMENT	} APPELLANTS
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AND

1. DR. WOKORACH JUSTICE 2. OCAYA GEORGE 3. ANGEE DEROSIA AND 337	}RESPONDENTS
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(Appeal against the judgment and orders of Mr. Justice Stephen Mubiru, J. dated 9th May 2019 in Gulu High Court Civil Suit No. HCT-02-CV-C5-002 OF 2013)

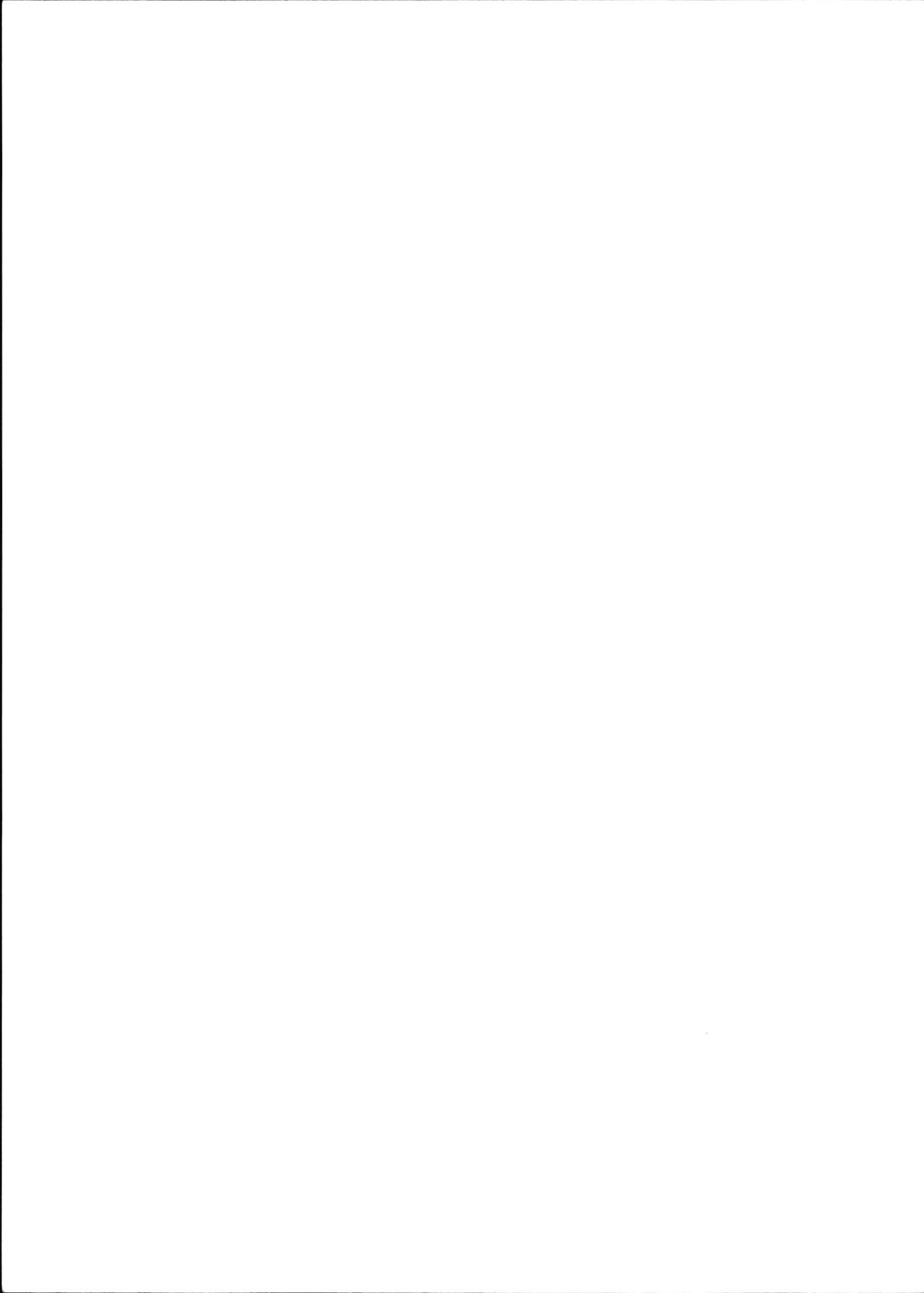
JUDGMENT OF IRENE MULYAGONJA, JA

I have had the benefit of reading in draft the judgment of my brother, Hon Justice Christopher Madrama Izama, JA.

I agree with his decision that the appeal was filed out of time and it ought to be struck out with costs to the respondents.


Irene Mulyagonja

JUSTICE OF APPEAL





THE REPUBLIC OF UGANDA

**THE COURT OF APPEAL OF UGANDA
AT KAMPALA**

CORAM: MADRAMA, MULYAGONJA AND MUGENYI, JJA

CIVIL APPEAL NO. 315 OF 2019

1. DR. LUKE OKECH ABE
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VERSUS

1. DR. WOKRACH JUSTICE
2. OCAYA GEORGE
3. ANGEE DEROSIA & 337 OTHERS RESPONDENTS

**(Appeal from the Judgment of the High Court of Uganda at Gulu (Mubiru, J) in Civil
Suit No. 2 of 2013)**

JUDGMENT OF MONICA K. MUGENYI, JA

I have had the benefit of reading in draft the lead Judgment of my brother Hon. Justice Christopher Madrama in this Appeal. I agree with the decision arrived at and the orders therein, and have nothing useful to add.

Dated and delivered at Kampala this 12th day of July, 2022.

Monica K. Mugenyi

Monica K. Mugenyi
JUSTICE OF APPEAL