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**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
*[Coram: Egonda-Ntende, Muzamiru M. Kibeedi & Christopher Gashirabake, JJA]*

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**CIVIL APPLICATION NO. 322 OF 2021**  
*(Arising out of Court of Appeal Civil Appeal No. 0246 of 2021)*

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**BYARUHANGA JOHN & 2499 OTHERS**  
**(SUING THROUGH THEIR LAWFUL**  
**ATTORNEY-REPRESENTATIVES) .....** **APPLICANT**  
**VERSUS**  
**ATTORNEY GENERAL .....** **RESPONDENT**

**RULING OF MUZAMIRU MUTANGULA KIBEEDI, JA**

**Introduction**

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The Applicants brought this application by Notice of Motion under Rules 43, 44, 82, 83 and 84 of the Judicature (Court of Appeal) Rules, S.I. No. 13-10 and Section 98 of the Civil Procedure Act, Cap. 71. They seek orders of this court that Civil Appeal No. 0246 of 2021 be struck out with costs on the ground that the respondent did not institute the appeal within the prescribed period.

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The application is supported by the Affidavit of Mr. Richard Bwiruka, one of the advocates of the applicants. The Affidavit was sworn on 04<sup>th</sup> November 2021.

The respondent opposed the application and relied on the Affidavit in Reply sworn on 12<sup>th</sup> November 2021 by Mr. Isaac Singura Karekona, a Principal State Attorney and the Head of Fort Portal Regional Office of the respondent.

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The applicants filed an Affidavit in Rejoinder sworn on the 16<sup>th</sup> of November 2021 by Mr. John Byaruhanga, one of the applicants.

The background to this application is that on the 28<sup>th</sup> of May 2019, the High Court of Uganda at Fort Portal (Masalu Musene, J) passed judgment in favour of the applicants in Civil Suit No. 020 of 2003, formerly Civil Suit No. 056 of 2001 of the High Court of Uganda at Kampala, in

35 which it declared that the applicants were wrongfully evicted from the suit land located in  
Kyabatukura, Ruhero, Katachenga, Kamuhaho, Kabirizi and Rutooma Villages in Kitswamba  
Sub County, Bugoye County, Kasese District. The trial Court also awarded the applicants  
special damages of UGX. 52,658,658,633/= (Uganda Shillings Fifty-Two Billion, Six Hundred  
Fifty-Eight Million, Six Hundred Fifty-Eight Thousand, Six Hundred Thirty-three Shillings only),  
40 general, exemplary, and punitive damages of Ugx. 4,000,000,000 (Uganda Shillings Four  
Billion only), interest and costs of the suit.

Dissatisfied with the decision of the High Court, the respondent filed a Notice of Appeal in Fort  
Portal High Court dated 30<sup>th</sup> May 2019. It was signed by the Registrar of the High Court on  
10<sup>th</sup> June 2019. Subsequently, the Respondent applied for certified copies of the proceedings  
45 and judgment of the High Court by letter addressed to the Registrar on 18<sup>th</sup> June 2019. The  
letter was filed in the Registry of the High Court at Fort Portal and served on the Applicants'  
Advocates on the same date.

On the 02<sup>nd</sup> of September 2021, the respondent filed in this court the Memorandum and  
Record of Appeal instituting Civil Appeal No. 246 of 2021 Attorney General Vs Byaruhanga  
50 John and 2499 Others.

By this application, the applicants seek to strike out the above appeal.

### **Representation**

At the hearing of this application, the Applicants were represented by Hon. Medard Lubega  
Ssegona, Learned Counsel, assisted by Mr. Joseph Muhumuza Kaahwa, Mr. Jonathan Erotu,  
55 Ms. Annet Nanfuma and Mr. Bagenda Ivan.

On the other hand, the Learned Attorney General, Mr. Kiryowa- Kiwanuka, appeared in person  
assisted by Mr. George Kallemera - the Commissioner of Civil Litigation, Mr. Isaac Asingura -  
Principal State Attorney and Mr. Ronald Kawalya - State Attorney in the Attorney General's  
Chambers.

60 The applicants proceeded by way of written submissions filed on 08<sup>th</sup> November 2021 as directed by the Court Registrar. The respondent having failed to file his Written Submissions within the timelines given by the Registrar of this court was granted leave by court to reply to the applicants' submissions orally when the application was called for hearing. Thereafter, Counsel for the applicants made their oral submissions in rejoinder. This Ruling has therefore  
65 been prepared on the basis of both the Written and oral Submissions.

### **Applicants' Submissions**

In their written submissions, the applicants' counsel argued that Paragraphs 5, 6 and 7 of the Affidavit in support of the application confirmed that the Registrar of Fort Portal High Court notified the Respondent that the record of proceedings was ready for collection by the letter  
70 dated 10<sup>th</sup> December 2020 and served on the Respondent's address on the same date. The said letter was attached to the Affidavit in Support of the application and marked "A3". Accordingly, the Respondent should have filed Civil Appeal No. 246 of 2021 within 60 days from the date of notification. Instead, the Respondent lodged the Record of Appeal and Memorandum of Appeal in this Court on the 2<sup>nd</sup> of September 2021 contrary to Rules 83 and  
75 84 to the rules of this Court.

The Applicants' counsel argued that upon failure of the respondent to file the appeal within the prescribed 60 days, the applicants were entitled to apply to this Court to strike off the appeal on the ground that some essential step in the proceedings was not taken within the prescribed period. Counsel relied on Rules 82 and 83 of this Court and the Supreme Court decision in  
80 Hannington Wasswa & Another Vs Maria Ochola & Others Civil Application No. 12 of 1988.

The Applicants prayed that the application be allowed and Civil Appeal No. 0246 of 2021 be struck out with costs.

### **Respondent's Reply**

In his oral submissions, the Learned Attorney General submitted that the issue for resolution  
85 by court is whether or not the respondent was notified and availed the certified record of

proceedings in order to comply with the Rules of this Court regarding institution of appeals. Counsel referred to annexure A3 to the Affidavit in support of the application which stated that the proceedings were ready on 10.12.2020 while, on the other hand, another letter from the same court, a copy of which was annexed to the Affidavit in reply as annexure "H", stated that  
90 the Certified proceedings were ready on 28.08.2021. Counsel invited court to determine the issue based on a proper evaluation of the two contradictory documents talking about the same issue differently and yet they all claim to originate from the same court.

Counsel further submitted that the other piece of evidence to guide court's evaluation of the application is the record of proceedings itself which is on the file. The record speaks for itself  
95 as having been certified on 31<sup>st</sup> August 2021. That there was no evidence adduced before court to prove that there was any other certified record of proceedings which was ready by 10.12.2020 as stated in the Registrar's letter of 10.12.2020.

Counsel also referred court to the Affidavit in Reply in which it was stated that the letter (annexture A3) was a forgery. Counsel stated that his office never received annexture A3.  
100 That the evidence adduced by the respondent was consistent with the certification of the record on 31<sup>st</sup> August 2021.

The Learned Attorney General submitted that the way the file was managed after the judgment had been awarded in favour of the applicants, as detailed in the Affidavit in Reply, was curious. Counsel referred to the letters attached to the Affidavit in Reply to demonstrate  
105 that after December 2020 several communications came from the office of the Attorney General requesting for a record of proceedings. But at no point did the Registrar or anyone from the court write back to the parties and say that the record was ready in December 2020.

Counsel concluded by submitting that from the evidence before court, the applicants did not prove that the record of proceedings was made available to the respondents in December  
110 2020 as alleged. Instead, the evidence shows that the record was made available to the respondent on 31<sup>st</sup> of August 2021 and on the 2<sup>nd</sup> of September 2021 an appeal was filed well within the time allowed by the court rules.

Counsel prayed that the application be dismissed with costs.

### **Applicants' rejoinder**

115 In rejoinder, Counsel for the applicants submitted that noncompliance with the Rules on the part of the respondent started with non-service of the Notice of Appeal on the applicants after filing it in court. Thereafter, the letter requesting for proceedings and all the other subsequent correspondences which the respondent referred to were never copied and served onto the applicants who are the respondents in the appeal.

120 Counsel submitted that non-service of a notice of appeal by itself is fatal and entitles this court to strike out the appeal.

With regard to the claim of forgery, Counsel argued that it was very serious to allege fraud or forgery on the part of court without particularizing that complaint. Counsel submitted that no evidence was furnished by the respondent to prove the allegation of fraud.

125 Counsel reiterated his prayer to grant the application with costs.

### **Consideration of the application**

I have carefully considered the Notice of Motion, all the Affidavits filed in this matter by all the parties, the submissions of all counsel, and the authorities they have relied upon. By this application, the applicants seek an order of this court to strike out Civil Appeal No. 246 of 2021  
130 on the ground that the Memorandum of Appeal and Record of Appeal instituting the said appeal were filed outside the 60 days' period prescribed by the Rules of this Court. The applicants relied upon Rules 82 and 83 of the Rules of this Court.

There is no doubt that the applicants have a right to apply for striking out the appeal pursuant to Rule 82 of the Rules of this court which provides as follows:

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

*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*

140 *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.”*

There is also no doubt that filing of the Memorandum and Record of Appeal are “essential steps” in the institution of appeals to this court. This is pursuant to Rule 83 (1) (a) & (b) of the Rules of this court. The claim of the applicants is that the respondents did not file the Memorandum and Record of Appeal in Civil Appeal No. 246 of 2021 within the 60 days  
145 prescribed by Rule 83 of the Rules of this Court.

The respondent denied the applicants’ claim.

Resolution of this application revolves around establishing the point at which to start computing the 60 days prescribed by Rule 83 of the Rules of this Court within which the respondent should have filed the Memorandum and Record of Appeal.

150 Rule 83 is couched as follows:

**“83. Institution of appeals.**

(1) *... 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;*

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

c) *the prescribed fee; and*

d) *security for the costs of the appeal.*

160 (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.*

165 (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.”*

Rule 83 presents two different scenarios each of which governs computation of the prescribed 60 days’ period and leads to different consequences. The first scenario is where the intending appellant does not apply for proceedings after lodging the Notice of Appeal. The second

170 scenario is where the intending appellant applied for typed proceedings after lodging the Notice of Appeal.

The two scenarios and their consequences on the computation of the prescribed 60 days were elaborated by the Court of Appeal of Kenya at Malindi in the case of Kenya Ports Authority Vs Maur Abdalla Bwanamaka [2018] eKLR while interpreting Rule 82 of the Kenya Court of  
175 Appeal Rules which is in pari materia with Rule 83 of the Rules of this court. The court stated thus:

180 *“The import of this provision is that where no application for typed proceedings is made, the appeal must be instituted strictly within 60 days of lodging the Notice of Appeal. However, where an application for typed proceedings is made, the time taken to compile the proceedings is exempted in the computation of the 60 days. This means that at the time the proceedings are being prepared, time ceases to run; to enable the parties and the court ascertain when this period was, the Deputy Registrar of the Court below issues what is known as a certificate of delay, detailing the period of exemption.”*

185 In the instant matter, the applicants rely on the 2<sup>nd</sup> scenario for computation of the 60 days' period within which the respondent ought to have filed the Memorandum and Record of Appeal. It is the applicants' case that the respondent having applied in writing, within 30 days of the trial Court decision, requesting the Registrar of the High Court to be availed certified copies of the proceedings of the High Court, and also served the said letter upon the  
190 applicants' Counsel, then the trigger for the computation of the time within which the applicant ought to have filed the Memorandum and Record of Appeal was the letter of the Registrar of the High Court addressed to, and served upon the respondent on 10.12.2020, notifying him that the typed and certified copy of the proceedings and judgment were ready for his collection.

195 The respondent denied having received the Registrar's letter relied upon by the applicants. In the Affidavit in Reply sworn by Mr. Isaac Singura Karekona, a Principal State Attorney and the Head of Fort Portal Regional Office of the respondent, he stated that he was well conversant with the facts relating to the application. That the respondent has never received the Registrar's letter. The respondent contends that he was availed the certified proceedings and

200 judgment on 01<sup>st</sup> September 2021 and filed the Memorandum and Record of Appeal on 02<sup>nd</sup> September 2021 within the prescribed period.

In those circumstances it is incumbent upon this court to evaluate the evidence adduced by the applicants and establish whether they have discharged their burden to prove that computation of the prescribed time of 60 days should commence on 10.12.2020 the date on  
205 which the respondent is stated to have been notified by the Registrar of the High Court that the certified proceedings were ready for collection. The importance of service of the Registrar's letter of 10.12.2020 upon the respondent lies in the fact that effective communication by the registrar of the High Court inviting an intending appellant to collect the certified proceedings upon payment for the same is the precursor for delivery of the certified  
210 proceeding which is the trigger for computation of time under Rule 83(2) of the Rules of this Court. This court (Kavuma, Nshimye and Kasule, JJA) highlighted the interconnection between the Registrar's communication and the Registrar's duty to deliver the certified proceedings prescribed by Rule 83(2) of the Rules of this court in the case of Wanume David Kitamirike Vs Uganda Revenue Authority, Civil Application No. 138 of 2010 (unreported), in  
215 the following terms:

*"We reiterate that the law requires and imposes a duty upon the Registrar of the High Court, to whom a written application for a copy of proceedings is made, to reply in writing to the applicant, informing the said applicant as to the readiness and availability of the copy of proceedings applied for.*

220 ... We also wish to observe that under Rule 83(2), in computing the time within which the appeal is to be instituted, the [High] Court Registrar must certify the time as having been required for the preparation and delivery to the appellant of the copy of the proceedings.

225 *The Rule, therefore, imposes upon the Registrar, first, a duty to certify the time taken by the process of making ready the proceedings. This process involves, in addition to producing typed copies, arranging, and making available in sufficient number, copies, to the party applying, of all documents, and other matters such as annexures and exhibits, if any, constituting the proceedings in the case.*

230 *The other duty imposed on the court Registrar by this Rule is to ascertain the time it has taken to deliver a copy of the proceedings to the party who applied for the same. This involves communicating to the said party that the proceedings are ready for collection; or with appropriate arrangement, between the Registrar and the party*



applying, physically delivering by the Registrar, a copy of the proceedings to the party applying." [Emphasis mine]

235 I agree that the above position is still a good statement of the law. I however add that where a party who applied for certified proceedings and judgment within the prescribed time is notified by the Registrar to collect the proceedings and the notice is served upon him/her/it but does not comply, the date on which service was effected would be deemed to be the starting point for computation of the 60 days' prescribed period for institution of the appeal. But where a  
240 party, upon receipt of service of the Registrar's notice, pays the prescribed fees and proceeds to collect the certified proceedings, the starting point for computation of the 60 days' prescribed period for institution of the appeal would be the actual date upon which the certified proceedings are delivered to him/her/it by the registrar.

I have looked at the applicant's evidence as set out in the Affidavit in Support of the Notice of  
245 Motion sworn by one of their advocates, Mr. Richard Bwiruka. In the said Affidavit Evidence, I note the following which are relevant to proof by the applicants of their claim that the prescribed 60 days period within which the respondent should have filed their Memorandum of Appeal should be computed from the date of 10.12.2020 on which the respondent was notified by the Registrar to collect the certified proceedings:

250 First, the applicants' advocates acknowledge receipt of the respondent's letter which was addressed to the Registrar on 18<sup>th</sup> June 2019 and filed in the Registry of the trial Court on the same day applying to be availed certified proceedings. The said letter is attached to Mr. Bwiruka's Affidavit as annexure "A2" and bears the "Received Stamp" of M/S Kaahwa, Kafuuzi, Bwiruka & Co. Advocates confirming the date of receipt of the letter on 18<sup>th</sup> June  
255 2019. This was within the 30 days from the date of the judgment appealed from. As such, in terms of Rule 83(2) of the Rules of this Court, in computing the 60 days' period within which the respondents were required to file the Memorandum and Record of Appeal instituting Civil Appeal No. 246 of 2021, the period certified by the registrar of the High Court as having been required for the preparation and delivery to the appellant of that copy is supposed to be  
260 excluded.

Second, on 10.12.2020 the Registrar notified the respondent to collect the typed and certified proceedings by letter attached to Mr. Bwiruka's Affidavit as annexure A3. Accordingly, the applicants contend that the computation of the 60 days' period should start from the 10<sup>th</sup> December 2020 when the respondent was notified by the Registrar through annexure A3. They rely on the "Received Stamp" of the Respondent's Regional Office in Fort Portal. The Memorandum and Record of Appeal having been filed by the respondent on 02<sup>nd</sup> September 2021, it was out of the prescribed period.

Below is a verbatim reproduction of Mr. Richard Bwiruka's Affidavit:

**"AFFIDAVIT IN SUPPORT**

**I Bwiruka Richard of Messrs Kaahwa, Kafunzi, Bwiruka & Co. Advocates, Plot 38 Mugurusi Road, P. O. Box 804, Fort Portal, do solemnly swear and state on oath as follows:**

1. **That** I am male adult Ugandan of sound mind, an Advocate in the said Law Firm which has been representing the applicants/plaintiffs in the original suit in which capacity I swear this affidavit.
2. **That** I am aware that judgment in the original suit HCT-CV-CS-020 of 2003 was delivered on 28<sup>th</sup> May 2019 at Fort Portal in the presence of the parties and their counsel.
3. **That** I am aware that the respondent lodged a Notice of Appeal on 30<sup>th</sup> May 2019 which was received by Court on 30<sup>th</sup> May 2019 hereto attached as **Annexure A1**.
4. **That** on 18<sup>th</sup> June 2019 the respondent wrote a letter addressed to the Registrar High Court Fort Portal applying for a record of proceedings which was received by Court on the 18<sup>th</sup> June 2019 and served on the applicants' Counsel on 18<sup>th</sup> June 2019 hereto attached as **Annexure A2**.
5. **That** I am aware that the Registrar High Court Fort Portal notified the respondent to collect the typed and certified record of proceedings in a letter dated 10<sup>th</sup> December 2020 hereto attached as **Annexure A3**.
6. **That** the respondent failed to lodge the appeal within 60 days from the time Annexure A3 above was received by the respondent.
7. **That** the respondent filed Civil Appeal No. 0246 of 2021 on 2<sup>nd</sup> of September 2021 out of time and there is no jurisdiction at all for that conduct. A copy of the Memorandum of Appeal is attached as **Annexure A4**.
8. **That** the applicants reside in various districts of Western Uganda. They have been living as destitute in poor conditions since their eviction by Government,

the suit in the High Court started in 2001 which is now over 20 years ago and it is unfair for the respondent to further delay their entitlements as granted by Court.

9. **That** I swear this affidavit in support of the application to strike out Civil Appeal No. 0246 of 2021 with costs.

300 10. **That** whatever I have stated herein is true and correct to the best of my knowledge and belief.

Sworn by the said **Bwiruka Richard** this 4<sup>th</sup> day of November at Kampala.

**Bwiruka Richard**  
**Deponent**

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Before me: *Barnabas Dyadi Kamyia Esq.*  
**Advocate & Commissioner for Oaths**

My finding from a close scrutiny of the application is that the applicant's only evidence in proof of the critical fact of when the Registrar notified the respondent that the certified proceedings were ready for collection by way of the Registrar's letter of 10.12.2020 is contained in  
310 paragraph 5 of Mr. Bwiruka's Affidavit where he states thus: "That I am aware that the Registrar High Court Fort Portal notified the respondent to collect the typed and certified record of proceedings in a letter dated 10<sup>th</sup> December 2020 attached [to the Affidavit] as Annexure A3."

315 Because of the centrality of the Registrar's Letter of 10.12.2020 which was annexed to Mr. Bwiruka's Affidavit as "A3", I hereby reproduce the same verbatim below:

320 *The Judiciary*  
*P. O. Box 48*  
*Fort Portal*  
*10/12/2020*

*The Attorney General's Chambers*  
*Fort Portal Regional Office*  
*Kitumba, Fort Portal*

325 **RE: TYPED AND CERTIFIED COPY OF PROCEEDINGS AND JUDGMENT IN HCT-01-CV-CS-20/2003 JOHN BYARUHANGA & 2499 OTHERS VS ATTORNEY GENERAL & ANOTHER**

*Refer to your letter of 18<sup>th</sup> June 2019 applying for a typed and certified copy of the proceedings and judgment in the said matter.*

*This serves to notify you that the Record is ready for your collection*

330 Dated this 10<sup>th</sup> day of December 2020

.....  
**HENRY TWINOMUHWEZI**  
**ASSISTANT REGISTRAR**

335 The deponent does not show how he came to be aware of the Registrar's letter and the fact of its service upon the respondent. This is particularly relevant here since the Registrar's letter (annexture A3) does not indicate that it was copied to the deponent, and neither is it certified as a public document. This renders the deponent's evidence hearsay and inadmissible for breaching Rule 44(1) of the Rules of this court which requires Affidavits in support of formal applications to be of persons having knowledge of the facts. The Rule is couched thus:

340 **"44. Supporting documents.**

- (1) *Every formal application to the court shall be supported by one or more affidavits of the applicant or of some other person or persons having knowledge of the facts."*

345 The deponent does not even give the names of the Court official who is stated to have effected service of the Registrar's letter upon the Respondent. Neither does he give the names or title or occupation of the person who is stated to have received the letter on behalf of the respondent. And to make matters worse, that information is not discernable from examination of the "Received Stamp" endorsed on the Registrar's letter (annexture A3) relied upon by the deponent.

350 Rules 18 & 23 of the Rules of this court require that in the absence of special directions given by court, service of documents required by the Rules to be served on any person shall be effected upon the party to the proceedings in person or his advocate or a clerk of an advocate at the office of the advocate.

Rule 18 is couched as follows:

355 **"18. Service and transmission of documents.**

- (1) *Where any document is required by these Rules to be served on any person, service may be effected in a way directed in each case by the court, which*

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*shall normally be a way in which a comparable process of the High Court could be served; and in the absence of any special direction, it shall be made personally on the person to be served or any person entitled under rule 23 of these Rules to appear on his or her behalf.*

(2) *N/A*

(3) *For the purpose of this rule, service on a partner or a clerk of an advocate at the office of the advocate shall be taken to be service on the advocate...*

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In civil proceedings involving the Attorney General, like the instant one, service is not complete until the letter allegedly served on the respondent is endorsed with an acknowledgement of service by the Attorney General or the Attorney General's Officers whose duties entitle them to practice as advocates. This is by virtue of Rule 5 of the Government Proceedings (Civil Procedure) Rules, S.I. No. 77-1 which is couched as follows:

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***“5. Service of documents.***

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1) *Service of a document on the Attorney General for the purpose of or in connection with civil proceedings by or against the government shall be effected by delivering or sending the document to be served and duplicate or copy of the document to the office of the Attorney General, and shall be deemed not complete until the Attorney General or another officer of the government entitled to practise as an advocate in connection with the duties of his or her office has endorsed an acknowledgement of service on the document to be served.*

2) *In this rule, “document” includes a notice, pleading, order, summons, warrant and any written proceeding or communication.”*

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I have also closely examined the evidence of the respondent in respect of the critical issue of being served with the Registrar's Letter dated 10.12.2020. It is contained in the Affidavit in Reply sworn by Mr. Singura Isaac Karekona. In the said Affidavit, the respondent states that he was notified by the Registrar that the certified proceedings were ready for collection through the Registrar's letter dated 01.09.2021 a copy of which was attached to Mr. Singura's Affidavit as annexure “H”. The respondent denied being aware of the Registrar's letter of 10.12.2020 and its service upon the respondent's office as claimed by the applicants. The denial of knowledge of the Registrar's letter of 10.12.2020 and its service upon the respondent was set out in Mr. Singura's Affidavit thus:

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**"RESPONDENT'S AFFIDAVIT IN REPLY**

390 I, **SINGURA ISAAC KAREKONA** of C/O Attorney General's Chambers, Fort  
Portal Regional Office, P. O. Box 7183 Kampala, Uganda do solemnly swear and  
state on oath as follows:

- 395 1. I am a male adult of Ugandan of sound mind, a Principal State Attorney, and  
the Head of the Fort Portal Regional Office in the Attorney General's  
Chambers, well conversant with the facts relating to this Application and I  
swear this Affidavit in that capacity.
2. ...
- 400 11. That on the 01<sup>st</sup> day of September, 2021 the Assistant Registrar of the High  
Court of Uganda at Fort Portal issued a notification to the Respondent to  
appear and collect the certified copy of the Record of Proceedings and  
judgmental that had been duly certified on the 31<sup>st</sup> day of August, 2021 to  
facilitate the Respondent's Appeal process. **(A copy of the said letter is  
hereto attached and marked as annexure "H")**
- 405 12. That on the 02<sup>nd</sup> day of September, 2021 having been availed with a fully  
certified copy of the record of proceedings from the High Court of Uganda at  
Fort Portal, the Respondent went ahead to file the Record of Appeal which  
was subsequently served on and received by the Applicants on the 6<sup>th</sup> day of  
September, 2021 without any delay.
- 410 13. That it is not true that the Respondent received Annexure A3 to the Affidavit in  
support of this Application and the same is not within the Respondent's  
knowledge and neither is it on the Court Record that was availed to us by the  
High Court.
- 415 14. That on close scrutiny of Annexure A3 to the Affidavit in support of this  
Application, the purported letter head does not match with the official  
communication we received on 01<sup>st</sup> September 2021.
- 420 15. That I also know that our receiving stamp reflected on Annexure A3 of the  
Affidavit in support of the Application purportedly from the Ministry of Justice  
and Constitutional Affairs Fort Portal Regional Office does not bear the true  
resemblance of our stamp and the signature therein does not belong to any of  
the Officers at Fort Portal Regional Office.
- 425 16. That we note that the Judgment was delivered on 28<sup>th</sup> May, 2019 and on the  
same day the Registrar issued the Certificate of Order against Government  
contrary to the Statutory time frame under the Government Proceedings Act.  
(Attached hereto is a copy of the Certificate of Order against Government  
marked as Annexure "I")

17. That I also know that the Taxation Proceedings in this matter were conducted in the absence of the Attorney General's representative.

18. That Civil Appeal No. 246 of 2021 has merit and raises triable issues for determination by this Honourable Court.

430 19. That it is in the interest of justice, fairness and equity that this Application is dismissed with costs.

20. That I swear this Affidavit in Reply to Civil Application No. 322 of 2021 and in opposition of the orders sought therein.

435 21. That whatever I have stated herein is true and correct to the best of my knowledge and belief.

Sworn at Kampala by the said SINGURA ISAAC KAREKONA this 12<sup>th</sup> day of November 2021

.....  
Deponent

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BEFORE ME:  
Jackie Okot  
A COMMISSIONER FOR OATHS"

445 On top of denying knowledge of the Registrar's letter of 10.12.2020 and its service upon the respondent, Mr. Isaac Singura Karekona stated that before receiving the Certified Proceedings on 01.09.2021, the respondent's officials at the Fort Portal Regional Offices had made three written reminders to the court to be availed copies of the proceedings on diverse dates, that is: 17<sup>th</sup> August 2020, 23<sup>rd</sup> July 2021 and 25<sup>th</sup> August 2021. The reminder letters were attached to Mr. Singura's Affidavit. I have noted that each one of the letters bore a  
450 "Received Stamp" of Fort Portal High Court confirming that they were filed in court.

In his oral submissions, the respondent argued that his office would not have continued to send reminders to the Registrar to avail them Certified proceedings if they had already been served with the Registrar's Letter of 10.12.2020.

455 Faced with the above denials and elaborations on the part of the respondent, one would have expected affidavits to be obtained by the applicants' counsel from persons with direct knowledge about the contested facts and filed in court as part of the applicants' Affidavits in

Rejoinder. But this was not done. The Affidavit in Rejoinder on record was sworn by one of the applicants, Mr. Byaruhanga John. As far as relevant to the resolution of the instant application, Mr. Byaruhanga stated thus:

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**"AFFIDAVIT IN REJOINDER**

*I, BYARUHANGA JOHN of C/O MS Lukwago & Co. Advocates, 1<sup>st</sup> Floor Media Plaza Plot 78 Kira Road Kamwokya, P.O.Box 980, Kampala, do hereby make oath and solemnly state as hereunder:*

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1. *THAT I am a male adult Ugandan of sound mind, the 1<sup>st</sup> Applicant herein, in which capacity I swear this affidavit in rejoinder.*
2. *THAT I have with the assistance of our lawyers of M/s Lukwago & Co. Advocates, read and understood the contents of the affidavit of Singura Isaac Karekona in reply to the application and established the same to have material falsehood, and I wish to respond to the same as hereunder:*

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3. *THAT in rejoinder to paragraphs 5-19 of the affidavit in reply to the application, I wish to state that;*

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- a) *On 10<sup>th</sup> June, 2019, being dissatisfied with the judgment and decree of court, the Respondent lodged a written notice of appeal and letter requesting for a typed and certified copy of the record of proceedings at the High Court of Uganda at Fort Portal but never served our lawyers with the same...*

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4. *THAT in rejoinder to paragraph 11 of the affidavit of Singura Isaac Karekona in reply to the application, I wish to state that the authenticity of the letter marked as annexure "H" attached to affidavit in reply to the application is doubtful and suspicious for not disclosing the author and date of issue by court at all.*

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5. *THAT the Respondent has not demonstrated seriousness in pursuing this appeal which she abandoned by failing to serve the notice of appeal and letter requesting for proceedings as well as other subsequent alleged reminders on the Application.*
6. *THAT the contents of paragraphs 11, 12, 13, 14 and 15 of the affidavit of Singura Isaac Karekona in reply to the application are false and the Respondent shall be put to strict proof thereof.*
7. *THAT the contents of paragraphs 16 and 17 of the affidavit of Singura Isaac Karekona in reply to the application is not material to the instant application...*



490 11. That I swear this affidavit in rejoinder to the affidavit in reply to the application  
and whatever I have stated hereinabove is true and correct to the best of my  
knowledge, save for the contents of the paragraphs which are indicated to be  
based on information whose source is disclosed therein and which I verily  
believe to be true.

495 SWORN at KAMPALA  
By the said BYARUHANGA JOHN  
This 16<sup>th</sup> day of Nov 2021

\_\_\_\_\_  
DEPONENT

500 Before me  
Kenneth Ssebabi  
Advocate & Commissioner for Oaths”

My finding is that the Affidavit in Rejoinder does not provide the answers to reinforce the  
applicants’ case that the Certified Proceedings were ready by 10.12.2020 and that the  
respondent was informed accordingly by the Registrar’s letter of 10.12.2020. Instead, the  
505 applicants introduced new facts to the effect that after filing the Notice of Appeal and Letter  
applying for proceedings in court, the respondent did not serve both documents upon the  
applicants’ advocates. The point of non-service of the Notice of Appeal was amplified by  
Counsel for the applicants during their oral submissions in rejoinder when this matter came  
before us for hearing. This approach of the applicants’ Counsel is the equivalent of “changing  
510 goal posts” in the middle of a game. This court (*Kakuru, Egonda-Ntende & Musoke, JJA*) in  
*Mutembuli Yusuf Vs Nagwomu Moses Musamba & Another, EPA No. 43 of 2016 (Unreported)*  
held that parties cannot introduce fresh issues or change the substance of their claim by way  
of Affidavits in Rejoinder and upheld the position of the law as stated by the High Court Judge  
who heard the matter in the following terms:

515 “At no point is a petitioner or applicant permitted to introduce new pleas in his or her  
affidavit so as to alter the basis of his or her claim. In rejoinder, he or she has to  
simply explain if certain additional facts have been taken in the affidavit in reply but  
cannot be allowed to come forward with an entirely new case in his or her rejoinder.  
520 The original plea cannot be permitted to be altered under the garb of filing a  
rejoinder. An Affidavit in rejoinder cannot be permitted for introducing pleas which  
are not consistent with the earlier pleas.”

The above position is still a good statement of the law.

In the instant application, the complaint of the applicants as set out in the Notice of Motion and the supporting Affidavit was about failure of the respondents to institute the appeal within 60 days computed from the date they were said to have been served with the Registrar's Letter of 10.12.2020. Non-service of the applicants' Counsel with the Notice of Appeal and the letter applying for proceedings was not part of the original plea of the applicants. Indeed, the applicants' Counsel, Mr. Bwiruka, acknowledged being served the respondent's letter applying for the certified proceedings and this formed the basis of their case for the need for the Registrar to certify the time taken to prepare and deliver the certified proceedings in order to set in motion the 60 days' period prescribed by the Rules for instituting the appeal. Raising the issue of non-service of the Notice of Appeal and the Letter applying for proceedings by way of the Applicants' Affidavit in rejoinder is thus unacceptable as it breaches the principles of a fair trial in so far as the respondent does not have an opportunity to respond to the new issue after the closure of the pleadings and evidence upon filing the Affidavit in Rejoinder.

Needless to add that even the paragraphs in the Affidavit in Rejoinder sworn by Mr. Byaruhanga stating that their advocates were not served with the Notice of Appeal and respondent's letter applying for proceedings are not from the direct knowledge of the deponent. As such, they are inadmissible for being hearsay and could not assist the applicants discharge the burden of proof of the changed issues.

In all, from the analysis of the evidence filed in this application, it is my finding that on a balance of probabilities the applicants did not discharge the burden of proof of their claim that the time for filing the Memorandum and Record of Appeal instituting Civil Appeal No. 240 of 2021 commenced on 10.12.2020. The application would accordingly fail.

#### 545 **Remedies**

I would dismiss the application. However, I would not grant the respondent the costs of this court as this application would not have been necessary if the respondent had been more vigilant in the pursuit of the certified proceedings beyond simply writing the reminder letters to court after long intervals in-between the letters. Regular follow-ups and follow-ups of the

550 follow-ups have been tested and established to be critical to the successful accomplishment of  
tasks. As key stake holders in the justice system, the bar has an obligation to follow up on the  
status of such routine matters pending before courts of law like typing and delivery of  
proceedings which are critical to the institution of appeals before this court. It is through  
becoming pro-active instead of being reactive that the bar will be able to discharge its  
555 mandate in the expeditious delivery of justice by the courts of law.

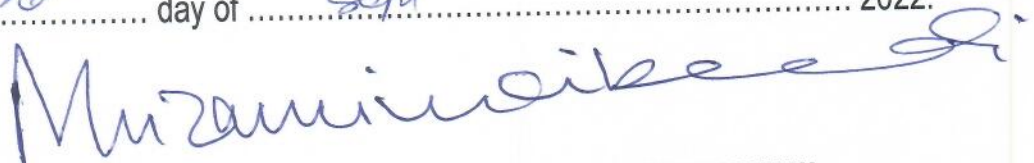
I would accordingly dismiss the application and order each party to bear its own costs.

**Consequential Orders**

When Civil Appeal No. 246 of 2021 came before us for hearing, we adjourned it pending the  
disposal of this application and Civil Application No. 239 of 2021 between the same parties.  
560 Following the disposal of the two applications by this court, I would direct the appellant in Civil  
Appeal No. 246 of 2021 to file and serve his Written Submissions and authorities within two  
weeks from date of delivery of this Ruling. The respondents in Civil Appeal No. 246 of 2021  
will then file and serve their written Reply and authorities within two weeks from date of  
service. The Rejoinder (if any) and authorities will be filed and served within seven days of  
565 being served. Judgment will thereafter be rendered on notice. Filing should be both in hard  
copy and electronic form to the email available from the Registrar of this court.

I would order accordingly.

DATED this 26<sup>th</sup> day of Sept 2022.



.....  
**MUZAMIRU MUTANGULA KIBEEDI**  
**JUSTICE OF APPEAL**

**THE REPUBLIC OF UGANDA**

**IN THE COURT OF APPEAL OF UGANDA**

**AT KAMPALA**

**[Coram: Egonda-Ntende, Kibeedi, Gashirabake, JJA]**

**CIVIL APPLICATION NO. 322 OF 2021**

*{Arising out of Court of Appeal Civil Appeal No. 0246 of 2021}*

**BETWEEN**

**BYARUHANGA JOHN & 2499 OTHERS  
(SUING THROUGH THEIR LAWFUL  
ATTORNEY- REPRESENTATIVES)**

.....:APPLICANTS

**VS**

**ATTORNEY GENERAL .....: RESPONDENT**

**RULING OF CHRISTOPHER GASHIRABAKE, JA**

I have had the benefit of reading in draft the Ruling prepared by Muzamiru M. Kibeedi, JA. I concur with the reasoning and conclusions therein. I have nothing useful to add.

**Dated at Kampala this 26<sup>th</sup>.....day of Sept.....2022**

  
Christopher Gashirabake,  
**JUSTICE OF APPEAL**

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
*[Coram: Egonda-Ntende, Muzamiru M. Kibeedi & Christopher Gashirabake, JJA]*

**CIVIL APPLICATION NO. 322 OF 2021**  
*(Arising out of Court of Appeal Civil Appeal No. 0246 of 2021)*

**BETWEEN**

**BYARUHANGA JOHN & 2499 OTHERS**  
**(SUING THROUGH THEIR LAWFUL**  
**ATTORNEY-REPRESENTATIVES) ===== APPLICANT**

**AND**

**ATTORNEY GENERAL ===== RESPONDENT**

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

- [1] I have had the opportunity of reading in draft the ruling of my brother, Kibeedi, JA. I agree with it.
- [2] As Gashirabake, JA, agrees with it too, this application is dismissed on the terms proposed by Kibeedi, JA.
- [3] The hearing of the original appeal shall proceed by way of written submissions as proposed by Kibeedi, JA.

Signed, dated, and delivered at Kampala this <sup>26<sup>th</sup></sup> day of <sup>sept</sup> 2022

  
Fredrick Egonda-Ntende  
**Justice of Appeal**