

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
MISC. APPLICATION NO. 0026 OF 2023
ARISING FROM MISC. APPLICATION NO. 0088 OF 2021
FURTHER ARISING FROM HCMA NO. 0061 OF 2021
OUT OF CIVIL SUIT NO. 0040 OF 2021

FINCA UGANDA LTD (MDI) APPELLANT

VERSUS

SEMAKULA ROZIO RESPONDENT

BEFORE: Hon Justice Isah Serunkuma.

RULING

This appeal is brought under Article 126 (2) (e) of the constitution of the republic of Uganda as amended, sections 80, 81 and 98 of the Civil Procedure Act, section 33 of the Judicature Act, Order 50 rule 1, 3, 8, & Order 52 rule 1 & 3 of the Civil Procedure Rules on grounds that;

- a) The learned Assistant Registrar Sayuni David erred in law and fact when he misapplied the principles of setting aside dismissal orders and reinstatement by dismissing Miscellaneous Application No. 0088 of 2021 thereby not exercising his discretion judiciously.
- b) The ruling and orders of the learned Assistant Registrar Sayuni David in Misc. Application No. 0088 of 2021 be set aside.
- c) That Misc. Application No. 0088 of 2021 and Misc. Application No. 0061 of 2021 be allowed and the applicant be granted leave to file its written statement of defence out of time;
- d) Costs of the application be provided for.

The appellant further laid out the grounds upon which this appeal is premised in the affidavit of a one **Fred Kamurasi** in the capacity of the appellant's **Accounts Relationship Supervisor**. The affidavit in support states;

1. That the respondent instituted HCCS NO. 0040 OF 2021 against the appellant. (A copy of the plaint is marked **FU1**.)
2. That the appellant failed to file its written statement of defence on time within the period provided for filing a written statement of defence, owing to the presidential directives on lockdown & travel restrictions.
3. That the appellant had limited accessibility to files, research and gathering of evidence in preparations for the main suit hence the written statement of defence could not be prepared within time prescribed by law.
4. That the appellant applied to file its written statement of defence out of time vide Miscellaneous Application No. 0061 of 2021 arising out of Civil Suit No. 0040 of 2021.
5. That the said Misc. Application No. 0061 of 2021 was accompanied by written submissions to enable speedy adjudication. A copy of the submissions is marked **FU2**.
6. That on the day Misc. Application No. 0061 of 2021 came up for hearing on the 14th day of September 2021, counsel for the appellant had symptoms of COVID19 and was undergoing self-isolation and as a result, could not attend the hearing.
7. That based on the advice of appellant's lawyers, despite counsel's failure to attend, he had fulfilled a critical step in the hearing by filing written submissions which the learned registrar should have based on to hear the application without dismissing it for non-appearance.
8. That despite the appellant's written submissions being on file in Misc. Application No. 0061 of 2021, the learned Assistant Registrar did not address that ground and went ahead and dismissed Misc. Application No. 0088 of 2021 in his ruling delivered on the 11th day of May 2023. A copy of the ruling is attached and marked **FU3**.
9. That on the 2nd day of June 2023, counsel applied for typed record of proceedings. A copy of the letter is marked **FU4**.
10. That based on the advice of the appellant's lawyers, the learned Assistant Registrar didn't exercise his discretion judiciously and thereby ending up misapplying the

principles of setting aside dismissal orders and reinstatement when he dismissed misc. application no. 88 of 2021.

11. That it's fair and equitable that this appeal be allowed and orders in Misc. Application No. 0088 of 2021.

5 In response, the respondent filed his affidavit in reply stating that;

1. That based on the advice of his lawyers, the appeal has no merit, the notice of motion with its accompanying affidavit is full of falsehoods, the appeal is a procedural nullity and baseless, filed and served out of time with no leave of court, aimed at delaying justice for which a preliminary objection shall be raised.

10 2. That based on the advice of his lawyers, the appellant cannot benefit from the excuse contained in paragraph 3 of the affidavit in support since banks including itself were not affected by lockdown owing to the fact that they were among the essential workers and even courts were operating with their registries open for filing all court process.

15 3. That Misc. Application No. 0061 of 2021 and Misc. Application No. 0088 of 2021 were never supported by any sufficient cause to warrant reinstatement and court rightly dismissed them.

20 4. That based on the advice of his lawyers, the blatant falsehoods contained in paragraphs 3 & 6 of the affidavit in support of the notice of motion, renders the affidavit defective.

5. That in reply to paragraph 5 of the affidavit in support, the appellant failed to serve the respondent with Misc. Application No. 0061 of 2021 but instead claims to have filed written submissions which can neither justify nor warrant the appellant's non-attendance for hearing the matter.

25 6. That in further reply to paragraph 5 of the affidavit in support, and based on the advice of his lawyers, the appellant deliberately failed to serve neither the respondent nor his lawyers with the Misc. Application No. 0061 of 2021 and instead without any leave, or directive of court, the appellant filed submissions and sat back

home comfortably waiting for ruling as if it were ex-parte application whereas in total contravention of the civil procedure rules.

7. That in reply to paragraph 6 of the affidavit in support of the notice of motion, the allegations therein are false and baseless, the appellant adduced nothing to support this allegation and thus Misc. Application No. 0088 of 2021 was dismissed.
8. That in reply to paragraphs 7 & 8 of the affidavit in support of the notice of motion, it is absurd that the appellant filed its Misc. Application No. 0061 of 2021 at leisure in anticipation that court would prosecute the same on their behalf contrary to the rules of procedure and law relating to civil litigation.
9. That based on the advice of his lawyers, the learned assistant registrar was right to dismiss Misc. Application No. 0061 of 2021 and Misc. Application No. 0088 of 2021 for they lacked sufficient cause owing to falsehoods in the affidavits and illegalities thereto for which this court should scrutinize.
10. That paragraphs 7, 10, 11, 12 of the affidavit in support are absurd in so far as the learned assistant registrar exercised his discretion judiciously, and could not condone illegalities and falsehoods as contained in the applicant's Misc. Application No. 0061 of 2021 and Misc. Application No. 0088 of 2021.
11. That based on the advice of his lawyers, the instant appeal is seeking to reinstate illegal applications which were rightly dismissed and if this appeal is granted, it will occasion material injustice on the respondent.

Representation and hearing

The appellant is represented by M/S Finca (U) Ltd (MDI) Legal Department whereas the respondent is represented by M/S Kasumba, Kugonza & Co. Advocates.

Appellant's submissions

- 25 Counsel for the appellant submitted on the first two grounds jointly namely;
 - a) The learned Assistant Registrar Sayuni David erred in law and fact when he misapplied the principles of setting aside dismissal orders and reinstatement by

dismissing miscellaneous application No. 0088 of 2021 thereby not exercising his discretion judiciously.

b) The ruling and orders of the learned assistant registrar Sayuni David in Misc. Application No. 0088 of 2021 be set aside.

5 Counsel submitted that the present appeal is brought under Order 50 rule 8 of the Civil Procedure Rules, allowing any person aggrieved by an order of a registrar to appeal to the high court through a notice of motion. Counsel submitted that the learned assistant registrar in his ruling, failed to provide a ratio decidendi for dismissing Miscellaneous Application No. 0088 of 2021, mixing up the facts of Misc. Application No. 0061 of 2021
10 and Civil Suit No. 0040 of 2021 and misapplying the law. Counsel stated that Misc. Application No. 0088 of 2021 was an application for setting aside the dismissal orders of the assistant registrar in Miscellaneous Application No. 0061 and was brought under Order 9 rule 23 of the Civil Procedure Rules and Article 126 (2) (e) of the Constitution of the Republic of Uganda.

15 Counsel further submitted that Order 9 rule 23 of the Civil Procedure Rules stipulates the circumstances under which dismissal orders can be set aside, granting the plaintiff the opportunity to apply for such an order and establish sufficient cause for non- appearance during the hearing. Counsel further reiterated the provisions of Article 126 (2) (e) of the Constitution and Section 98 of the Civil Procedure Act. Counsel added that the appellant
20 submitted and provided evidence that proved sufficient cause and that Miscellaneous Application No. 0061 of 2021 was dismissed unjustly as counsel had filed written submissions, fulfilling a critical step necessary for the adjudication, and ruling of the matter. Counsel prayed that these two grounds succeed.

c) That Misc. Application No. 0088 of 2021 and Misc. Application No. 0061 of 2021 be
25 allowed and the applicant be granted leave to file its written statement of defence out of time.

Counsel submitted that having argued grounds 1 & 2, he prayed that Miscellaneous Application No. 0088 of 2021 is allowed to succeed and the dismissal of Miscellaneous Application No. 0061 of 2021 be set aside.

5 Counsel submitted that Misc. Application No. 0061 of 2021 was application for leave to file the written statement of defence out of time, brought under section 98 of the Civil Procedure Act and Order 52 rules 1 & 3 of the Civil Procedure Rules. Counsel added that the appellant attached a draft written statement of defence to the application whose primary ground was the nationwide restrictions imposed by the president under the presidential directives on lockdown and travel restrictions to curb the spread of COVID-10 19. Counsel submitted that a quick search on google for lockdown dates in Uganda would have reminded the learned assistant registrar that Uganda re-entered a partial lockdown on 7th June 2021, which included travel bans between districts, restrictions on gatherings and suspension of schools and communal/ religious gatherings for 42 days.

Counsel submitted that the appellant's branch where the cause of action arose, is Masindi 15 branch, and the travel bans limited counsel's accessibility to files, research, evidence gathering and witness interviews. Counsel believed that this amounted to sufficient reason as stated in the case of *Rosette Kizito Vs Administrator General & Ors; Supreme Court Civil Application No. 009 of 1996*, to explain the failure to take a particular step in time. Counsel prayed that this ground succeeds and that the appellant is granted leave to file its 20 written statement of defence out of time.

With reference to the 4th ground of costs in this appeal, counsel submitted it is well established that costs follow the event and the successful party is entitled to costs as per section 27 of the Civil Procedure Act. Counsel prayed that costs are awarded to the appellant.

25 ***Respondent's submissions***

Before counsel made his submissions on the merits of the appeal, he raised 4 four preliminary objections relating to the propriety of this appeal as hereunder;

1. That the appeal was filed out of time and without leave of this honorable court contrary to the law.

Counsel submitted that this appeal was filed contrary to Section 79 of the Civil Procedure Act which provides for mandatory period within which to file an appeal of this kind, the
5 mandatory time being 7 days. Counsel added that the appellant has appealed out of time on two applications formerly handled in this court that is to say Misc. Application No. 0061 of 2021 and Misc. Application No. 0088 of 2021. He added that the respondent has never been served with any application for leave of this court to file an appeal out of time since the time within which to appeal against ruling and orders in Misc. Application No.
10 0061 of 2021 elapsed about 2 years ago.

Counsel submitted that Miscellaneous Application No. 0061 of 2021, Finca Bank Ltd Vs Ssemakula Rozio was heard and determined way back on the 14th day of September 2021 and the order issued by the court on the 12th day of October 2021. Counsel stated that the
15 applicant was mandated to file her appeal within 7 days and that the appellant should have filed the same by the 19th day of October 2021 which the appellant failed to do and opted to appeal against the ruling and orders of the same application on the 06th day of June 2023 after almost two years had elapsed.

Counsel further submitted that in Miscellaneous Application No. 0088 of 2021, Finca Bank Ltd Vs Ssemakula Rozio, was heard and ruling delivered on the 11th day of May 2021, the
20 appellant adamantly filed this appeal out of time on the 6th June 2023 when the mandatory period for her to file an appeal of this nature had already elapsed which is contrary to the law and procedure prescribed.

Counsel argued that the appellant ought to have sought for leave of this honorable court to file or be allowed to appeal out of time instead the appellant illegally opted to bring
25 this appeal which has since been fixed for hearing in total disregard of law and procedure couched in mandatory terms thus rendering the instant appeal illegal and incompetent thus praying that it should be dismissed with costs to the respondent.

Counsel relied on the case of *Abubaker Sebalamu Ganya Vs Yasmin Nalwoga; SCCA No. 014 of 2017* where it was held that;

“Filing of court documents should strictly comply with timelines save for where leave of court has been sought and is granted”.

5 Counsel also relied on the case of *Ayub Suleman Vs Salim Kabamalo; SCCA No. 032 Of 1995* where it was held that Article 126 (2) (e) of the Constitution was not a license for non-compliance with the rules of procedure. Counsel added that the same was re-echoed in the case of *Utex Industries Ltd Vs Attorney General; SCCA No. 052 Of 1995* where it was held that;

10 *“Article 126 (2) (e) of the Constitution was not intended to do away with the requirement that litigants must comply with the rules of procedure in litigation..... the framers of the constitution were alive to this fact and that is why they provided that the principles in Article 126 of the constitution including administering substantive justice without undue regard to technicalities must be*
15 *applied subject to the law. Such laws include rules of procedure. Article 126 (2) (e) of the Constitution is not therefore a magic wand in the hands of defaulting litigants.”*

Counsel submitted that time limits should be taken seriously, as they are not mere technicalities but matters of substantive law and must be strictly complied with lest the
20 consequences are fatal. Counsel added that courts have taken a strict approach with regard to the matters of time limits and thus prayed that this court agrees with the respondent’s affidavit in reply and written submissions to uphold this preliminary objection.

2. The instant appeal was served out of time contravening order 43 rule 11 and order 5 rule 1 (2) & (3) of the Civil Procedure Rules.

25 Counsel submitted that the appellant filed this appeal on the 6th June 2023 and the same was endorsed on the 15th June 2023 but it was served unto the M/S Kasumba, Kugonza & Co. Advocates on the 1st August 2021 which is beyond the mandatory 21 days within which such an appeal must be served, contrary to Order 5 rule 1 (2) of the Civil Procedure Rules.

Counsel added that the appellant has never filed any application in this honorable court seeking for extension of time within which to serve the notice of motion instead, the appellant went ahead and fixed the illegal or ghost and incompetent appeal for hearing in total disregard of the civil procedure rules.

5 Counsel submitted that the appeal offends Order 43 rule 11, Order 49 rule 2 and Order 5 rule 1(1), (2), & (3) of the Civil Procedure Rules which provides for the timelines within which a hearing notice of the appeal fixed must be served. Counsel argued that the above provisions of the law mandates court to dismiss a suit or any application served beyond the prescribed 21 days. Counsel relied on several authorities such as *Kizza Bigogo & Anor*
10 *Vs Mugisa Joy & Anor; Masindi HCMA No. 0040 Of 2020* where; while upholding the preliminary objection and dismissing the application for service outside of the prescribed time without seeking extension, the court was of the view that;

15 *“Whereas the above contentions of the applicant may amount to sufficient cause or reason for the applicants’ failure to serve the application within the prescribed time, no application was filed for extension. The reasons have to be tested in an application for extension of time to serve the application. The reasons in this case are merely being presented during submissions in the determination of the present application for leave to appeal and their veracity is in no way tested. The law requires an application for an extension of time and.....”*

20 In conclusion, counsel prayed that this court accordingly finds that service was done out of time and dismiss the same with costs.

3. The notice of motion and its affidavit in support contain material falsehoods which renders the affidavit in support defective.

25 Counsel invited this court to scrutinize the notice of motion specifically page 2 on the 1st paragraph which falsely states that,

“Take further notice that this application is supported by the affidavit of the applicants together with other additional affidavits....”

Counsel argued that upon perusing the entire pleading, the alleged affidavit sworn by the appellant is not attached to the notice of motion and that the only affidavit in support is that deponed by Fred Kamurasi who is believed not to be the applicant per se as falsely stated in the notice of motion. Counsel added that this clearly shows the lies contained in the appellant's appeal which this court should not condone. Counsel further relied on paragraphs 3 of the appellant's affidavit in support and submitted that all banks including the appellant bank were under essential category during lockdown and were operating though on half capacity. Counsel added that Misc. Application No. 0061 of 2021 was filed after COVID19 restrictions had been lifted and the courts had already returned to normal business hence the allegations in paragraph 3 are false.

4. The appeal was filed without legal authority and the affidavit in support sworn by a person without the requisite capacity to do so

Counsel submitted that the appeal was filed without legal authority in support as sworn by Mr. Fred Kamurasi without any express authority from the company thus making it incompetent and fatally defective. Counsel added that Mr. Fred Kamurasi has not been shown anywhere that he was a principal officer of the appellant and as such he had no capacity to swear an affidavit in support on behalf of the appellant company. Counsel further submitted that it is trite law that a suit instituted in the name of the company without the authority of the directors is incompetent. Counsel relied on the case of *MHK Engineering Services (U) Ltd Vs MacDowell Limited; HCMA NO.0825 OF 2018* where it was held that;

“An affidavit sworn by a person without the requisite capacity is incompetent and fatally defective. It cannot be cured by any stretch of the application of the principles of substantive justice. In the premises therefore, the affidavit in reply to the present application is struck out.”

In conclusion, counsel prayed that the objections are upheld.

With reference to the merits of the application, counsel submitted that the appeal lacks merit and that it should be dismissed with costs. Counsel added that the instant appeal

contravenes with the provisions of the law as submitted above and thus prayed that this honorable court be pleased to find this appeal incompetent, illegal and dismiss it for lack of merit.

5 With regard to costs of the application, counsel submitted that there are sufficient reasons to warrant an award of costs to the respondent having been subjected to huge expenses to hire lawyers, prosecute this incompetent appeal, payment of fees in the entire court process, transportation expenses and even time lost in seeking justice from this honorable court. In conclusion, counsel prayed that this court be pleased to dismiss the appeal.

Court Analysis

10 I have perused the pleadings of both parties to the appeal, their submissions and relevant authorities which are considered herein. A brief back ground is necessary for this court as well as the litigants to understand the foundation of this current appeal as hereunder;

15 The respondent herein, instituted Civil Suit No. 0040 of 2021 on the 31st day of March 2021 against the appellant for breach of Banker - Customer contract for failure to credit his account with Ugx. 222,100,000/= on the 5th February 2021 contrary to the contract agreement dated 6th February 2020, breach of consumer protection guidelines, breach of duty of care and negligence contrary to the banking principles of reliability and transparency, award of special damages of Ugx. 20,000,000/=, general damages and costs.

20 Having filed the suit, the summons to file a defence were issued on the 31st March 2021 and according to the affidavit of service, summons was effected unto the appellant on the 7th day of June 2021. The appellant failed to file their written statement of defence, however she filed Miscellaneous Application No. 0061 of 2021 on the 30th day of June 2021 for an order that;

25 ***“That the applicant/appellant be granted leave to file a written statement of defence in Civil Suit No. 0040 of 2021 out of time.”***

The above application was heard on the 14th day of September 2021 and dismissed under Order 9 rule 22 of the Civil Procedure Rules by the learned Assistant Registrar which states;

“22. Procedure when defendant only appears.

Where the defendant appears, and the plaintiff does not appear, when the suit is called on for hearing, the court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part of it, in which case the court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.”

The appellant later filed Miscellaneous Application No. 0088 of 2021 on the 12th day of November 2021 for orders that;

“a. The court be pleased to set aside the dismissal of Miscellaneous Application No. 0061 of 2021 arising out of civil Suit No. 0040 of 2021.

b. Miscellaneous Application No. 0061 of 2021 be reinstated.”

When the matter came up for hearing on the 20th day of December, 2021, the trial court noted that;

“Submissions are all on record. Matter adjourned to 17th day of January 2022 for ruling at 10:00am before the Assistant registrar who determined the impugned application.”

The ruling in the application was delivered on the 11th day of May 2023 by the learned assistant registrar wherein the application was dismissed against the appellants for lack of showing seriousness to pursue their matter. It is thus on such premises that this current appeal arises. Counsel for the respondent has raised four preliminary points of law which I intend to consider first before delving into the merits of this application as discussed above. This court has however noted that no reply was filed by the appellants in response to the preliminary points of law raised by the respondent.

Notwithstanding the above, this court shall proceed and consider the preliminary objections first before embarking on the merits of the appeal. I shall thus start with the 4th preliminary objection which is;

5 ***1. The appeal was filed without legal authority and the affidavit in support sworn by a person without the requisite capacity to do so.***

It was the contention of the respondent's counsel that the affidavit in support as sworn by Mr. Fred Kamurasi was deponed without any express authority from the company thus rendering it incompetent and fatally defective. Counsel also argued that it has not been shown anywhere that Mr. Fred Kamurasi was a principal officer of the appellant and as
10 such had no capacity to swear an affidavit in support of the motion on behalf of the company.

In the case of *MHK Engineering services (u) ltd vs MacDowell Limited (supra)*, It was held that;

15 ***“The law is that matters related to affidavits are taken seriously by the court and the rules governing competence of affidavits are often interpreted strictly by the court. It follows therefore that an affidavit that is found to have been made without the requisite capacity would be incompetent and defective. A question as to the capacity of a deponent therefore has to be seriously investigated and determined by the court before such an affidavit can be relied upon by the court.”***

20 The law relating to pleadings by or against corporations is clear as per Order 29 rule 1 of the civil procedure rules which provides;

“1. Subscription and verification of pleading.

25 ***In a suit by or against a corporation any pleading may be signed on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.***

The term ***“principal officer”*** of the corporation as defined by Black's Law Dictionary to mean; ***“In corporate law, the term refers esp. to a person elected or appointed by the***

board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary, or treasurer”.

Further in *Security Group (U) Ltd & Anor Vs Ellis R. Kasolo (supra)* it was further held as follows that:

5 “... a principal officer [of a company] must be a primary or high-ranking officer of the company and may include the Chief Executive Officer of the corporation, the Manager or any such officer with a binding management say for the Company. It is such an officer that if he/she signed a document or made an agreement on behalf of the Company, such would be binding to the Company”.

10 The question therefore would be whether a one Mr. Kamurasi Fred had such authority from the appellant to depone the affidavit in support of the motion. According to paragraph 1 of the affidavit in support it states that;

“That I am a male adult Ugandan of sound mind, the Applicant’s Accounts Relationship Supervisor.....”.

15 By designation, the term supervisor encompasses a person who has such authority over a group of persons in a work place. In other words, he or she has some portion of managerial power to employ unto a group of persons he has authority over. With reference to the background of this application, in the Civil Suit No. 0040 of 2021, the facts constituting the cause of action indicate summarily that on the 6th February 2020, the respondent
20 entered into a contract with the defendant at Hoima branch wherein they agreed on a non-negotiable fixed deposit of 200,000,000/= (Uganda shillings two hundred million only) for a period of one year ending on the 5th February 2021. In consideration thereof, the appellant was to pay back or credit the respondent’s Finca Bank Account with Ugx 222,100,000/= (Uganda shillings two hundred twenty-two million one hundred thousand
25 only) which was breached.

By virtue of those facts, I am of the view that the deponent of the appellant company was in position to have knowledge about the facts of the respondent and if coupled with the low managerial position, Mr. Kamurasi Fred is equipped with the authority to depone the

affidavit in support of the application on behalf of the appellant company. In the result therefore this preliminary objection is overruled.

2. That the appeal was filed out of time and without leave of this honorable court contrary to the law.

5 The law is clear in relation to timelines within which to file appeals against rulings and orders of Registrar such as this current appeal. Section 79 of the civil procedure act states that;

“(1) Except as otherwise specifically provided in any other law, every appeal shall be entered—

10 ***(a) within thirty days of the date of the decree or order of the court; or***

(b) within seven days of the date of the order of a registrar,

as the case may be, appealed against; but the appellate court may for good cause admit an appeal though the period of limitation prescribed by this section has elapsed.

15 ***(2) In computing the period of limitation prescribed by this section, the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.”***

Counsel for the respondent submitted that this appeal was filed out of time contrary to section 79 (1) of the Civil Procedure Act which provides for mandatory period to file an appeal being 7 seven days. According to the court record, the ruling in Miscellaneous
20 Application No. 0088 of 2021 was delivered on the 11th day of May 2023 and the appeal was lodged on the 06th day of June 2023 which is approximately 19 days from the date when the learned Assistant Registrar delivered the ruling.

In computing the period within which one has to file an appeal of this nature, this court
25 has to consider the period within which, court record of proceedings has been prepared. The appellant in this case under paragraph 9 of the affidavit in support of the states that the appellant applied for typed record of proceedings by letter dated 02nd June 2023 but

the said letter was received at this court on the 06th day of June 2023 which is the same day that the appeal was filed in the court.

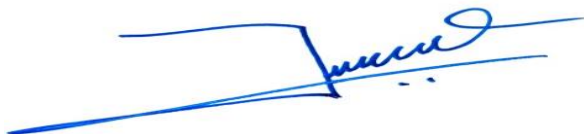
Whereas the law of limitation grants appellants a grace period of the time when the record of court proceedings is being prepared, it is my considered view that there must be some vigilance portrayed by the appellant who seeks to be heard on his rights to ensure that a request for typed record of proceedings is made subject to the running timelines of the law. However, in the current appeal before me, it seems that there was negligence on the side of the legal department of the appellant. The appellant waited a whole 19 days without prompting any action as far as this appeal is concerned and yet the time lines require the appeal to be filed within 7 days from the date of the Order of the Registrar.

The appellant should have been vigilant enough to understand the timelines and work subject to the same otherwise she cannot come to this court seeking refuge when she waited a whole 19 days to make a request of the record of proceedings and expect this court to begin counting the time from the 6th day of June 2023. This is improper and neither can article 126 (2) (e) of the constitution sever the situation at hand to their advantage. The conduct of the appellant was an abuse of court process and this court cannot tune to the whims of the litigant who comes to it with dirty hands. In the circumstances, I uphold this preliminary point of law.

In that regard, the other preliminary points of law are inconsequential since this appeal is found incompetent and hereby struck out with costs to the respondent.

I so order.

Dated and delivered on this 22nd day of December 2023.



Isah Serunkuma

JUDGE