

The Republic of Uganda  
In the High Court of Uganda Holden at Soroti  
Miscellaneous Cause No. 14 of 2022

Dr Omagor Charles ..... Applicant

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Versus

- 1. Soroti University
  - 2. Prof. Francis G. Omaswa
  - 3. Prof. J.R. Ikoja Odongo
  - 4. Lawrence Too-Okema
  - 15. Attorney General
- ..... Respondents

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

20 1. Introduction:

This application is by Notice of Motion brought under Sections 33,36,37 and 38 of the Judicature Act, Cap 13, Rules 3(1) (a), 3A and 6(1) of the Judicature (Judicial Review) Rules, 2009 as amended, Section 98 of the Civil Procedure Act, Cap 71, and Section 31 of the Universities and other Tertiary Institutions Act, Cap 2001 as amended for orders that;

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- a) A declaration that the 1<sup>st</sup> respondent's Chairperson of the University Council did not have any legal mandate to appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice Chancellor and Deputy Vice Chancellor of the 1<sup>st</sup> Respondent since such authority is vested under the law upon the Chancellor who then had not been appointed and such appointment was null and void.

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- b) A declaration that the 3<sup>rd</sup> and 4<sup>th</sup> respondents, having been handpicked to occupy key positions at the University without following due process, have as such never held any valid appointment for positions of Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively.
- 10 c) A declaration that the purported expired contracts of appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions as Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, were irregular, illegal, null and void.
- d) A declaration that the purported process, approval and re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondent as Vice Chancellor and Deputy Vice Chancellor of Soroti University was null and void.
- 15 e) A declaration that the purported recommendations of the 1<sup>st</sup> respondent's University Council upon which the 2<sup>nd</sup> respondent based to re-appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, was and is null and void.
- 20 f) A declaration that the purported legal opinion of the 5<sup>th</sup> respondent upon which the 2<sup>nd</sup> respondent based to re-appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, was and is erroneous and void.
- 25 g) A declaration that the 2<sup>nd</sup> respondent acted in abuse of his mandate and authority as the Chancellor when he influenced the 1<sup>st</sup> respondent's University Council to specifically recommend for reappointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, albeit without following the law.
- 30 h) A declaration that the acts of the University Council of the 1<sup>st</sup> respondent in acting upon and upholding the irregular and illegal directive of the 2<sup>nd</sup>

respondent **soliciting for recommendations** to re-appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents as **Vice Chancellor** and Deputy Vice Chancellor of Soroti University, respectively, was and is null and void ab-initio.

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- i) A declaration that the actions of the 1<sup>st</sup> respondent's Council of constituting itself into a Search Committee, Senate and hijacking the Search Committee and Senate's role by purporting to identify, nominate and recommend to the 2<sup>nd</sup> respondent to appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondent as Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, were/are irregular, null and void.
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- j) A declaration that the actions of the 2<sup>nd</sup> respondent in re-appointing the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, without following the correct and lawful procedures of shortlisting and interviewing all the applicants who had applied for the said positions were and are null and void ab-initio.
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- k) A declaration that the purported re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, were irregular, illegal, null and void ab initio.
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- l) An order of certiorari does issue quashing the re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, and removing them from the respective offices immediately for having been irregularly and illegally appointed.
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- m) An order directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to desist from ring-fencing the positions of Vice Chancellor and Deputy Vice Chancellor of Soroti University to the 3<sup>rd</sup> and 4<sup>th</sup> respondents, respectively, but instead, allow for inclusive participation of all qualified Ugandans on merit.

- n) An order directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to desist from discriminating against other eligible Ugandans from participating and being considered for the positions of Vice Chancellor and Deputy Vice Chancellor of Soroti University.
- 10 o) An order of certiorari does issue quashing the acts and conduct of the 2<sup>nd</sup> respondent directing or soliciting the 1<sup>st</sup> respondent council to recommend for re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice Chancellor and Deputy Vice Chancellor of Soroti University in total contravention of the law established.
- 15 p) An order of certiorari does issue quashing the illegal and erroneous “legal opinion” of the Solicitor General or the 5<sup>th</sup> respondent that purportedly informed the re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, without complying with the clearly established lawful procedure under the University and Other Tertiary Institutions Act, 2001.
- 20 q) An order declaring the offices of the Vice Chancellor and Deputy Vice Chancellor of Soroti University that are being held illegally by the 3<sup>rd</sup> and 4<sup>th</sup> respondents vacant.
- 25 r) An order of mandamus does issue directing the 1<sup>st</sup> respondent, its agents or persons acting on its behalf to lawfully commence, conduct and conclude the process of appointing a Vice Chancellor and Deputy Vice Chancellor of Soroti University in compliance with the law.
- 30 s) An order of permanent injunction doth issue restraining the 3<sup>rd</sup> and 4<sup>th</sup> respondents from participating in any affair of the 1<sup>st</sup> respondent or holding out as Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively and/ or any activity connected with the

aforementioned offices using the titles of Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, based on the purported irregular and illegal reappointment until they are properly appointed to the said offices in accordance with the law.

- t) An order directing the 3<sup>rd</sup> and 4<sup>th</sup> respondents to refund all monies or funds illegally received by them as Vice Chancellor and Deputy Vice Chancellor of Soroti University, and the same be refunded to the Consolidated Fund.
- u) An order for general, exemplary and punitive damages.
- v) The costs of this application be provided for.

15 2. Grounds:

The grounds of this instant application are set out in the application and anchored in the supporting affidavit deposed by the applicant, but briefly, they are that;

- a) He is a practising educationist, hails from the Teso-sub region and a guardian who helps to meet/pay school dues for some of his relatives, some of whom are enrolled for medicine at the 1<sup>st</sup> respondent and others plan to enroll on science classes, which give him the direct and substantial interest in the smooth, sound running and management of the 1<sup>st</sup> respondent.
- b) The irregular administration of the 1<sup>st</sup> respondent is likely to affect both the current and future generations of scientists in the region and Uganda at large.
- c) From 23-28 November 2014, before the 1<sup>st</sup> respondent was gazetted as a university, the applicant led a delegation of the 3<sup>rd</sup> respondent, 4<sup>th</sup> respondent, Ms. Achimo Ruth Etibot and James Okello - the Task Force Members that had been set up to fast track the establishment of the 1<sup>st</sup> respondent to TKNIKA Basque, Spain for purposes of securing both

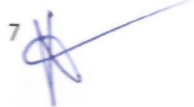
collaboration and funding for the 1<sup>st</sup> respondent, which support or donation the funders withheld because of the uncertainties in the management and administration of the 1<sup>st</sup> respondent.

- 10 d) Upon the commencement of the 1<sup>st</sup> respondent, the applicant noticed grave irregularities in the operations and recruitment of top management positions of the 1<sup>st</sup> respondent, to which he wrote seeking information regarding the recruitment processes of the top management positions but was only given unsatisfactory response in reply to one of the letters written by the applicant's lawyers. (Annexures **C1, C2 and C3; applicant's letter, the letter written by the applicant's**
- 15 **lawyers, and response, respectively**).
- e) The 1<sup>st</sup> respondent was gazetted as a public university on 16<sup>th</sup> July 2015 under Statutory Instrument No. 034 of 2015, and the 1<sup>st</sup> University Council of the 1<sup>st</sup> respondent was constituted and inaugurated on 28<sup>th</sup> July 2017 under the Chairmanship of Mr. F.X. Lubanga. (Annexure D, copy
- 20 of the Statutory Instrument).
- f) The Chairperson of the 1<sup>st</sup> respondent's University Council illegally purported to appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice Chancellor, respectively, of the 1<sup>st</sup> respondent, and they have continued to purportedly hold the said offices
- 25 as such. (**Annexures E1 and E2 of the respective appointments**)
- g) There was no public advert and search committee before the 1<sup>st</sup> respondent's University Council in 2017 purported to appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice Chancellor of the 1<sup>st</sup> respondent.
- 30 h) The applicant is not aware of any application made by the 3<sup>rd</sup> and 4<sup>th</sup> respondents for the positions of Vice Chancellor and Deputy Vice

Chancellor of the 1<sup>st</sup> respondent on which the Chairperson of the 1<sup>st</sup> respondent's University Council purported to appoint them to the respective positions.

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- i) The 3<sup>rd</sup> and 4<sup>th</sup> respondents were members of the Soroti University Task Force that had been set up to fast-track the establishment of the 1<sup>st</sup> respondent, whose mandate expired upon the gazettelement of Soroti University and appointment of the first University Council.
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- j) The 2<sup>nd</sup> respondent was, in accordance with the law, appointed and installed as the inaugural Chancellor of the 1<sup>st</sup> respondent in August 2022 and has since then assumed office; prior to his appointment, the applicant did not know of any other Chancellor of the 1<sup>st</sup> respondent.
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- k) On 25 July 2022, the applicant saw and read a public advert on the website of the New Vision newspaper calling for eligible candidates to apply and fill the vacant positions of Vice Chancellor and Deputy Vice-Chancellor (Administration and Finance of the 1<sup>st</sup> respondent. (Annexure F is a copy of the said Advert).
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- l) The applicant is aware that in the recruitment process for the positions of Vice Chancellor and Deputy Vice Chancellor of public universities, there are always two members from the University Council and three members from the University Senate that are chosen to constitute a Search Committee that identifies suitable candidates.
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- m) The applicant is aware that once suitable candidates for the position of Vice Chancellor have been identified by the Search Committee, the names are forwarded to the University Senate, which nominates three suitable candidates and recommends the same to the University Council, which in turn recommends to the University Chancellor who ultimately appoints the University Vice-Chancellor.

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- 10 n) The applicant as a **person with** experience and having direct interest in the academic **excellence and development** of the 1<sup>st</sup> respondent and as a concerned **guardian and parent**, the 1<sup>st</sup> respondent has never followed any proper procedure in recruiting the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice Chancellor, respectively of the 1<sup>st</sup> respondent.
- 15 o) The applicant is fully aware that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have never held any previous valid appointments for the positions of Vice Chancellor and Deputy Vice-Chancellor (Administration and Finance), respectively, of the 1<sup>st</sup> respondent; hence their purported appointments were/are illegal.
- 20 p) The recent purported re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice-Chancellor (Administration and Finance), respectively, of the 1<sup>st</sup> respondent was in error, there being no valid appointments.
- 25 q) I am aware that in view of the illegalities in the recruitment process, the 1<sup>st</sup> respondent's University Council in its meeting held on 12 August 2022 under Minute 6 CM:19/6/12/08/2022, recommended and forwarded to the 2<sup>nd</sup> respondent, Dr. Fred Kirya and Mr James G. Okello for the appointment to serve in Acting capacity as Acting Vice-Chancellor and Deputy Vice-Chancellor (Finance and Administration), respectively, pending the formal process for the appointment of the substantive office bearers to the respective offices is affected. Annexure G is a copy of the letter written to the 2<sup>nd</sup> respondent
- 30 r) The 2<sup>nd</sup> respondent, by letter dated 15<sup>th</sup> August 2022, solicited the 1<sup>st</sup> respondent's University Council to approve and recommend to him the 3<sup>rd</sup> and 4<sup>th</sup> respondents for the reappointment to the positions of Vice



Chancellor and Deputy Vice Chancellor of Soroti University, contrary to the decision of the 1<sup>st</sup> respondent's council which was irregular and illegal. Annexure H is a copy of the said letter.

- 10 s) The applicant came across and read a legal opinion of the Solicitor General of the 5<sup>th</sup> respondent dated 11 July 2022, insisting that the 1<sup>st</sup> respondent University Council had no powers to appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice-Chancellor (Administration and Finance), respectively, of the 1<sup>st</sup> respondent and that it had no powers to extend the respective Contracts. Annexure I is a copy of the said legal opinion dated 11 July
- 15 2022.
- t) The applicant also came across another conflicting legal opinion of the 5<sup>th</sup> respondent dated 12 August 2022, indicating that a person who had no valid appointment could be re-appointed based on a nullity. Annexure J of the legal opinion dated 12 August 2022
- 20 u) The applicant is aware that the 3<sup>rd</sup> and 4<sup>th</sup> respondents were purportedly re-appointed as substantive Vice Chancellor and Deputy Vice-Chancellor (Administration and Finance) of the 1<sup>st</sup> respondent by the 2<sup>nd</sup> respondent for a further term of five years with effect from 19 August 2022. Annexures K1 and K2 respectively
- 25 v) The applicant is not aware of any applications that were duly submitted by the 3<sup>rd</sup> and 4<sup>th</sup> respondents applying for the re-appointment and under what circumstances the 1<sup>st</sup> respondent's University Council and the 2<sup>nd</sup> respondent purported to exercise the powers to re-appoint them as substantive Vice-Chancellor and Deputy Vice-Chancellor
- 30 (Administration and Finance) of the 1<sup>st</sup> respondent.

w) The applicant is aware that at the time the 2<sup>nd</sup> respondent exercised his powers to re-appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice-Chancellor and Deputy Vice-Chancellor (Admin and Finance) of the 1<sup>st</sup> respondent, the 3<sup>rd</sup> and 4<sup>th</sup> respondents had no valid running contracts to be renewed.

10 x) The applicant as a Senior Lecturer in a public university knows that a public university cannot effectively and properly run without a properly appointed Vice-Chancellor and Deputy Vice-Chancellor, these being key officials in any university.

15 y) There is an urgent need for this Honourable Court's intervention to prevent the only public university in the Teso sub-region to be improperly run by an irregular administration in order to guarantee academic excellence at the institution.

20 z) The continued occupation of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as substantive Vice-Chancellor and Deputy Vice-Chancellor (Admin and Finance) of the 1<sup>st</sup> respondent without any proper appointment is a threat to the existence of the university and any programmes undertaken by them.

### 3. Preliminary Objections:

On the other hand, each of the respondents, through their affidavits in reply (the 1<sup>st</sup> respondent through Abdallah Oyare Shaban, the Deputy University Secretary, the 5<sup>th</sup> respondent through Kahindo Ezira Edwin, a State Attorney in the Attorney  
25 General's Chambers, Soroti Regional Office) and each of the other respondents, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup>, raised objections that cut across the different affidavits with the specific ones being as follows;

30 a) The 5<sup>th</sup> respondent avers that the applicant's affidavit is full of falsehoods and that the respondent shall, at the hearing of the application, cross-examine the applicant on his averments.

- b) The 5<sup>th</sup> respondent (M/s Attorney General's Chambers, Ministry of Justice & Constitutional Affairs), the respondents' lawyers and also the 5<sup>th</sup> respondent shall raise a preliminary point of law that the application is time-barred and that the applicant does not have a direct or sufficient interest to bring the matter before this Honourable Court.
- 10 c) The applicant has never been involved in the establishment, let alone the management of the 1<sup>st</sup> respondent. The 3<sup>rd</sup> and 4<sup>th</sup> respondents state that the donations that the applicant is referring to were from the initiative of the 1<sup>st</sup> respondent headed by the 3<sup>rd</sup> respondent.
- 15 d) The 3<sup>rd</sup> respondent stated that the applicant got involved in the said project requiring support from Tknika-Spain because he had a biological sister, Ruth Achimo Etibot, then working for the 1<sup>st</sup> respondent as University Secretary and accounting officer and that the said funders withheld support on the ground that the 1<sup>st</sup> respondent was not fully established to utilise the said machinery which opportunity the applicant
- 20 wanted to take advantage of.
- e) The 5<sup>th</sup> respondent avers that the appointment of 3<sup>rd</sup> and 4<sup>th</sup> respondents was lawfully done in the interest of operationalising the 1<sup>st</sup> respondent that had been established by an Act of Parliament, and because the said appointments were made in 2017, the applicant is time-barred to
- 25 challenge those appointments.
- f) The 1<sup>st</sup> respondent is a newly established government university in the Teso sub-region under Statutory Instrument No. 34 of 2015.
- g) The 3<sup>rd</sup> and 4<sup>th</sup> respondents were members of the Task Force duly appointed by the Ministry of Education and Sports to carry out the task
- 30 of establishing the 1<sup>st</sup> respondent.

- h) The 3<sup>rd</sup> and 4<sup>th</sup> respondents were assisted by the applicant's biological sister, Ruth Achimo Etibot, who was the University Secretary and Accounting Officer of the 1<sup>st</sup> respondent.
- i) At the time of the appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents, not all the structures or organs for running of the 1<sup>st</sup> respondent were in place.
- 10 j) The 3<sup>rd</sup> and 4<sup>th</sup> respondents were appointed by the 1<sup>st</sup> respondent's council on powers conferred on it to have the 1<sup>st</sup> respondent operational.
- k) The 3<sup>rd</sup> and 4<sup>th</sup> respondents have worked hard to have the 1<sup>st</sup> respondent's administration, infrastructure set up and education programmes accredited by the National Council for High Education and other professional bodies.
- 15 l) The 2<sup>nd</sup> respondent stated that he was appointed by the President of the Republic of Uganda in 2021. (**Instrument of appointment marked as Annexure "A"**) and thereafter installed into office as the 1<sup>st</sup> Chancellor for the 1<sup>st</sup> respondent on 11 August 2022.
- 20 m) The 5<sup>th</sup> respondent states that the 1<sup>st</sup> respondent was advised or guided on the functions/duties of the University Council and the Chancellor in the recruitment process for the positions of Vice Chancellor and Deputy Vice-Chancellor after the operationalisation of the 1<sup>st</sup> respondent.
- n) It is true the adverts for recruitment of the Vice Chancellor and Deputy Vice Chancellor for the 1<sup>st</sup> respondent was run in the media, but they were halted on the advice of the 5<sup>th</sup> respondent, and the 3<sup>rd</sup> and 4<sup>th</sup> respondents were appointed for the 2<sup>nd</sup> term as per the law. (the said appointments are marked as Annexures "B" and "C" respectively, and the opinion of the 5<sup>th</sup> respondent as Annexure "D".)
- 25 o) The halting of the search process for the Vice Chancellor and Deputy Vice Chancellor of the 1<sup>st</sup> respondent and opting for the re-appointment of
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the 3<sup>rd</sup> and 4<sup>th</sup> respondents, respectively, was guided by the legal opinion of the 5<sup>th</sup> respondent, which I verily believe to be true and valid. The said opinions are marked as Annexure "D."

- 10 p) The 2<sup>nd</sup> respondent states that he has previously served as 1<sup>st</sup> Chancellor of Busitema University under similar circumstances where the same practice was applied for the appointment of the Vice Chancellor and Deputy Vice-Chancellor as I had guided the 1<sup>st</sup> respondent (the said letter dated 13<sup>th</sup> August 2022 is Annexure "E")
- 15 q) The 5<sup>th</sup> respondent states that the 1<sup>st</sup> respondent was advised or guided on the functions/duties of the University Council and the Chancellor in the recruitment process for the positions of Vice Chancellor and Deputy Vice-Chancellor after the operationalisation of the 1<sup>st</sup> respondent.
- 20 r) The 1<sup>st</sup> respondent states that the opinion of the 5<sup>th</sup> respondent was lawfully sought before and after the installation of the 2<sup>nd</sup> respondent, and the re-appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents were backed by statute and upon satisfactory performance. (the Minutes of Council and the Evaluation Reports in regard to the said appointments are marked as Annexures "E" and "F", respectively.)
- 25 s) The 5<sup>th</sup> respondent states that their legal advice was with respect to the appointment of the acting Vice Chancellor and Deputy Vice-Chancellor by the Chancellor but not as claimed by the applicant in paragraph 28 of his affidavit in support. (marked as annexure "A" to the affidavit of the 5<sup>th</sup> respondent)
- 30 t) The 5<sup>th</sup> respondent states that the appointment of the Vice Chancellor is governed by the Universities and Other Tertiary Institutions Act, 2011, which provides that the Vice Chancellor or the Deputy Vice-Chancellor

are to be appointed by the Chancellor on the recommendation of the University Council from among three candidates recommended.

10 u) The 5<sup>th</sup> respondent states that the appointing authority of the 1<sup>st</sup> respondent exercised his powers to re-appoint the Vice Chancellor and the Deputy Vice-Chancellor on the recommendation of the University Council based on their appraisal.

v) The 5<sup>th</sup> respondent avers that since the chancellor has powers to appoint a substantive vice chancellor or deputy vice-chancellor, he has the power to reappoint the incumbent for another five years.

15 w) The 5<sup>th</sup> respondent avers that the solicitor general lawfully advised or guided the 1<sup>st</sup> respondent on the appointment of the vice chancellor and deputy vice-chancellor based on the prevailing facts at the time of the request for advice.

20 x) The 5<sup>th</sup> respondent avers that the 1<sup>st</sup> respondent, through its University Council, rightly evaluated the 3<sup>rd</sup> and 4<sup>th</sup> respondents' performance and recommended their appointment in the positions of Vice-Chancellor or the Deputy Vice-Chancellor in accordance with the law (the copy of the ad-hoc committee report on the performance of the 3<sup>rd</sup> and 4<sup>th</sup> respondents is Annexure "B" to the 5<sup>th</sup> respondent's affidavit).

25 y) The 5<sup>th</sup> respondent avers that the reappointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents in the positions of the Vice Chancellor or the Deputy Vice-Chancellor by the 2<sup>nd</sup> respondent was lawful and procedurally right.

30 z) This application is brought in bad faith because when a new public university is established in Uganda, the practice is that the University Council is to devise means for the operationalisation of the university objects.

aa) The applicant is making this application in bad faith, and the application is backed up by personal vendetta against the individuals working for the 1<sup>st</sup> respondent with wallowing fishing expeditions.

10 bb) The 2<sup>nd</sup> respondent avers that the applicant harbours a grudge against the 3<sup>rd</sup> and 4<sup>th</sup> respondents, who are currently witnesses involving a relative of the applicant (the said witness summons all marked as Annexure "H")

cc) The applicant is bringing this application for vengeance against the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents for terminating the services of his son as the Senior Procurement Officer.

15 dd) The 5<sup>th</sup> respondent states that since the appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents in August 2017, the 1<sup>st</sup> respondent has, under their stewardship, among other milestones, inaugurated the admission of students in the academic year 2019/2020.

The applicant rejoined the affidavits in reply, but for brevity as follows;

20 a) That the contents of the affidavit in support of the application and re-affirm that the re-appointments to the positions of the Vice Chancellor or the Deputy Vice-Chancellor of the 1<sup>st</sup> respondent, respectively, were irregular and nullity since they were premised on previous illegal appointments.

25 b) That he was aware that a search committee has never identified suitable candidates, and also, the University Senate has never nominated and recommended to the University Council for purposes of appointment of any person as a Vice-Chancellor or the Deputy Vice-Chancellor of the 1<sup>st</sup> respondent.

30 c) Even if the 3<sup>rd</sup> and 4<sup>th</sup> respondents had been validly appointed as the Vice-Chancellor or the Deputy Vice-Chancellor of the 1<sup>st</sup> respondent, the so-

called Adhoc Committee cannot substitute for a Search Committee and Senate for purposes of identifying and recommending persons for appointment of the Vice Chancellor or the Deputy Vice-Chancellor of the 1<sup>st</sup> respondent.

- 10 d) The Adhoc Committee was not clearly independent, having been chaired by Dr Catherine Omaswa, who is known a known wife of Prof. Francis G. Omaswa, the 2<sup>nd</sup> respondent who is the Chancellor and appointing authority of the office bearers who were the subject matter of evaluation.
- 15 e) There was no provision in the Appointing Instrument issued by His Excellency the President of Uganda appointing the 2<sup>nd</sup> respondent allowing for the ratification of previous illegal appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as the Vice-Chancellor or the Deputy Vice-Chancellor of the 1<sup>st</sup> respondent, respectively.
- 20 f) The applicant does not have a personal vendetta or malice against any respondent, and this is an attempt to cover up for the irregular recruitment of a Vice-Chancellor or the Deputy Vice-Chancellor for the 1<sup>st</sup> respondent.
- 25 g) The application is concerned with the irregular process leading to the illegal re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of the Vice Chancellor or the Deputy Vice-Chancellor of the 1<sup>st</sup> respondent, an act that was done without getting the recommendation both of the Search Committee and Senate.

Abdallah Oyare Shaban, the Deputy University Secretary of the 1<sup>st</sup> respondent, deposed and filed a supplementary affidavit in reply, but for brevity, it states that;

- 30 a) The 3<sup>rd</sup> respondent, through a letter dated 12 May 2022, expressed interest in re-appointment as Vice Chancellor of the 1<sup>st</sup> respondent (Annexure "A" to the supplementary affidavit).



b) The 4<sup>th</sup> respondent, through a letter dated 12 May 2022, expressed interest in re-appointment as Deputy Vice-Chancellor (Finance and Administration) (Annexure "B" to the supplementary affidavit).

The applicant rejoined the Supplementary Affidavit in reply, in brief, that

- 10 a) There were no valid appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice Chancellor of the 1<sup>st</sup> respondent.
- 15 b) As a Senior Lecturer in a public university, the 4<sup>th</sup> respondent was not eligible for any purported re-appointment as he has never held any valid position as Deputy Vice-Chancellor or an associate professor and has no known minimum experience of 10 years in management of tertiary institutions. (Annexure "F" is a copy of the public advert for the position of Deputy Vice-Chancellor (Finance and Administration) detailing the requirements of the position.)
- 20 c) Following the deliberate refusal by the 1<sup>st</sup> respondent to by letter dated 25<sup>th</sup> August 2022 avail me certified copies of an advert upon which the 4<sup>th</sup> respondent acted upon to be appointed University Deputy Vice-Chancellor, the applicant came across minutes of the 1<sup>st</sup> respondent dated 20<sup>th</sup> August 2018 confirming that the 4<sup>th</sup> respondent was not qualified for a purported appointment to the position of University Deputy Vice-Chancellor. (Minutes annexed as "R")
- 25 d) As a senior lecturer in a public university, the applicant is aware and knows that the University Chancellor can only validly appoint a University Vice Chancellor from three candidates identified, vetted and recommended for appointment, which procedure was not applied in the purported
- 30 appointment of the 3<sup>rd</sup> respondent.

e) As a senior lecturer in a public university, the applicant is aware that a Deputy Vice-Chancellor can only be appointed by the University Chancellor from three candidates identified by the search committee, recommended by the University Senate and by the University Council, which procedure was not applied in the purported appointment of the 4<sup>th</sup> respondent.

10 4. Representation:

According to the pleadings, the applicant is represented by M/s Tumwebaze, Kasirye & Co. Advocates. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents are represented by M/s Candia Advocates & Legal Consultants. The 1<sup>st</sup> and 5<sup>th</sup> representatives are represented by M/s Attorney General's Chambers, Ministry of Justice &  
15 Constitutional Affairs, Soroti Regional Office.

5. Submissions:

The parties argued the instant application by written submissions, which I have considered together with the pleadings and annexures thereto. I will, however, only refer to the parts of the submissions that are helpful in the resolution of this  
20 instant application.

The applicant's counsel, in his submissions, suggested the following issues, which I have found appropriate and I accordingly adopt and adjust them for the resolution of the instant cause.

Thus, the following shall suffice for the determination of this application.

25 a) Whether the instant application is amenable to judicial review, and if Yes, whether the process to re-appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice-Chancellor and Deputy Vice-Chancellor (Finance & Administration), respectively of the 1<sup>st</sup> respondent (Soroti University) followed the correct procedure and was arrived at in accordance with the law?

30 b) Whether the applicant is entitled to the remedies sought?

6. Resolution:

The applicant brought this application under Section 33 of the Judicature Act, Cap 13, which enjoins this court with discretion to grant all such remedies either absolutely or on such terms and conditions as it thinks just as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that, as far as possible, all matters in controversy  
10 between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.

This application was also brought under Section 36 of the Judicature Act, Cap 13, which provides for judicial review and states that;

15 Upon application for judicial review, this Court may grant any one or more of the following reliefs in a civil or criminal matter—

- a) an order of mandamus requiring any act to be done;
- b) an order of prohibition prohibiting any proceedings or matter;
- c) an order of certiorari, removing any proceedings or matter into the High  
20 Court;
- d) an injunction to restrain a person from acting in any office in which he or she is not entitled to act;
- e) a declaration or injunction not being an injunction referred to in paragraph (d) of this subsection.

25 2. The Court may, upon any application for judicial review, in addition to or in lieu of any of the reliefs specified in subsection (1), award damages.

3. The High Court may grant an application for a declaration or an injunction under paragraph (e) of subsection (1) if it considers that having regard to—  
the nature of the matters in respect of which relief may be granted by way of an  
30 order of mandamus, prohibition or certiorari;

the nature of the persons and bodies against whom relief may be granted by way of an order referred to in paragraph (a); and all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

- 10 4. On an application for judicial review, as mentioned in subsection (1), any relief may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.
- 15 5. No order of mandamus, prohibition or certiorari shall be made in any case in which the High Court is empowered, by the exercise of the powers of review or revision contained in this or any other enactment, to make an order having the like effect as the order applied for or where the order applied for would be rendered unnecessary.
- 20 6. No return shall be made to any order made under this section, and no pleadings in prohibition shall be allowed and subject to any right of appeal; the order shall be final.
7. An application for judicial review shall be made promptly and, in any case, within three months from the date when the ground of the application arose unless the Court has good reason for extending the period within which the application shall be made.

25 Section 37 of the Judicature Act provides that;

- 1) The High Court may grant an order of mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the High Court to be just or convenient to do so.
- 2) An order may be made under this section unconditionally or on such terms and conditions as the High Court thinks just.
- 30

Section 38 of the Judicature Act provides that:

- 1) The High Court shall have the power to grant an injunction to restrain any person from doing any act as may be specified by the High Court.
- 2) Where an injunction is granted restraining any person from acting in any office in which he or she is not entitled to act, the High Court may  
10 declare the office to be vacant.
- 3) Where before, at or after the hearing of any cause or matter, an application is made for an injunction to prevent a threatened or apprehended waste or trespass, an injunction may be granted if the High Court thinks fit—  
15
  - a) whether or not the person against whom the injunction is sought is in possession under any claim of title or claims a right to do the act sought to be restrained under any colour of title and
  - b) whether the estates claimed by the parties or any of the parties are legal or equitable.

20 Under the Judicature (Judicial Review) Rules, 2009, the pertinent provisions are; **Rules 3(1) (a)** which provides for cases under which applications for judicial review can be made in accordance with the rules, thus, an order of mandamus, prohibition or certiorari.

**Rule 3A** which provides that any person who has a direct or sufficient interest in  
25 a matter may apply for judicial review.

**Section 98 of the Civil Procedure Act** enjoins this court with inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

30

7. Burden and Standard of Proof:

Section 101 of the Evidence Act, Cap 6, provides that;

- 1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.
- 10 2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 102 of the Evidence Act states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

- 15 Also, Section 103 of the Evidence Act provides that the burden of proof as the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person.

This being a civil cause, the burden of proof lies with the applicant (**sections 101 and 102 of the Evidence Act, Cap 6**).

It is, therefore, trite law that the standard of proof in civil cases is on a balance of probabilities (*Nsubuga vs Kawuma [1978] HCB 307*).

After having examined the law under which this cause is anchored to, I now turn to examine it on the basis of the facts and the law and make conclusions accordingly as below.

- a) Whether the instant application is amenable to judicial review, and if Yes, whether the process to re-appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice-Chancellor and Deputy Vice-Chancellor (Finance & Administration), respectively of the 1<sup>st</sup> respondent (Soroti University) followed the correct procedure and was arrived at in accordance with the law?

From the submissions, there are three preliminary points of law raised in regards to this application by the 1<sup>st</sup> and 5<sup>th</sup> respondents. I will first determine them before I resolve the issues formulated and also because the first issue regards the application's amenability to Judicial Review.

From the affidavit in reply, the 5<sup>th</sup> respondent (M/s Attorney General's Chambers, Ministry of Justice & Constitutional Affairs), therein is raised a preliminary point of law that the application is time-barred and that the applicant does not have a direct or sufficient interest to bring the matter before this Honourable Court.

In support of this contention, counsel for the 1<sup>st</sup> and 5<sup>th</sup> respondents' submitted that in a bid to operationalise Soroti University which had been created in 2015, the Soroti University Council under the auspices of section 40 (2) (d) of the Universities and Other Tertiary Institutions Act 2001 appointed the 3<sup>rd</sup> and 4<sup>th</sup> respondents in 2017 as Vice-Chancellor and Deputy Vice-Chancellor respectively for five years as the University could not operate without a Vice Chancellor and and Deputy Vice-Chancellor.

Further, counsel for the 1<sup>st</sup> and 5<sup>th</sup> respondents contended that whereas the applicant was aware of the appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents in 2017 and had even introduced them to various entities and persons as Vice-Chancellor and Deputy Vice-Chancellor of Soroti University, he did not challenge the appointments in 2017 of the 3<sup>rd</sup> and 4<sup>th</sup> respondents anywhere including in the courts of Law.

Counsel further submitted that when the 5-year term of the 3<sup>rd</sup> and 4<sup>th</sup> respondents expired, the Soroti University Chancellor, who had been appointed in 2021 went ahead to renew the appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice Chancellor and Deputy Vice Chancellor, respectively, based on the 3<sup>rd</sup> and 4<sup>th</sup> respondents' expression of interest to serve for a 2<sup>nd</sup> term and after vetting

and recommendations as provided under the Law and Rules/regulations governing Soroti University.

That because the appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents took place in 2017 without the instant applicant challenging the same in any court of law, then the instant application is time-barred.

- 10 To reinforce this preliminary point of law, Counsel contended that while the applicant alleges that since the appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice-Chancellor and Deputy Vice-Chancellor in 2017 was illegal or unlawful then the re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice Chancellor and Deputy Vice Chancellor based on the 2017 appointment, which he also state is unlawful
- 15 then would automatically render this application to be time barred and out of time.

To that end, counsel referred to the **Judicature Act** and the **Judicature (Judicial Review) Rules 2009 (Rule 5(1) of the Rules** which both provide that an application for judicial review shall be made promptly but in any event within three months

20 from the date when the grounds of the application first arose, unless the court for good reason extends the period within which the application is made.

That in the case of *Obol James Henry and 2 others Vs Gulu University and Prof. George Ladaah Openjuru Misc. Cause No. 16 of 2021*, Justice George Okello, when dismissing a similar application for judicial review, referred to section 36(7) of the

25 Judicature Act and indicated that the word “shall” used in the law was mandatory and not directory, meaning that an application for judicial review must be filed within three months from the date when the grounds of the application first arose, unless the court for good reason extends the period within which the application is made.

- 30 Counsel further cited the case of *Muhumuza Ben Vs AG and Others Misc. Cause No. 212 of 2020* where Justice Ssekana Musa held that the court ought not to



consider stale claims by persons who have slept on their rights...any application brought by way of judicial review cannot be entertained if presented after the lapse of a period fixed by limitation legislation.

Counsel argued that in this case since the grounds for this application originates from the appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents in 2017, then the only  
10 remedy available to the instant applicant was the filing of an application seeking leave of court to extend time to file this application for judicial review as time for doing the latter had expired.

Counsel submitted that in the case of *Obol James Henry (cited above)*, Justice George Okello pointed out that where the time for filing an application for judicial  
15 review has expired, there must be a formal application for enlargement of time.

Counsel for the 1<sup>st</sup> and 5<sup>th</sup> respondents thus pointed out that since no application for extension of time was filed by the applicant, then this application offends the provisions of section 36 (7) of the Judicature Act Cap 13 and Rule 5 (1) of the Judicature (Judicial Review) Rules, 2009 given the fact that the pleadings of the  
20 applicant that are before this Honourable Court clearly show that the applicant anchors his grievances to the 1<sup>st</sup> appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents in 2017 which came to court after 61 months and 17 days from the date when the grounds of the application first arose which is contrary to the provision of Rule 5 (1) of the Judicature (Judicial Review) Rules, 2009.

25 In conclusion, Counsel for the 1<sup>st</sup> and 5<sup>th</sup> respondents contended that since the cause of action arose on 15<sup>th</sup> August 2017, then the three months within which to file an application for judicial review had lapsed on 15<sup>th</sup> November 2017 and because this application was filed in Court on the 20<sup>th</sup> October 2022 without the leave of court enlarging time to file the application for Judicial Review, then the  
30 application is incompetent and ought to be struck out with costs to the

respondents because of being time-barred and is not compliant with Rule 5 (1) of the Judicature (Judicial Review) Rules 2009.

The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents, in their submissions in reply through their counsel, associated themselves with the above submission of the 1<sup>st</sup> and 5<sup>th</sup> respondents on the preliminary points of law but added that the applicant  
10 presupposes that he is challenging the re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice-Chancellor (VC) and Deputy Vice-Chancellor (Finance and Administration) (DVC -FA), respectively of the 1<sup>st</sup> respondent by the 2<sup>nd</sup> respondent but he is by the nature of his application, challenging the initial  
15 appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice-Chancellor (VC) and Deputy Vice-Chancellor (Finance and Administration) (DVC -FA), respectively which was in 2017.

Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents further submitted that the instant application was premised on the 1<sup>st</sup> respondent's university council's appointment and then the re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice-  
20 Chancellor (VC) and Deputy Vice-Chancellor (Finance and Administration) (DVC -FA), respectively, on powers conferred upon the said council and the Chancellor to operationalise the establishment of the 1<sup>st</sup> respondent which happened in year 2017 as per the paragraphs 7 and 8 (a-e) of the affidavits in reply of the 3<sup>rd</sup> and 4<sup>th</sup> respondents.

25 Counsel added that the process of establishment of the 1<sup>st</sup> respondent under the law had started in 2014, and the 3<sup>rd</sup> and 4<sup>th</sup> respondents were part of the task force that established the 1<sup>st</sup> respondent in 2015 and that their first appointment was anchored on the legal regime establishing the university for a period of five years.

30 That the 2<sup>nd</sup> respondent was appointed on 26 April 2021, and he reappointed the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice-Chancellor (VC) and Deputy Vice-Chancellor

5 (Finance and Administration) (DVC -FA), respectively of the 1<sup>st</sup> respondent on the basis of their successful service of their first term leading to the establishment of the 1<sup>st</sup> respondent and on the advice of the 5<sup>th</sup> respondent and upon the recommendation by the 1<sup>st</sup> respondent's Council that the 3<sup>rd</sup> and 4<sup>th</sup> respondents serve their second and last term.

10 Counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents contended that this application is barred by the law of limitation as raised by the 3<sup>rd</sup> and 4<sup>th</sup> respondents' affidavits in reply (paragraphs 2 respectively) because the application offends Rule 5((1) of the Judicature (Judicial Review) Rules, 2009 which implies that the application ought to have been filed promptly (that is as soon as the grounds for the  
15 application arose) and if it had not been filed immediately, then it should have been filed within three months from the date when the grounds of the application arose but that should not have exceeded three months from the date when the grounds arose.

That when the three months did elapse, the court would have been moved by  
20 way of an application to may extend the three months' time upon the applicant providing satisfactory, sufficient and good cause thereof.

Counsel then contended that since none of these was not done and since the applicant admitted in his affidavit in support under paragraphs 13, 14 and 15 the fact that the 1<sup>st</sup> appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents happened on 15  
25 August 2017 (Annexures E1 and E2) and even during cross-examination that he did not challenge the said appointment during 2017 which he did not withdraw even during re-examination, then the instant application challenging the 3<sup>rd</sup> and 4<sup>th</sup> respondents' appointment in 2017 which was brought after 61 months and 17 days from the date when the grounds of the application first arose, should be  
30 found to be time barred and in total abuse and contravention of Rule 5(1). Counsel submitted that the time stipulated in Rule 5(1) is not a sword but rather

to strike a balance in the protection of the rights of diligent and aggrieved litigants while promoting the proper administration and settlement of matters of public interest.

In reply to the preliminary objections raised by the respondents on the issue of time limitation of the instant application, counsel for the applicant reiterated his  
10 earlier submissions that the re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents on 19<sup>th</sup> August 2022 by the 2<sup>nd</sup> respondent to the respective positions of Vice-Chancellor (VC) and Deputy Vice-Chancellor (Finance and Administration) (DVC - FA), respectively of the 1<sup>st</sup> respondent is illegal because to him there can be no renewal of a non-existing or illegal appointment.

15 Counsel contended that the illegal re-appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents by the 2<sup>nd</sup> respondent through collusions with the other respondents was made on 19<sup>th</sup> August 2022 by the 2<sup>nd</sup> respondent, and the instant application was filed on 20<sup>th</sup> October 2022 promptly within two months and one day within the required time of three months under Rule 5(1) of the Judicature (Judicial Review)  
20 Rules, 2009.

Counsel for the applicant asserts that the conduct or the decision of the 2<sup>nd</sup> respondent to re-appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the respective offices in the renewal of the illegal or void appointment dated 15<sup>th</sup> August 2017 in the alleged exercise of the statutory powers of appointment was executed on 19<sup>th</sup>  
25 August 2022 as such the issues of its legality, rationality and propriety of the exercise of statutory powers of appointment and legality of the renewed appointments only arose in August 2022, and the instant application was filed within the required time because to counsel, it defeats logic and understanding how the purported exercise of the 2<sup>nd</sup> respondent's power of appointment could  
30 be pursued before this court when the 2<sup>nd</sup> respondent assumed office on 11<sup>th</sup> August 2022.

Counsel contends that the flouting and infraction of clear rules of reappointment of the Vice Chancellor and Deputy Vice-Chancellor by the respondents through the solicitation of the names of the 3<sup>rd</sup> and 4<sup>th</sup> respondents by the 2<sup>nd</sup> respondent for the purported reappointment as VC and DVC – FA of the 1<sup>st</sup> respondent and concocted ad-hoc committee evaluation report happened in August 2022.

10 Counsel contends that the impugned illegal and erroneous legal opinion of the 5<sup>th</sup> respondent communicated in Annexures C3 and J was issued on 1<sup>st</sup> September 2022 and 12<sup>th</sup> August 2022, and the instant application was lodged on 20<sup>th</sup> October, which is within the prescribed time.

Counsel averred and contended that any appointment into a public office made  
15 in infraction of clearly laid down statutory procedures of recruitment, as is the case with the 3<sup>rd</sup> and 4<sup>th</sup> respondents, is a nullity, *void ab initio*, and is non-existent.

In rejoinder, the 1<sup>st</sup> and 5<sup>th</sup> respondents through their counsel reiterated their earlier submissions in reply but chiefly that the application before the court is not  
20 as alleged in the submissions of the applicant in rejoinder because to counsel, the applicant in the application alleges that since the appointments of the applicant in 2017 were unlawful, the reappointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents as VC and DVC -FA respectively of the 1<sup>st</sup> respondent was unlawful.

He cited the case of *Obol James Henry and 2 others vs Gulu University and Prof. George Ladaah Openjuru Misc. Cause No. 16 of 2021* where Justice George Okello  
25 when dismissing the application for judicial review referred to Section 36(7) of the Judicature Act and indicated that the word “shall” therein is peremptory and not directory, considering the purpose of the provisions dealing with judicial review... matters which are amenable for judicial review, therefore ought to be  
30 challenged without delay ... to which the Justice found that the three months

5 period provided for lodgement of judicial review matters is mandatory and not directory.

Counsel for the 1<sup>st</sup> and 5<sup>th</sup> respondents submits that the 3<sup>rd</sup> and 4<sup>th</sup> respondents were appointed for a five-year term as VC and DVC -FA, respectively, of the 1<sup>st</sup> respondent in 2017 which is a fact within the knowledge of the applicant and  
10 partly contained in the applicant's affidavit in support under paragraphs 13 to 23. Counsel asserts that it is now over five years since the 3<sup>rd</sup> and 4<sup>th</sup> respondents were appointed, and the applicant filed an application for judicial review challenging the appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents in 2022, which offends Section 36(7) of the Judicature Act and Rule 5(1) of the Judicature  
15 (Judicial Review), Rules, 2009.

The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents, through their counsel, re-joined on the preliminary objection and reiterated that the grounds for judicial review of the application before the court arose in 2017 when the 3<sup>rd</sup> and 4<sup>th</sup> respondents were first appointed and that the applicant was grossly misled to believe that he can  
20 challenge the reappointment when he did not challenge the 1<sup>st</sup> appointment. Counsel added that the applicant is in paragraph 13 of his affidavit in support adducing evidence, Annexures E1 and E2, which are instruments of appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents in 2017, so it isn't the issue of reappointment *per se*, but the appointment is the foundation of the reappointment which cannot be  
25 divorced. Counsel contends that the applicant's right to sue the 3<sup>rd</sup> and 4<sup>th</sup> respondents was, by law, supposed to be done in 2017.

Court's determination:

From the submissions, there are a number of preliminary objections raised by either through submissions as well as own through the affidavits.

5 That raised counsel for the applicant in his reply to the preliminary objections, contends that the affidavit in reply of the 5<sup>th</sup> respondent should be expunged off the record for having been filed later than the schedules given by the court.

In arguing that the action of expunging off the record of the affidavit in reply of the 5<sup>th</sup> respondent be done, Counsel for the applicant contended that the  
10 evidence on the court record indicates that all the respondents were served on 27<sup>th</sup> October 2022 with the instant application, including the 5<sup>th</sup> respondent with the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents filing their replies on 10<sup>th</sup> November 2022.

That since applicant's affidavit in rejoinder was filed on 23<sup>rd</sup> November 2022, the reply of the 5<sup>th</sup> respondent was smuggled on to the court record to show that it  
15 was filed also on 23<sup>rd</sup> November 2022 yet actually it was filed after the applicant had filed his rejoinders to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents' affidavits in reply.

That given that position then the 5<sup>th</sup> respondent reply was not validly filed before the court and as such should struck off the record after being considered illegal. In reply, counsel for the 5<sup>th</sup> respondent submitted that there is no evidence on  
20 the court record to show that the 5<sup>th</sup> respondent was served with the application on 27<sup>th</sup> October 2022 because counsel for the applicant has not made any reference to the affidavit of service indicating that the 5<sup>th</sup> respondent was served with the application on 27<sup>th</sup> October 2022.

Counsel for the 5<sup>th</sup> respondent also averred that since affidavits are a way of  
25 giving evidence to court other than by giving oral evidence, time constraints applied to defences may be misplaced when applied to affidavits.

The perusal of the record show that there is an affidavit of service dated 30<sup>th</sup> October 2022 which was filed in court on the same day deposed by one Akurut Rose in which she mentions that she was given a Notice of Motion to serve on  
30 the 5<sup>th</sup> respondent but she does not mention how she served the 5<sup>th</sup> respondent. No materials, particulars is contained therein showing how service was actually

5 effected and in my considered view such laxity casts doubt in my mind as to whether indeed any service was actually effected on the 5<sup>th</sup> respondent as per the law.

This, my position, is fortified by holding in *Dr Lam Lagoro James versus Muni University HCMC No. 007 of 2016*, where it was observed that an affidavit in reply,  
10 being evidence rather than a pleading, should be filed and served on the adverse party within a reasonable time before the date fixed for hearing, time sufficient to allow the adverse party a fair opportunity to respond.

That being the case, it is my finding that since the applicant did not discharge the burden of proof that indeed the 5<sup>th</sup> respondent was served with the application  
15 since the affidavit of service is devoid of any material particulars showing how such a service was actually effected, then for that reason, I would find that the 5<sup>th</sup> respondent's affidavit is valid on the court record.

In relations to the preliminary points of law raised by the respondents, in their pleadings and also in the submissions through their respective counsel, I note  
20 that they are three and they deal with the application being time-barred and offensive to the law applicable, the applicant lacking locus and the affidavit in support of the motion being bridled with prolixity and being argumentative offending Order 19 rule 2 of the Civil Procedure Rules.

I will first determine the preliminary point of law relating to the fact that this  
25 application is time-barred and thus offends Section 36(7) of the Judicature Act and Rule 5(1) of the Judicature (Judicial Review) Rules, 2009.

According to the **Black Laws Dictionary 8<sup>th</sup> Edition at page 864**, Judicial Review is the power of a court to review the decisions and or actions of other branches or levels of government, especially the court's power to invalidate legislative and  
30 executive actions as being unconstitutional. Also, it is a form of appeal from an



5 administrative body to the courts for review of either the findings of fact, or of law, or of both.

Pursuant to Section 36 (1) (a, c, d and e) of the Judicature Act, Cap 13,

The High Court may, upon application for judicial review, grant any one or more of the following reliefs in a civil or criminal matter; an order of mandamus requiring  
10 any act to be done; an order of certiorari; removing any proceedings or matter into the High Court; an injunction to restrain a person from acting in any office in which he or she is not entitled to act; and a declaration or injunction not being an injunction referred to in paragraph (d) of this subsection.

In the case of *Erias Lukwago vs Attorney General HCMC No. 281 of 2013*, Judicial  
15 Review was defined as the process by which the High Court exercises its supervisory jurisdiction over proceedings and decisions of inferior courts, tribunals and other bodies or persons who carry out quasi-judicial functions or who are engaged in the performance of public acts and duties.

Since Judicial Review is not concerned with a decision *per se* but with the  
20 decision-making process then this court cannot thus determine whether the decisions complained of in the instant application were right or wrong on their merits but only reserve its determination on the process that led to the decision. Further, it should be borne in mind that Judicial Review is concerned not with the private rights or the merits of the decision being challenged but with the decision-  
25 making process. Its purpose is to ensure that an individual is given fair treatment by the authority to which he is being subjected.

Rule 7A (1) and (2) of the Judicature (Judicial Review) (Amendment) Rules, 2019 enjoins this court to consider the following factors in handling the instant application; these are;

- 30 a. That the application is amenable under Judicial review

b. That the aggrieved person has exhausted the existing remedies available within the public body or under the law

c. That the matter involves an administrative public body or official.

In their 1<sup>st</sup> preliminary point of law, the respondents contend that the instant application is time-barred and is offensive to Section 36(7) of the Judicature Act and Rule 5(1) of the Judicature (Judicial Review), Rules, 2009.

Section 36 (7) of the Judicature Act, Cap 13, provides that;

**An application for judicial review shall be made promptly and, in any case, within three months from the date when the ground of the application arose unless the Court has good reason for extending the period within which the application shall be made.**

Rule 5(1) of the Judicature (Judicial Review) Rules 2009 provides that;

**An application for judicial review shall be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made and by effect.** (Emphasis added).

It is the contention of the respondents in their pleadings and in their submissions that the instant application originates itself from the initial appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice Chancellor Finance and Academics respectively of the 1<sup>st</sup> respondent which were done in 2017 and that the argument that it is only the reappointments that are in question is contrary to the pleadings of the applicant as he seeks the court to review the 2022 reappointments which he considers as unlawful because they originate from an unlawful 2017 appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice Chancellor Finance and Academics respectively of the 1<sup>st</sup> respondent.

5 On the other hand, Counsel for the applicant contends that the instant application is only founded on the re-appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents on 19<sup>th</sup> August 2022 by the 2<sup>nd</sup> respondent to the respective positions of Vice-Chancellor (VC) and Deputy Vice-Chancellor (Finance and Administration) (DVC - FA), respectively of the 1<sup>st</sup> respondent, and that was what is illegal because to  
10 him there can be no renewal of a non-existing or illegal appointment, among others and since the instant application was filed promptly on 20<sup>th</sup> October 2022 within two months and one day of the required time of three months under Rule 5(1) of the Judicature (Judicial Review) Rules, 2009, then it should be found to not be time barred.

15 In the instant application, the pleadings, the submissions, affidavit in support and rejoinder, affidavit in reply and the attachments all show that the applicant before the court is challenging the process through which the 3<sup>rd</sup> and 4<sup>th</sup> respondents are currently occupying the public offices of Vice-Chancellor and Deputy Vice-Chancellor (Administration and Finance) of Soroti University, which  
20 counsel contends that it is premised on undisputed facts that the mandated statutory search committee has never been constituted to identify and screen the names of at least three eligible and suitable candidates from which the University Chancellor could validly exercise his powers of appointment or reappointment under Sections 31(2)(3)(4) and 32(1) of the Universities and Other  
25 Tertiary Institutions Act, No.7 of 2001 as amended to lawfully fill the respective existing vacant offices, and the purported reappointment were premised on illegal instruments of appointment.

As can also be deduced from the submissions of the applicant, counsel contends that the purported reappointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions  
30 of Vice Chancellor and Deputy Vice-Chancellor (Finance and administration), respectively, of Soroti University is illegal, irrational and *void ab initio* as there



5 were no valid appointments warranting any reappointment, no search committee has ever been constituted to identify the required minimum of three candidates for the 2<sup>nd</sup> respondent to exercise any lawful appointment to the respective offices.

In dealing with this matter, I must first remind parties herein that they are bound  
10 by their pleadings.

In this application, the applicant in the affidavit in support of the notice of motion avers and states the following;

- 15 - *"The Chairperson of the 1<sup>st</sup> respondent's University Council illegally purported to appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice Chancellor, respectively, of the 1<sup>st</sup> respondent, and they have continued to purportedly hold the said offices as such. (Annexures E1 and E2 of the respective appointments).*
  
- 20 - *There was no public advert and search committee before the 1<sup>st</sup> respondent's University Council in 2017 purported to appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions of Vice Chancellor and Deputy Vice Chancellor of the 1st respondent.*
  
- 25 - *The applicant is not aware of any application made by the 3<sup>rd</sup> and 4<sup>th</sup> respondents for the positions of Vice Chancellor and Deputy Vice Chancellor of the 1<sup>st</sup> respondent on which the Chairperson of the 1<sup>st</sup> respondent's University Council purported to appoint them to the respective positions*

30

5           - *The applicant is fully aware that the 3<sup>rd</sup> and 4<sup>th</sup> respondents have never held any previous valid appointments for the positions of Vice Chancellor and Deputy Vice-Chancellor (Administration and Finance), respectively, of the 1<sup>st</sup> respondent; hence, their purported appointments were/are illegal."*

10           Also from the declarations and orders sought by the applicant from this court; the following is deduced;

15           a) *A declaration that the 1<sup>st</sup> respondent's Chairperson of the University Council did not have any legal mandate to appoint the 3<sup>rd</sup> and 4<sup>th</sup> respondents as Vice Chancellor and Deputy Vice Chancellor of the 1<sup>st</sup> Respondent since such authority is vested under the law upon the Chancellor who then had not been appointed and such appointment was null and void.*

20           b) *A declaration that the 3<sup>rd</sup> and 4<sup>th</sup> respondents, having been handpicked to occupy key positions at the University without following due process, have as such never held any valid appointment for positions of Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively.*

25           c) *A declaration that the purported expired contracts of appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the positions as Vice Chancellor and Deputy Vice Chancellor of Soroti University, respectively, were irregular, illegal, null and void.*

          d) *An order directing the 3<sup>rd</sup> and 4<sup>th</sup> respondents to refund all monies or funds illegally received by them as Vice Chancellor and Deputy Vice Chancellor of Soroti University, and the same be refunded to the Consolidated Fund.*

30           Further, during the cross-examination of the applicant, he was very categorical and evidently clear that the appointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents' in 2017 as illegal and unlawful because there was no Chancellor at the time they were

5 initially appointed and also that during their appointments in 2017, the provision of the law under Universities and Other Tertiary Institutions Act, 2001 were not followed initially and also the subsequent reappointment, the applicant concluded that they were illegal occupants of those offices. He kept making references to the 2017 appointments.

10 When asked why the applicant did not challenge the 3<sup>rd</sup> and 4<sup>th</sup> defendants being in office in 2017, he testified that he did not do so as he had discussions with them, and they told him that they were going to regularise their appointment. In re-examination, the applicant also testified that the respondents did not follow the procedure.

15 As already mentioned above, it is a requirement of the that an application for Judicial Review must be made within 90 days of the decision being made as provided by Section 36 (7) of the Judicature Act, Cap 13, which provides that;  
*An application for judicial review shall be made promptly and, in any case, within three months from the date when the ground of the application arose unless the*  
20 *Court has good reason for extending the period within which the application shall be made.*

The provisions of Section 36 (7) of the Judicature Act, Cap 13 is further amplified by Rule 5(1) of the Judicature (Judicial Review) Rules 2009 provides that;  
*An application for judicial review shall be made promptly and in any event within*  
25 *three months from the date when the grounds of the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made and by effect.*

From the pleadings, it is evident that the applicant seeks this court to review the process undertaken on appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to the  
30 respective positions of Vice-Chancellor and Deputy Vice-Chancellor (Finance and Administration) of the 1<sup>st</sup> respondent in 2017 which the applicant and his

5 counsels evidently brand as illegal, unlawful. The applicant also seeks declarations and orders from this court in that regard.

According to the Online Web Dictionary, the word appointment is defined as employment, engagement, place, office or station. A person appointed to a job or position. The synonyms of appointment are; nomination, naming, designation, 10 designating, installation.

From the above definition, where one insists that he or she is only dealing with the act of reappointment, I would find it difficult to sever such from appointment as the applicant would want this honourable court to believe for how would a re-appointment come if not based on an appointment?

15 It would be illogical for one to determine a "re-appointment process" without reference to an appointment, which in the instant case was done in of 2017 for from even the pleadings herein, the same is the backbone of the pleadings in this matter and the basis upon which the impugned re-appointment was made.

Even were the court to confine itself and consider ation the issue of re- 20 appointment alone, some of the declarations sought by the applicant in paragraphs (a) and (b) of this application alone are clearly referencing to the appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents, which outcome this application seeks.

The applicant by his pleading clearly combines events/ processes which 25 happened in 2017 and with the subsequent ones of August 2022.

In this regard, I find myself persuaded by the argument of the respondents that Rule 5(1) of the Rule 5(1) of the Judicature (Judicial Review) Rules 2009 is the applicable law here and it only gives the applicant three months' period within which to make an application such as the instant one yet that is no so the case 30 herein.

5 That alone would make this application time barred given the fact that judicial review deals with processes not the decision itself.

Given the fact that this application is in regard to a process which started in 2017 but was filed in 2022, which is several years beyond the three months' cap that is provided for one to legally challenge a decision of a public body, then the  
10 default provision of the law of first applying to the court for an extension of time beyond the three months provided by the law before bringing this application would have been the proper step to take.

Since that is not the case herein and the applicant has not adduced any evidence to prove that he had or has applied for an extension of time or that the  
15 application was made within three months, then this application by virtue of its questioning the process of reappointment, which arise from the appointment of the 3<sup>rd</sup> and 4<sup>th</sup> respondents, clearly would be out of time.

Accordingly, it is my finding that this application having been made after over five years from 2017 when the process alluded to begin when the 3<sup>rd</sup> and 4<sup>th</sup>  
20 respondents were appointed and the subsequently re-appointment of 2022, is in in contravention of Rule 5(1) of the Judicature (Judicial Review), Rules and Section 36(7) of the Judicature Act.

As was ably confirmed by my Learned Brother Justice George Okello in *Obol James Henry and 2 others Vs Gulu University and Prof. George Ladaah Openjuru Misc.*  
25 *Cause No. 16 of 2021*, which I do associate myself with, by section 36 (7) of the Judicature Act using the word "shall" as contained in the law therein, it is mandatory and not directory for matters which are amenable for judicial review to be challenged within the three months period provided by the law unless the Court has for good reason, through a prior application, extended such period  
30 within which an application must be made, which is not proved here.



5 Compellingly, since the law provide clear timelines for filing matters in the purvey for Judicial Review or the seeking of extension of time to file such an application when the time line has expired, then I would find that this application is wont of either requirements and thus offends the law.

This is because the applicant would wish this Honourable Court as seen from his  
10 pleadings to inquire into the process of the reappointments of the 3<sup>rd</sup> and 4<sup>th</sup> respondents in 2022 yet that act forms part and parcel of a process which began in 2017.

That being the case, I would find that this application did not comply with the law and is thus clearly time barred. This preliminary objection is therefore upheld.

15 Having concluded as above, I do not find necessary to proceed with the determination of the other two preliminary objections because this instant preliminary point of law on this application being time barred disposes in the whole the whole application itself on its own as the applicant has failed to comply with the provisions of Rule 5(1) of the Judicature (Judicial Review) Rules, 2009  
20 which provides that an application of this nature must be filed promptly within three months from the date of the cause of action arising or that it can be filed only after leave to file out of time has previously been granted where the cause of action is outside the prescribed time.

Arising from my conclusions in regard to the 1<sup>st</sup> preliminary objection, I would  
25 accordingly dismiss this application for being time barred.

8. Conclusion:

The respondents prayed that this application be struck out with costs to the them.

Accordingly, since I have found that the instant application ought to either have  
30 been filed within three months from the date the appointments in 2017 such that the reappointments in 2022 has a backbone from whence it arises; orwhere that

5 had failed, then the applicant should have filed an application for extension of  
time in order to comply with the provisions of Rule 7A (1) and (2) of the Judicature  
(Judicial Review) (Amendment) Rules, 2019 and Section 36 (1) (a, c, d and e) of  
the Judicature Act, Cap 13.  
Since applicant did not comply with the provisions of the law, then this  
10 application is dismissed with costs to the respondents.  
I so order.



15

.....  
Hon. Justice Dr Henry Peter Adonyo

Judge

10<sup>th</sup> October 2023