

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.0855 OF 2022

5 **(Arising from Civil Appeal No.73 of 2018)**

**(Arising out of Entebbe Chief Magistrates Court Civil Suit No.201 of
2011)**

1. KIGEMUZI DEO

2. SEKITENDE JOSEPH

10 **3. BIRYINZI GRACE**

4. JOHN BOSCO MULINDWA

5. SEMYALO PETER

6. MUSOKE RONALD:.....:APPLICANTS

15 **VERSUS**

1. DEOGRATIOUS MANDE

2. BAGAMUHUNDA MATENDO PATRICK

3. BIRUNGI ANN BAGAMUHUNDA

4. JEREMIAH K. MUDDUKAKI MUSOKE

20 **5. KIWALABYE FRED:.....:RESPONDENTS**

Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

25 The applicants brought this application under the provisions of **Section 33 of the Judicature Act cap. 13, Section 98 of the Civil Procedure Act cap.98 and Order 43 rule 18 of the Civil Procedure Rules SI 71-1**, seeking



orders that the *ex-parte* judgment and decree in **Civil Appeal No.73 of 2018** be set aside and the appeal be reheard.

It also seeks that the costs of this application be provided for.

Grounds of the application:

5 The grounds upon which this application is premised are contained in the affidavit in support of **Mr. Semyalo Patrick**, the 5th applicant who stated *inter alia* that while the applicants were the successful parties in **Civil Suit No.201 of 2011**, they were never served with the memorandum of appeal or the directives of this court and that they only came to learn of the existence of the
10 appeal when the area local chairperson was served with a taxation hearing notice.

That when the applicants' lawyers perused the court record, they discovered that the memorandum of appeal, directives and hearing notices were served on **M/s Byamugisha Lubega Ochieng** yet neither the firm nor Counsel Isiko
15 Timothy, the applicants' former lawyer had instructions to represent the applicants in the said appeal.

That because the appeal was not communicated to the applicants, they were condemned unheard without being afforded a chance to be heard. That the judgment of this court has the effect of dispossessing the applicants of their
20 property and that this court has powers to grant the prayers sought herein as long as the applicants satisfy court that they were prevented from attending court by sufficient cause.

Respondent's reply:

The 2nd respondent, Mr. Bagumuhunda Matendo Patrick opposed the
25 application through his affidavit in reply wherein he states that the affidavit in support of the application is riddled with falsehoods.

That while it is true that the applicants were the victorious parties in **Civil Suit No.201 of 2011**, it is not true that they were never served with the memorandum of appeal, directives and hearing notices of the appeal because

