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THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 10 OF 2017

(CORAM:ARACH-AMOKO, MWANGUSYA, OPIO-AWERI, MWONDHA, TIBATEMWA-EKIRIKUBINZA, JJSC)

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BETWEEN

**1. MUBEEZI JAMES
2. NTUNGIRE STEVEN APPELLANTS
3. MISAKI KAVIIGI**

15

AND

**KASULE SAMUEL
RESPONDENT**

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DECISION OF COURT

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The appeal before us was heard on 3rd October 2017. In the course of writing the judgment and on perusal of the Court record, this Court discovered irregularities regarding the filing and cause listing of the appeal. We herein below set out a chronology of events highlighting these anomalies.

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The respondent lodged an application in this Court vide **Supreme Court Miscellaneous Application No. 24 of 2015** for orders that the Notice of Appeal filed by the appellants be struck out for being served out of time. The application was heard by Justices: Katureebe, CJ; Nshimye, Mwangusya, Mwendha and Tibatemwa-Ekirikubinza. The Court found that there was no plausible explanation given for not serving the Notice of Appeal on the applicant’s lawyers within the prescribed time. Furthermore, the

Court found that the appellants did not apply for extension of time to remedy the late service of the Notice of Appeal. The Court held in favour of the Applicant (**current respondent**) and struck out the Notice of Appeal filed by the appellants together with the
5 appeal.

On 13/9/2017, the current second appellant - Ntungire Steven - filed **Supreme Court Miscellaneous Application No. 24 of 2017** for stay of execution of the orders of Court in the ruling that struck out the Notice of Appeal and the appeal. This Miscellaneous
10 Application for stay of execution came up for mention at the pre-hearing conference before a single justice. At the pre-hearing, Counsel appearing for the applicant informed court that:

(i) He had previously filed Civil Application No. 18 of 2015 on behalf of the applicant and others in this court.

15 (ii) That the applicant had also applied for an interim order vide No. 15 of 2017, an application for stay of execution vide No. 24 of 2017, and an application for extension of time vide No. 19 of 2017.

Furthermore, counsel informed court that the respondent's
20 counsel had conceded to all the above applications and agreed to file a consent order in Court setting out the above terms.

Counsel concluded by praying that the appeal be fixed for hearing on the 3rd or 4th of October 2017.

In reply to the above submission, Counsel for the respondent
25 informed court that he together with the applicant's counsel had agreed to file a consent order in court. He however sought guidance from the Court whether the validation of the Notice of Appeal and Memorandum of Appeal will have an effect on the 1st and 3rd appellants.

30 Counsel for the applicant clarified that Miscellaneous Application No. 24 of 2017 was filed in respect to only Steven Ntungire.

Counsel for the respondent then stated: *“I have discussed with the applicant and he says he makes the application then the others will join if he succeeds.”*

5 Court then ordered that the consent order be presented to the Court for endorsement and that the hearing of the appeal be fixed for 3rd October 2017.

Consequently, the second appellant -Ntungire Steven- filed **Supreme Court Miscellaneous Application No. 19 of 2017** for:

- 10 (a) extension of time within which to file and serve a Notice of Appeal against the decision of the Court of Appeal No. 49 of 2012; and
- (b) in the alternative validation of the applicant’s Notice and Memorandum of Appeal and the Record of Appeal which
15 was already filed in court on 4/12/2015 as Civil appeal No. 18 of 2015.

In addition, the second appellant- **Ntungire Steven** also filed **Supreme Court Miscellaneous Application No. 25 of 2017** (arising from Civil Application No. 24 of 2017) (itself arising from
20 Civil Application No. 19 of 2017)(arising from Civil Application No. 18 of 2015) for -

- (a) An interim order of stay of execution of the orders of the Court of Appeal in Civil Appeal No .49 of 2012.

25 On 7/9/2017, Counsel filed the consent order vide **Miscellaneous Application No. 19 of 2017**. The consent order indicated that both the applicant’s and respondent counsel consented to have the time within which to file and serve the Notice of Appeal extended. Furthermore, that the costs of the application be in the main appeal.

On 13th September 2017, the consent order was endorsed by a single Judge.

We are alive to the fact that a full bench had earlier on delivered a decision striking out the appeal and the said Notice of Appeal.

5 We find it irregular for parties to consent on a matter already determined by the Court. It follows that the orders contained in the consent and endorsed by the single judge could not overturn the orders of the full bench. Civil Appeal No.10 of 2017 is a disguised attempt to have the appeal heard despite the fact that
10 it had been struck out.

We hereby dismiss Civil Appeal No. 10 of 2017 as having been incompetently placed before this Court. We make no order as to costs.

15 Dated at Kampala the ...21st... day ofMay..... 2018.

.....
20 **HON. JUSTICE STELLA ARACH-AMOKO,**
JUSTICE OF THE SUPREME COURT.

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25 **HON. JUSTICE ELDAD MWANGUSYA,**
JUSTICE OF THE SUPREME COURT.

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.....
HON. JUSTICE RUBBY OPIO-AWERI,

JUSTICE OF THE SUPREME COURT.

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**HON. JUSTICE FAITH MWONDHA,
JUSTICE OF THE SUPREME COURT.**

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**HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA,
JUSTICE OF THE SUPREME COURT.**

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Final, delivered on 21.5.18