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THE REPUBLIC OF UGANDA,

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: TIBATEMWA – EKIRIKUBINZA, TUHAISE & MADRAMA, JJSC)

CIVIL REFERENCE NO 04 OF 2023

HERMAN SSEMAKULA} APPELLANT

10

VERSUS

IVAN ASIIMWE}RESPONDENT

(Reference of the Ruling of Hon. Justice Mike Chibita JSC dated 14th April 2023 in Miscellaneous Applications Nos 16 & 18 of 2022)

RULING OF COURT

15 The appellant made this reference from the decision of Hon Justice Mike Chibita (JSC), sitting as a single Justice in consolidated Applications Nos 16 and 18 of 2022 wherein the learned single Justice of the Supreme Court in Civil Application No 16 of 2022 brought by the respondent, Mr. Ivan Asiimwe struck out the appellant's appeal and dismissed the appellant's application
20 in Civil Application No 18 of 2022 for extension of time to validate the Memorandum and Record of Appeal which had been filed on Court record.

The grounds of the reference are that:

1. The learned Justice of Appeal erred in law and fact when he failed to consider exceptional and justifiable reasons as to why the
25 appellant/applicant was unable to file this appeal in time.
2. The learned Justice of Appeal erred in law when he failed to discount the December and January Christmas/court vacation days when computing the days within which the appeal had to be argued.
3. The learned Justice of Appeal erred in law and fact when he failed to
30 evaluate and consider the evidence presented by the appellant in

5 Miscellaneous Application Nos 16 & 18 of 2022 leading to the dismissal of the application and striking (out) the underlying appeal.

4. The learned Justice of Appeal erred in law and fact when he struck out the appeal without statutory jurisdiction to do so.

10 At the hearing of the appeal, learned counsel Mr. David Ssempala appeared for the applicant while learned counsel Mr. Obed Mwebesa assisted by learned counsel Mr. Godfrey Akakimpa appeared for the respondent. The Applicant was in court.

15 Both counsel relied on written submissions on record. They addressed court orally on the additional ground of reference by way of amendment which raises a point of law as to the Jurisdiction of a Single Justice of the Supreme Court to strike out the appellant's appeal as he did in Civil Application No. 16 of 2022 and on the other grounds generally.

Ground 4:

20 **The learned Justice of Appeal erred in law and fact when he struck out the appeal without statutory jurisdiction to do so**

On ground 4 of the reference, Mr. Ssempala relied on section 8 of the Judicature Act and submitted that a single Justice may exercise all powers of the Supreme Court only in an interlocutory matter but that striking out the appeal was not an interlocutory order to the appeal but disposed of the appeal itself. In the premises, he argued that the single Justice of the Court had no jurisdiction to hear Miscellaneous Application No. 16 of 2022. He submitted that the judgment of a court without jurisdiction is a nullity and relied on **Makula International Vs Cardinal Emmanuel Nsubuga [1982] HCB 11** and **Prof Syed Huq vs Islamic University in Kampala (Supreme Court Civil Appeal No. 47 of 1995) [1997] UGSC 3** for the proposition that no court should condone an illegality once brought to the attention of the court.

Secondly Mr. Ssempala argued that under rule 110 (2) of the Rules of this Court, the court ought to have defined what is meant by Christmas vacation under rule 4 (e) of the Rules because it is not defined under the Rules. This