

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF UGANDA AT KAMPALA**  
**CIVIL APPLICATION NO 150 OF 2019**

**ATTORNEY GENERAL} .....APPLICANT**

**VERSUS**

10      **1     CHRISTOPHER SALES}**  
          **2     CAROL SALES} .....RESPONDENTS**

**CORAM:**

**HON. MR. JUSTICE STEPHEN MUSOTA, JA**

**HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA**

15      **HON. MR. JUSTICE MUZAMIRU MUTANGULA KIBEEDI, JA**

**RULING OF COURT**

The Applicant filed this application for the orders in Civil Application No 315 of 2013 to be reviewed. Secondly, the applicant seeks for the order striking out Civil Appeal No 205 of 2013 to be set aside and for orders reinstating Civil Appeal No 205 of 2013 as well as for costs of the application to be in the cause.

Briefly, the grounds of the application are that on 28<sup>th</sup> February 2019, the applicant's appeal (Civil Appeal No 205 of 2013) was struck out on the ground that the memorandum and record of appeal were filed out of time. The memorandum and record of appeal were filed on 8<sup>th</sup> November, 2013 after the applicant received certified proceedings and Judgment on 2<sup>nd</sup> of October 2013. The applicant had earlier applied for certified proceedings from the Registrar of the High Court on 8<sup>th</sup> February, 2013. The applicant contends that the record of proceedings and judgment were certified and transmitted to the applicant/appellant on 2<sup>nd</sup> October 2013. When the matter came for hearing on 28<sup>th</sup> of February, the applicant could not trace the



5 registrar's certificate certifying that the record was transmitted to the applicant on 2<sup>nd</sup> October 2013. The applicant's record and memorandum of appeal had been lodged in this court on 8<sup>th</sup> November 2013 within the prescribed 60 days.

10 In light of the above the applicant contends that there is a mistake or error apparent on the face of the record which led to the striking out of Civil Appeal No 205 of 2013. The applicant further contends that there is no proof of service of Civil Application No 315 of 2013 on the applicant who is interested in having the appeal properly heard and disposed of on the merits. The applicant contends that it is not guilty of any dilatory conduct in  
15 bringing the application and the appeal raises pertinent questions of law of public interest with a high probability of success.

The application is supported by the affidavit of Allan Mukama, State Attorney in the Attorney General's Chambers that confirms the facts mentioned in the grounds of appeal. Particularly he attaches a notice of appeal which was  
20 filed on 8<sup>th</sup> February 2013 and the letter requesting for the record of proceedings. Lastly, he attached the certificate of the registrar certifying that proceedings in HCCS No 91 of 2011 were availed to the applicant's counsel on 2<sup>nd</sup> October 2013 and the certificate is dated 17<sup>th</sup> of October 2013.

The affidavit in opposition to the application is that of John Baptist Kawanga, an advocate of the High Court. He contends *inter alia* that the certificate of  
25 the registrar is silent on the time used by the registrar to prepare the record of proceedings. He points out that the certificate was allegedly received on October 17<sup>th</sup>, 2013 more than 2 weeks after the copy of the judgment was given to the appellant. He states that judgment had been delivered with  
30 copies to both parties on 8<sup>th</sup> February 2013. The certificate does not disclose the author of the certificate whose name and designation is correctly contained in the registrar's letter to the respondent dated July 11<sup>th</sup> 2013. The letter of 11<sup>th</sup> of July 2013 is addressed to Mr. Karoli Ssemogerere of Marble Law Firm Advocates and states that the purpose of the letter is to inform  
35 them that the certified proceedings are ready for collection. The respondent further attached the record of proceedings of the Court of Appeal which



5 shows that on 28<sup>th</sup> of February 2019 in the Civil Application No 0315 of 2013,  
the applicant's appeal, Civil Appeal No 205 of 2013 was struck out. The  
record discloses that the basis of the striking out was the letter dated 11<sup>th</sup> of  
July 2013 informing the respondent's counsel that the certified proceedings  
are ready for collection. The brief ruling of the Court of Appeal shows that  
10 when the applicant's state attorney, Mr. Mukama, appeared, he conceded  
that the appeal was filed out of time having been filed on 8<sup>th</sup> November 2013,  
outside the 60 days allowed for filing the record of appeal when reckoned  
from the 11<sup>th</sup> of July 2013. It shows that sixty days had expired by the time  
the memorandum and record of appeal was lodged. The application to strike  
15 out the appeal was filed on 30<sup>th</sup> September 2013 and the respondent (the  
Attorney General) had not taken any steps to validate the memorandum of  
appeal. Thus Civil Appeal No 205 of 2013 was struck out.

When this application was filed, the parties were given a schedule to file  
written submissions. The applicant's written submissions were filed on  
20 court record on 6<sup>th</sup> of December 2021 while the respondents written  
submissions were filed on 8<sup>th</sup> December 2021, on the date of the hearing.

At the hearing, learned counsel Mr. Wanyama Kodoli, Principal State  
Attorney represented the applicant while learned counsel Mr. Ssemogerere  
Karoli represented the respondent. Counsel briefly highlighted the gist of  
25 the application and the matter was reserved for ruling on notice.

We have carefully considered the application and it is clear that this Court  
relied as a matter of fact on a letter addressed to Mr. Karoli Ssemogerere  
of Marble Law Firm Advocates dated 11<sup>th</sup> of July 2013 in the matter of Civil  
Suit No 091 of 2011; Christopher Sales and Carol Sales versus Attorney  
30 General which letter reads in total as follows:

"This is to inform you that the certified proceedings are ready for collection."

Kibeedi, JA asked the respondent's counsel Mr. Ssemogerere whether  
there was any evidence that the letter had been served on the Attorney  
General. Mr. Ssemogerere had no evidence or knowledge of whether the  
35 Attorney General has been served. Secondly, the letter was addressed to



5 the respondent's counsel and was used in their application to strike out the  
applicant's appeal. When this Court considered the matter in Civil  
Application No 0315 of 2013; Christopher Sales and another versus Attorney  
General on 28<sup>th</sup> of February 2019, the contents of this letter were not  
scrutinised. It was assumed that the record of proceedings of the High Court  
10 was availed to the applicant/intended appellant by 11<sup>th</sup> of July 2013. In that  
application to strike out the appeal, the Attorney General's counsel  
conceded that the appeal had been filed on 8<sup>th</sup> November 2013 out of time  
on the basis of the letter of 11<sup>th</sup> of July 2013.

We have considered rule 83 (2) of the rules of this court which provides  
15 that:

(2) Where an application for a copy of the proceedings in the High Court has been  
made within thirty days after the date of the decision against which it is desired  
to appeal, there shall, in computing the time within which the appeal is to be  
instituted, be excluded such time as may be certified by the registrar of the High  
20 Court as having been required for the preparation and delivery to the appellant of  
that copy.

In his brief address to the court, Mr. Ssemogerere prayed that we consider  
the wording of the certificate relied upon by the applicant. We have  
considered the letter dated 11<sup>th</sup> July 2013 as well as the certificate of the  
25 registrar that is attached to the applicant's application. As far as the letter  
of 11<sup>th</sup> of July 2013 is concerned, it is addressed to the respondent's counsel.  
Granted, the respondent could have been anxious to have the matter  
proceed even if it was to proceed against it and vigilantly followed up the  
matter with the registrar of the High Court. Nevertheless, we find that the  
30 letter only informed the respondent's counsel and was specifically  
addressed to the respondent's counsel. The respondents counsel did not  
serve the Attorney General. We also find that the Attorney General is a  
Department with many officers handling different matters on behalf of the  
Attorney General. The application to strike out was filed by September 2013,  
35 two months later and clearly demonstrates the purpose of the letter which  
was to have the applicant's appeal struck out. In the absence of evidence



5 that the Attorney General was aware about the availability of the record or  
a finding that the Attorney General ought to have been aware, we find it  
difficult to fault the Attorney General which is a busy department for not  
having established within the period of 3 months to the time when they were  
availed the certificate of the registrar in this matter. The letter addressed  
10 to the respondent's counsel was not sufficient to prove that the Attorney  
General was aware that the record was available for collection.

We have secondly considered the wording of the certificate of the registrar  
which was meant to fulfil the requirements of rule 83 (2) of the Rules of this  
court. It is dated 17<sup>th</sup> of October 2013 and entitled "Registrar Certificate". It  
15 reads as follows:

I hereby certify that the proceedings consisting of a judgment in HCCS No 91 of 2011  
were given to the appellant's counsel on the 2<sup>nd</sup> day of October 2013 to facilitate the  
intended appeal to the Court of Appeal.

Given under my hand and seal of this court this 17<sup>th</sup> day of October 2013.

20 The registrar certificate was signed by the registrar. The respondent's  
counsel submitted that what was availed according to the certificate is a  
judgment of the High Court which had already been availed to the parties  
when judgment of the High Court was delivered in February 2013. We do not  
agree. The word "proceedings" is not the same and does not have the same  
25 meaning as the word "judgment". The word "proceedings" may include the  
judgement but word "judgment" does not include the record of proceedings.  
Though the wording of the registrar's certificate leaves a lot to be desired,  
it is adequate for purposes of showing that the proceedings and the  
judgment of the High Court were availed to the applicant on 2<sup>nd</sup> October,  
30 2013. Because the appeal of the applicant was filed on 8<sup>th</sup> November 2013,  
we find that the appeal was filed within 60 days as stipulated by rule 83 (1)  
of the **Judicature (Court of Appeal) Rules**, the applicant having applied for  
the record of proceedings of the High Court in terms of our rule 83 (2) of  
the rules of this court. It follows that the time within which the record was  
35 to be prepared by the registrar of the High Court was excluded and the  
certificate of the registrar suffices to show that the record of proceedings

5 was availed on 2<sup>nd</sup> October 2013 which is the time from which to reckon the 60 days within which to file the memorandum and record of appeal.

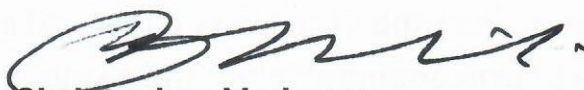
10 In the premises, the striking out of the appeal by this court on 28<sup>th</sup> of February 2019 proceeded on erroneous premises and was a nullity. Proceeding under the provisions of rule 2 (2) of the rules of this court, we hereby review and set aside the order of the Court of Appeal dated 28<sup>th</sup> of February 2019 striking out Civil Appeal No 205 of 2013. Further, we reinstate Civil Appeal No 205 of 2013 and the same shall be fixed for hearing on the merits in due course. We hereby allow the applicant's application with costs of this application to be in the cause.

15 Dated at Kampala the 5<sup>th</sup> day of December 2021



**Stephen Musota**

**Justice of Appeal**



**Christopher Madrama**

**Justice of Appeal**



**Muzamiru Mutangula Kibeedi**

**Justice of Appeal**