

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HC CV MA NO. 0010 OF 2012**

**BWENGE RICHARD**  
**BWENGE SAMUEL** } .....:APPLICANTS

**VERSUS**

**UGANDA**:.....:RESPONDENT

**BEFORE HON. MR. JUSTICE MIKE J. CHIBITA**

**RULING**

This is an application brought by Notice of Motion for orders that the dismissal of Criminal Application No. CV CM 001 of 2007 be set aside.

The application also seeks to have the application restored on the cause list and fixed for hearing.

The Applicants were represented by learned Counsel from M/s Ngaruye Ruhindi, Spencer and Co. Advocates while the Respondent was represented by learned State Attorney Safina Bireke. They filed written submissions.

The brief facts of the case are that the Applicants lodged an application to for leave to appeal out of time following failure to appeal within the specified time.

Counsel for the Applicants averred in his submissions that there was sufficient cause for non appearance by the Applicants when the application came up for hearing.

He further submitted that failure to file an affidavit in reply by the Respondent should be interpreted to mean that the facts contained in the Applicants' affidavit were admitted. He cited the case of **Samwiri Massa vs. Rose Achen 1987 HCB 297**.

In reply, the learned State Attorney prayed to court for the dismissal of the application. She contended that the Applicants were in court on the day the matter was adjourned. Yet they did not show up on the date it was adjourned to.

Further, she distinguished the case of **Massa vs. Achen (supra)** by submitting that though there was no affidavit in reply as stated the facts deponed to by the Applicants are denied in submissions.

She referred court to the case of **Adebanjo vs. Shumuk Springs Development HC Misc. Application No. 739 of 2011** to argue that filing an affidavit in reply is not necessary as long as there is an opportunity to be heard.

I have considered the application, the affidavit of the 2<sup>nd</sup> Applicant and the submissions by Counsel and found no convincing reason why the application should be allowed.

The Applicants were in court on the day the matter was adjourned yet they chose not to appear in court on the day the matter was supposed to be heard. Consequently, I dismiss the application.

Dated at Fort Portal this 26<sup>th</sup> day of November, 2012

**JUSTICE MIKE J. CHIBITA**

The ruling is to be read and delivered the Assistant Registrar.

MIKE J. CHIBITA

**JUDGE**