

THE REPUBLIC OF UGANDA IN THE
SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: ODOKI, CJ KATUREEBE, KITUMBA, J.J.S.C.)

CIVIL REFERENCE NO.01 OF 2012

BETWEEN

1. **ENGINEER EPHRAIM TURINAWE** :::::::::::::::::::::::::::::::**APPLICANTS**
2. **DEWARK LIMITED**

AND

1. **MOLLY KYALIMPA TURINAWE**
2. **FIONA TURINAWE**
3. **BERNES ANKUNDA** > **:RESPONDENTS**
4. **ROBIN TURINAWE**
5. **DAVIS TURINAWE**

***[Reference from the ruling of Kisaakye JSC, sitting as a single judge of 30
the Supreme Court of Uganda at Kampala dated 25th January, 2012 in
Civil Application No 27 of 2010.]***

RULING OF THE COURT.

This is an application by way of reference to this court from the decision of a single judge who granted an application by the respondents for extension of time within which to file the record of appeal.

When this reference came up for hearing learned counsel Mr. Blaze Babigumira, for the applicants and learned counsel Mr. David

Kaggwa for the respondents informed court that they had nothing else to add to their written submissions which they had already filed in this court. This court accepted to handle the reference as per written submissions.

The facts which give rise to this reference are as follows:

The first applicant, Engineer Ephraim Turinawe, is the husband of the 1st respondent Molly Kyalikunda Turinawe and respondents Nos. 2, 3, 4 and 5 are his children being issues of the marriage 15 with the 1st respondent. The first applicant sold the suit property, a residential property at Kololo, and transferred the same to Dewark Limited, the second applicant.

The respondents instituted Civil Suit No. 881 of 2004 in the High Court praying for orders for the nullification of the sale and transfer of the suit property to the second applicant without their consent. The respondents claimed that the suit property was their matrimonial home. The High Court ruled in their favour.

The applicants appealed to the Court of Appeal vide Civil Appeal No. 18 of 2009 against the decision of the High Court. The Court of Appeal reversed the High Court decision on 20th November, 2009. The respondents were dissatisfied with the decision of the Court of Appeal and instructed their lawyers M/S Bamwite & Kakuba Advocates to file an appeal to the Supreme Court.

The advocates filed a Notice of Appeal in the Court of Appeal on the 23rd November, 2009 and wrote a letter requesting for a certified copy of the proceedings. They served the advocates for the applicants with the Notice of Appeal and the letter.

On 11th March 2010 the Registrar of the Court of Appeal notified M/s Bamwite & Kakuba Advocates that the proceedings were ready for collection. The respondents' former advocates, however, did not take the necessary steps to file the appeal. In October 2010 the respondents learnt from their former counsel that they had been served with a notice to strike out the notice of appeal. They instructed M/s Kaggwa Owoyesigire & Co Advocates to apply for an extension of time within which to file the appeal against the decision of the Court of Appeal in Civil Appeal No. 18 of 2009.

Counsel made the application for extension of time by Notice of Motion under rules 2(1) 2(2) 5, 42 and 50 of the Judicature (Supreme Court Rules). The application was supported by the affidavit of the 1st respondent, Molly Kyalikunda Turinawe, sworn on 13th October, 2010.

The application was heard in court for the first time on 22nd December 2010. On that day counsel Blaze Babigumira who was appearing for the applicants informed court that he had not been served with the Notice of Motion and matters came to him by way of written submissions. He applied for an adjournment for two

weeks to consult his clients and file a reply. The court granted the adjournment. The affidavit in reply was sworn on the 12th January, 2011 by, Ms Joyce Lynn Kabutiti, a director of the second applicant.

On the 8th February 2011, counsel for the applicants filed a notice in this court to examine a witness, namely, Molly Kyalikunda Turinawe on her affidavit in support of the application which was sworn on 13th October, 2010. When the application came up for hearing on 9th February 2011 counsel for the respondents stated that the notice was too short as it had been served on them on the previous day. The deponent was not available for cross examination. He applied for an adjournment. The learned Justice adjourned the hearing to 3rd March 2011.

On 3rd March 2011 counsel for the applicants applied to rely on a supplementary affidavit by one Richard Mwebembezi a partner in Bamwe & Co. Advocates who are the applicants' counsel. The court record of Civil Appeal No. 18 of 2009 was annexed to the supplementary affidavit as annexure A.

Counsel for the respondent applied to examine Ms. Kabutiti on her affidavit in reply. The learned Justice allowed the supplementary affidavit and counsel's application to cross-examine Ms Kabutiti.

Molly Kyalikunda was cross- examined by counsel for the applicants on her affidavit in support about a number of issues.

The most important answer for this ruling is, Yes, I swore the affidavit in support of this application and signed it in Counsel Kaggwa's office".

The deponent was re-examined by her counsel. The court allowed the respondents to reply to the supplementary affidavit in seven days if they wished to do so. The hearing was adjourned to 6/4/2011.

On the 7/03/2011 counsel for the applicants wrote to the Registrar of this court requesting for a certified copy of the proceedings so far ***"so that we work out how to proceed"***.

On 21/3/2011 counsel for the applicants wrote to the Registrar of this court telling him that on the 7/3/2011 they applied for a typed and certified copy of the proceedings which had so far taken place. In that letter he intimated that his clerk had followed the matter and had learnt that the file was still with the judge. He requested the Registrar to approach the judge so that the file could be released for typing proceedings.

He stated:

"The matter is coming back in court on the 6th day April and the proceedings are vital to our Clients* case."

On the following day counsel once again wrote to the Registrar of this court requesting for a typed copy of the proceedings and stated:

“The reason why we cross-examined Molly Kyalikunda on her affidavit was ground for a possible Preliminary Objection to the affidavit and the Application itself.”

He hoped that with that elaboration the Registrar would be able to get the file from the trial judge and make a preliminary objection when the application comes up for hearing on 6th April 2011. On 4/4/2011 counsel again wrote to the Registrar indicating that he had not yet received the typed record of the proceedings yet the hearing date was 6th April. Counsel indicated that if he did not get the record he would be constrained to apply for an adjournment.

The Registrar replied to counsel on 4/4/2011 and the letter reads in part.

“I have been directed to inform you that since you are fully appraised of the said proceedings by reason of you having been in court during the proceedings that has so far taken place, no typed proceedings will be availed to you at this stage. ”

He informed counsel that the matter will proceed on 6/4/2011.

When the application came up for hearing counsel Babigumira for the applicants raised a preliminary objection that the affidavit was incurably defective. He argued that according to the affidavit the oath was taken before Bitaguma, a Commissioner for Oaths. Under cross-examination the deponent stated that she executed the affidavit in the chambers of her counsel. He, therefore, submitted that the only logical conclusion is that afterwards, it was taken to Bitaguma for signature which is contrary to sections 5 and 6 of the Oaths Act. He submitted that the affidavit is incurably defective and leaves the application hanging without a supporting affidavit. He prayed court to dismiss the application.

Mr. Kaggwa for the respondents did not agree. He contended that the affidavit did not offend the Oaths Act. He submitted that the deponent was not asked before whom she swore the affidavit. The deponent simply stated that she swore the affidavit in her advocate's chambers, but this does not exclude the fact that it could have been before the Commissioner for Oaths.

The learned Justice overruled the objection as being a mere conjecture and not supported by any credible evidence to prove the allegation by counsel.

The learned Justice adjourned the application to 14th April 2011 and made the following directions. The deponent whom counsel for the respondents wished to cross-examine was not in court. In case counsel for the respondents still wished to cross-examine her, he

should do so on that day. If he no longer wishes to cross-examine her, he should make his submissions and counsel for the applicants would reply.

On 6/04/2011 counsel for the applicants wrote to the Registrar that the applicants were aggrieved by the ruling of the single Justice and that his clients instructed him to make a reference to a full bench for determination before the hearing of the application continues.

On 8/4/2011 the Registrar referred to counsel's letter as an application for typed proceedings. He replied as follows:

“Please, reference was made to your communication of 6/4/2011, requesting for typed and certified copy of proceedings and ruling in the above matter to enable formulation of grounds for consideration of the full bench. I am directed to inform you that the position earlier communicated to you, vide correspondence of 4/4/2011 and still stands.”

On 11/4/2011 counsel for the applicants wrote to the Registrar of the Supreme Court informing him that he had filed Civil Application No.8 of 2011 seeking an interim order to stay the proceedings in Civil Application No 27 of 2010 pending the determination by the full bench of a single justice's ruling.

Counsel

indicated that the application was *ex parte* and would be heard by the Registrar on either 12th April or 13th April. ***“So that the interest of justice can be met”.***

On the same day, that is 11/4/2011, counsel Mr. Blaze Babigumira wrote to the Chief Justice requesting him to intervene in the matter in order to achieve the ends of justice.

He made serious allegations against the single Justice of bias and the suspicion of the possibility of alteration of the record of proceedings by the Justice. He indicated that his clients were not willing to participate in the proceedings where the Justice is bent on frustrating their efforts to appeal against her ruling. On the letter to the Chief Justice, counsel attached the application, the affidavit in reply and other correspondences that had been shuttling between counsel's chambers and the Supreme Court. Counsel copied his letter to the single Justice, who was handling the application, Tsekooko JSC and the Registrar of the Supreme Court.

When the application came up on 14/4/2011 for continued hearing counsel for the applicants was absent. Mr. Kaggwa for the respondents referred to Mr. Babigumira's letter of 6/4/2011 which alleged bias against the single Justice and condemned his allegation. He requested the court to continue with the hearing of the application in the absence of counsel who had indicated that

he was unwilling to appear inspite of the fact that he knew of the hearing date. He further prayed court to withdraw the submissions and file new ones and to abandon his request to cross-examine the deponent who was unlikely to appear in court in view of the correspondence from counsel for the applicants.

In her ruling the learned single Justice indicated that she had proceeded under Rule 53(2) which provides for where the respondent appears and the applicant does not appear. She allowed counsel to withdraw his written submissions and file new ones by 21st April 2011 and directed him to serve them on the applicants' counsel. The applicants' counsel was to file his submissions by 4th May.

The learned single Justice directed the Registrar to avail counsel for the respondents all the letters from counsel for the applicants which he had not received as he might find them necessary in making his submissions. Then the Justice would later give her ruling on notice.

On 25th January 2012 the single Justice delivered her ruling in favour of the respondents. She held that the respondents had proved that there was sufficient cause to warrant the extension of time in which to file the record of appeal. She held that the appeal was not instituted due to either negligence mistake error or omission of their former advocate. The single Justice allowed the respondent to file their appeal within 14 days from the delivery of

her ruling. The learned Justice did not award any costs because she was of the view that this was a matter which counsel could have resolved quickly without resorting to a protracted trial.

Dissatisfied with the above ruling, counsel for the applicants filed a reference to a full bench on the six grounds, which we shall reproduce as we deal with each one of them.

Ground 1.

“ The learned Justice erred in law and misdirected herself when she overruled the preliminary objection”

Submitting on this ground applicants’ counsel argued that during cross-examination Molly Kayalikunda Turinawe replied as follows:

“I swore the affidavit in support of this application and signed it in counsel Kaggwa’s office

He contended that the affidavit itself shows that she swore it on **13th** of October, **2010** before Deo Bitaguma, Advocate, and Commissioner for Oaths P.O.Box **10969** Kampala. Counsel argued that, the chambers of Counsel M/s Kaggwa- Owoyesigire & Co Advocates are not the same as the chambers of Deo Bitaguma Advocates. He submitted that if Deo Bitaguma was a member of Kaggwa-Owoyesigire & Co Advocates he would not have commissioned the affidavit.

He contended that the affidavit in issue offended section 5 and 6 of the Oaths Act (Cap 19). He argued that this court disapproved the practice whereby the deponent signs the affidavit and it is sent to the Commissioner for Oaths for signature and categorically stated that is violation of the law regarding the making of affidavits.

In support of that submission he relied on the authority of Kakooza John Baptist Vs Electoral Commission and Anthony Yiga, Election Petition Appeal No. 11 of 2007.

Counsel contended that according to section 101 of the Evidence Act (Cap 6) once the deponent stated on oath that she swore the affidavit in support of the application in counsel Kaggwa's chambers, the evidential burden shifted on her to prove that she swore the affidavit before the Commission for Oaths. He argued that counsel Kaggwa in re-examination avoided asking her before whom she swore the affidavit.

In reply, the respondents' counsel supported the dismissal of the preliminary objection by the single Justice. He contended that the judge considered the provisions of sections 5 and 6 of the Oaths Act and the submissions of counsel and came to the right conclusion that the preliminary objection had no merit.

We have carefully perused the record of appeal and the submissions of both counsel.

Section 5 and 6 the Oaths Act state:

6. Form and manner in which oath may be taken.

(1) Whenever any oath is required to be taken under the provisions of this or any other Act, or in order to comply with the requirements of any law in force for the time being in Uganda or any other country, the following provisions shall apply, that is to say, the person taking the oath may do so in the following form and manner-

(a) he or she shall hold, if a Christian, a copy of the gospels of the four evangelists or of the New Testament, or if a Jew, a copy of the Old Testament, or if a Moslem, a copy of the Koran, in his or her uplifted hand, and shall say or repeat after the person administering the oath the words prescribed by law or by the practice of the court, as the case may be;

(b) in any other manner which is lawful according to any law, customary or otherwise, in force in Uganda.

(2) for the purposes of this section, where a person taking the oath is physically incapable of holding the required copy in his or her uplifted hand, he or she may hold the

copy otherwise, or, if necessary, the copy may be held before him or her by the person administering the oath.

(6) Place and date of oath.

Every commissioner for oaths or notary public before whom any oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made. ”

In the reference before us it is stated in the jurat as follows:

Sworn at Kampala, this 13th October, 2010: by the said Molly Kyalikunda Turinawe.

Deponent

Before me:

.....
A Commission for Oaths.

The signature of the Commissioner for oaths is there.

We are of the considered view that signing the affidavit in counsel Kaggwa’s chambers does not mean that Commissioner Deo Bitaguma was not there. The affidavit showed that it was sworn in Kampala. The duty was upon counsel for the applicants to cross- examine the deponent to prove that Deo Bitaguma was not in counsel Kaggwa’s Chambers. The respondents did not have the evidential burden to prove that Commissioner Deo Bitaguma was

there. It is unfortunate that counsel for the applicants did not cross-examine the deponent about the presence of Deo Bitaguma the Commissioner for Oaths when she sworn her affidavit. The instant appeal is distinguishable from the case of ***Kakooza John Baptist Vs Electoral Commission and Anthony Yiga, Election Petition Appeal No. 11 of 2007.*** (*Supra*)

In that case it was the evidence of the appellant who is in fact an advocate, that he had sworn the affidavit and sent it to the Commissioner for Oaths.

We have no reason to fault the learned single Justice on her findings.

Ground 1 is devoid of merit and therefore fails

We now consider ground 2.

“The learned Justice erred in law and fact when she denied the applicants the right to refer the ruling/decision overruling the preliminary objection to a full bench”.

The applicants’ counsel submitted that since his clients were dissatisfied with the ruling on the preliminary objection he applied for a reference before a full bench. He argued that a right to reference to a full bench from the decision of a single judge is provided by Rule 52(1) (b) of the Rules of this court.

According to counsel the right to make a reference is a blanket one and there is no distinction between rulings of a single judge arising

from preliminary objections/interlocutory applications and final rulings on the applications. He submitted that the right to a reference is exercised at the option of the party aggrieved by the decision and not a single judge. The single judge has no discretion whether to allow or not to allow a reference to be made.

He contended that the denial by the single Justice to let the applicants have a typed and certified copy of the proceedings was a denial of their Constitutional right to a fair hearing provided by article 28 (1) of the Constitution.

He argued further that the procedure to be followed when making a reference was stated in ***Goodman Agencies Ltd Vs Has Agencies (K) Ltd S.C Reference No 1 of 2011*** at page 6 of the judgment as here below:

***“The procedure which is to be followed is as follows:
Where an oral application for a reference is made before a single Judge, that Judge should pass the file to the Registrar with direction that the number of appropriate copies of pleadings and proceedings before him or her be produced so that the application is fixed for hearing by three Justices. Where an application in writing is made to the Registrar, the Registrar shall ensure that an***

proceedings before the single Justice is produced after which the application is fixed for hearing. Thereafter the parties should be served with hearing notices. In either case, no additional evidence must be filed without leave of the Court.”

He further submitted that the single Justice was enraged by his complaint to the Chief Justice, and wanted to punish his clients for that. According to counsel that is why she denied them costs.

In conclusion he submitted that the single Justice’s denial to refer the matter to a panel of three judges occasioned a miscarriage of justice and was an abuse of process and contravention of his clients’ rights.

Kaggwa- Owoyesigire and Co. Advocates vehemently disagreed with submissions by counsel for the applicants. Counsel contended that the applicants’ counsel never applied to the trial Justice informally for the matter to be referred to a panel of three Justices.

He argued further that counsel’s letters were written before the ruling applying for the record of proceedings. His letter dated 6/04/2011 was written to the Registrar applying for a reference to a full bench.

Respondents’ counsel criticized the counsel for the applicants for making unfounded allegations of bias against the single Justice.

Rule 52 of the Rules of this court provide for reference from decision of a single judge thus:

“Reference from decision of a single judge.

(1) Where under section 8(2) of the Act, any person who is dissatisfied with the decision of a single judge of the court- (a) in any criminal matter wishes to have his or her application determined by the court; or

(b) in any civil matter wishes to have any order, direction or decision of a single judge varied, discharged or reversed by the court, the applicant may apply for it informally to the judge at the time when the decision is given or by writing to the registrar within seven days after that date.

(2) At the hearing by three judges of the court an application previously decided by a single judge, no additional evidence shall be adduced except with the leave of the court”.

The above rule does not stipulate that once a reference is applied for it must be granted. We agree with the quotation from ***Goodman Agencies Ltd Vs Hasa Agencies (K) Ltd, Supreme Court Civil Reference No. 1 of 2011. (Supra).***

That case set out the procedure to be followed by counsel when applying for a reference. In that case counsel had made the application for reference by Notice of Motion with a supporting affidavit. It is not stated anywhere in that case that once counsel applies for a reference the judge has no discretion to refuse the reference in an application like this one when she had merely ruled on a preliminary objection. The application was still going on and had not been decided upon. Counsel had the opportunity to challenge the ruling on the preliminary objection to a full bench as he has done, after the application had been decided. We do not see what prejudice the applicants have suffered.

We would like to observe that it is the judge who has control of the court and not counsel. We totally disagree with counsel's submissions that the single Judge's denial to give him a typed and a certified copy of the proceedings which had so far taken place violated the applicant's right to a fair trial or hearing as provided by article 28(1) of the Constitution. It is a common and an accepted practice in our courts for counsel to make a preliminary objection during trial without first obtaining a copy of the proceedings. It is also common practice for court to overrule a preliminary point and proceed with the main application and give reasons for the refusal in the final ruling.

It is unfortunate that counsel for the applicants, who is a senior advocate, accused the trial Justice of being biased without

substantiating the same. Counsel went to a great extent to make sure that his clients won the application at all cost. It did not matter to him whether he shot his goal from off side or not. Hence in his complaint to the Chief Justice he literally copied the Notice of Motion and all other documents on the file and forwarded them as attachments. He did so inspite of the fact that he is aware that there was a court file which his Lordship the Chief Justice could have called and read if he so wished.

Additionally, counsel filed Civil Application No.8 of 2011 for an interim order of stay before the Registrar to stop the Justice from proceeding with the application she was hearing. Counsel did not stop at that but gave the dates when the application should be heard. We do not think this was appropriate for counsel to purport to take over the functions of the Registrar or the court.

The ruling on the preliminary objection did not finally dispose of the whole application. The trial judge in her wisdom did not find it necessary to make a reference to a panel of three judges and continued with hearing the application. We do not agree with counsel's submissions that failure to refer the ruling on the preliminary objection to the full bench caused the applicants a miscarriage of justice.

A miscarriage of justice is said to occur when the judge misdirects himself/herself on the legal principles or on the facts by reason of

mistake, omission or irregularity and comes to the wrong conclusion to the disadvantage of one of the parties.

We do not appreciate counsel's argument that denial of costs to the applicants was out of bias. According to section 27 of the Civil Procedure Act (Cap 71) costs are within the discretion of judge. Costs normally follow the event but where there is a justifiable reason the judge may deny costs to a successful party. We appreciate that the respondent had conceded to costs but in the trial judge's view and for the reasons she gave none of the parties was entitled to costs.

Ground 2 has no merit and therefore fails.

We consider grounds 3 and 4:

- 3. *The learned Justice misdirected herself when she found that counsel of the respondent caused delay.***
- 4. *The learned Justice misdirected herself when she found that the Applicant/Respondent showed sufficient cause for the delay.***

Regarding these two grounds counsel for both parties referred to their written submissions which they had presented before the single Justice. Counsel for the applicants submitted that the law is settled, the court will extend time only for sufficient cause. He argued that the

respondents were relying on the negligence/mistake, error and omission by their former lawyer.

He conceded that negligence/mistake/error and omission by a former lawyer can not be visited on his client. However, before that is done, it must be proved by the client that the advocate was in breach of his duty to the client and that the client was not guilty of dilatory conduct.

He argued that according to the affidavit evidence of the 1st respondent after instructing their former lawyer who filed a notice of appeal on **23rd** November **2009** none of them visited his chambers again to find out about their case. It was the former lawyer who looked for the first respondent and informed her in October **2010** that their notice of appeal was about to be struck out. He argued that the former lawyer was not facilitated to file the appeal.

He argued that this was dilatory conduct on the part of the respondents. Additionally the affidavit in support was full of falsehoods. He argued that respondent's former counsel had never moved away from his chambers.

In support of his submission he relied on Paul Masiga Vs Toro & Mityana Tea Co. Ltd CACA 79/99, Godfrey Magezi & Another Vs Sudhir Ruparelia, Msc Application No. 6 of 2003.

Counsel for the respondents contended that they had shown sufficient cause why the record of appeal was not filed in time. They had left the matter with their lawyer who did not take the necessary steps. Besides, the family had been scattered. He submitted that the authorities quoted by counsel for the applicants are distinguishable from of the instant one. He argued that in ***Paul Masiga Vs Toro & Mityana Cr Ltd*** (supra) the applicant took 19 months to act after realizing that their lawyer had not filed their appeal. In the instant reference the respondent took 8 months and immediately changed to another lawyer. The application to strike out the notice of appeal was filed but it was up to the court's discretion to allow the application for extension of time when sufficient reason for extension of time is shown.

In her ruling the learned single Justice considered all submissions by both counsel and the authorities quoted. She relied on the respondent's affidavit in support. The single Justice held that from the evidence it was shown that the respondents relied on their former counsel to file the appeal on their behalf. She found that, the respondents were laymen who depended on their lawyer. She also held that they were scattered after their family residence was taken away. There was no dilatory conduct on their part. She held that they had adduced enough evidence to prove sufficient cause for extension of time. We entirely agree with the finding of the single judge.

Grounds 3 and 4 lack merit and must fail.

Ground 5.

“The learned Justice erred in law and fact when she failed to consider the applicants’ submission and authorities before allowing the application

The complaint by the applicants’ counsel on this ground is that the single judge allowed the application without considering their submissions and authorities. He referred to Rule 104 of this court and other authorities on dilatory conduct, which he contended the Judge simply listed and did not consider them.

In reply, counsel for the respondent submitted that Rule 104 was not applicable to this reference because there was no agreement made between the respondents and their former advocates basing the advocate’s remuneration on the result of the proceedings.

Regarding authorities’ respondents’ counsel submitted that the Judge considered the principles of law and came to the right decision.

Rule 104 of the Rule of this Court provides:

“104 Improper agreement for remuneration.

Any agreement by which the remuneration of an advocate or the amount of it is dependent upon the result of any proceedings in the court shall be void.”

Rule 104 is clear to us that it only renders void an agreement between the client and an advocate which makes the latter's remuneration dependent on the results of the proceedings. That was not the case in the reference before us.

We are of the considered view, that it is not necessary all the time to discuss every case that is quoted by an advocate during submissions. In the instant reference the learned single judge based her ruling on correct legal principles on dilatory conduct by litigant. From the evidence contained in the affidavit in

support of the application she rightly concluded that the respondents were not guilty of dilatory conduct and judiciously used her discretion to allow the application for extension of time within which to file the appeal as the respondents had shown sufficient cause.

Ground 5, therefore, fails for lack of merit

Ground 6.

“The learned trial Justice caused a miscarriage of justice to the Applicants, Respondent when she took a very long time to deliver her ruling”.

Applicant's counsel submitted that the trial judge reserved her ruling from 14th April 2011 and delivered it on 25th January 2012

which denied the applicants their constitutional right to a fair and speedy hearing.

Counsel for the respondents contended that this ground had no merit because no inquiries were made about the cause of the delay.

We appreciate that court decisions should be delivered as soon as practicable. In the reference before us there could have been sound reasons why the judge could not deliver her ruling until January 2012. From the record of the reference the single Justice heard the application whenever she fixed it.

We are unable to say that because she delivered the ruling 9 months after reserving it, she denied the applicants their constitutional right to a fair and speedy trial or that she was biased. Nonetheless we urge all judges to deliver their rulings/judgments in a timely manner so that finality is brought to legal proceedings speedily. Sometimes there may be good grounds, e.g sickness or absence from station why a judgment may be delayed. Counsel are also urged to write to the court and remind it of delayed judgments so that reasons are provided to counsel. In this case there is nothing on record that counsel did.

Ground 6, too, fails.

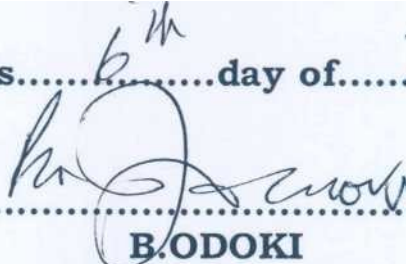
Before we take leave of this matter we would like to state that in this reference counsel for applicants seems to have prosecuted his

10

clients' case with a lot of emotions. Whereas it is normal and indeed necessary for counsel to be passionate about his client's case, that passion should never degenerate into disrespect for the judge. It is an unwritten cardinal rule in all Commonwealth countries with which we share the same legal system that the relationship between the bench and the bar should be cordial and respectful. Both the judge and counsel are officers of the court intent on one thing: administering justice to the parties.

In the result this reference is dismissed with costs to the respondents.

Dated at Kampala this.....6th.....day of.....June.....2013.



**B. ODOKI
CHIEF JUSTICE.**



**B. M. KATUREEBE
JUSTICE OF THE SUPREME COURT**

C. N.B. KITUMBA,

JUSTICE OF THE SUPREME COURT

25