

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

5

{Coram: Katureebe, CJ., Tumwesigye & Dr. Kisaakye, JJSC; Tsekooko &
Okello, Ag. JJSC}

10

~~Civil Appeal No. 26 of 2014~~

Between

APOLLO ISINGOMA APPLICANT.

15

And

DR. RUBINGA EDISON RESPONDENT.

20 {An application arising out of various court decisions such as former Supreme Court Civil
Appeal No. 35 of 1992, and Supreme Court Miscellaneous Application No. 33 of 1994}

RULING OF THE COURT:

25

Apollo Isingoma, the applicant, instituted a Notice of Motion under Rules 2 (2), 41 of the
Supreme Court Rules seeking for the following orders—

(a) A declaration that the judgment of the High Court at Fort Portal in Civil Appeal No.
DR. MFP 11 / 95: **(Dr. Rubinga vs. Yakobo Kato and Apollo Isingoma)** is null and
30 void and the same be set aside.

(b) An Order that the Respondent grants vacant possession of the suit land to the applicant
or in the alternative pays the applicant the current market value of the suit land.

(c) An Order that Costs of this application be provided for.

Counsel for the applicant had cited Rules 2 (2), 42 and 43 of the Court of Appeal Rules but
5 upon our intervention, counsel sought leave to substitute Supreme Court Rules for those of the
Court of Appeal which had been cited. We granted the application and Court of Appeal Rules
were replaced by relevant Supreme Court Rules, quoted above.

The grounds in support of the motion as set out in the Notice of Motion are couched in the
10 following manner—

(1) *On the 2nd day of July, 1993 this Honourable Court in a unanimous decision
dismissed **S.C.C.A No. 35 of 1992** in which the respondent was challenging the
decision of the High Court that had dismissed the Respondent's Application seeking to
appeal out of time and or extend the period within which the appeal was to be
15 instituted.*

(2) *Despite the decision of this Honourable Court the Respondent filed **Miscellaneous
Application No. 33 of 1994** before the Chief Magistrates Court of Fort Portal and
leave to appeal against the judgment in **Fort Portal Civil Appeal No. 54 of 1987** was
20 granted to the Respondent on 26th October, 1995.*

(3) *The Appellant filed **Fort Portal High Court Civil Appeal No. 11 of 1995** and the
decision of the Chief Magistrates Court in **Civil Appeal No. 54 of 1987** was reversed
in favour of the Respondent.*
25

(4) *The decision of the learned trial Magistrate and the learned trial Judge re-opened
litigation that had been concluded and brought to an end by this Honourable Court.*

(5) *The applicant who is an old and illiterate peasant has since the year 2006 lodged
30 complaints before various offices established by the Courts of Judicature protesting
the actions of the Respondent.*

(6) *It is in the interests of justice and administration of justice that this application be allowed.*

To put the issues raised by the parties in proper perspective we are obliged to reproduce affidavits sworn by parties. First the application is supported by an affidavit sworn by the applicant on 12th July, 2014. We produce pertinent paragraphs as follows—

“

(2) *THAT I was the 2nd Respondent in **Civil Appeal No. 35 of 1992** that was dismissed by this Honourable Court on the 2nd day of July, 1993. A Photostat copy of the judgment and record of appeal are attached hereto and are marked Annexures “A” and “B” respectively.*

(3) *THAT in Civil Appeal No. 35 of 1992 the Respondent was challenging the decision of the High Court dismissing an application seeking to appeal out of time and or extend that period within which the appeal was to be instituted.*

(4) *THAT various justices of this Honourable Court in their opinions expressed in the judgment noted that it was unlikely that leave to appeal would be granted to the Respondent who had abandoned his right of appeal.*

(5) *THAT despite the clear decision of this Honourable Court the Respondent filed **Miscellaneous Application No. 33 of 1994** before the Chief Magistrate Court of Fort Portal and leave to appeal against the judgment in Fort Portal Chief Magistrates Court **Civil Appeal No. 54 of 1987** was granted to the Respondent on 26th October, 1995. A Photostat copy of the Order granting leave is attached hereto as Annexure “C”*

(6) *THAT THE Respondent filed Fort Portal **Civil Appeal No. 11 of 1995** before the High Court and the decision in Fort Portal Chief Magistrates Court **Civil Appeal No. 54 of 1987** was reversed. A Photostat copy of the judgment of the High Court is attached hereto as Annexure “D”*

5 (7) THAT in his judgment the learned trial (SIC) Judge observed that the grant of extension of time to apply for leave to appeal and the grant of leave to appeal despite the guided words of Platt JSC. HAD CAUSED THE LEARNED TRIAL Judge much anxiety.

10 (8) THAT following the decision of the High Court in 1996 the Respondent commenced execution proceedings against the applicant on the 18th day of May, 2006. A Photostat copy of the warrant attached hereto as Annexure "E."

15 (9) THAT the applicant challenged the unlawful eviction by the Respondents in various offices including the Registrar of this Honourable Court, the Office of the President, and the Inspectorate of Courts. Photostat copies of the correspondences made are attached hereto as group Annexure "F."

20 (10) THAT all persons I have consulted and talked to are shocked that the Respondent was able to re-open a matter that was conclusively determined by this Honourable Court.

25 (11) THAT I am advised by my lawyers M/S Ekirapa & Co. Advocates, which advice I verily believe to be true, that the decision of the learned trial Magistrate who granted the Respondent leave to appeal and the subject of appeal and judgment delivered therein were illegal, null and void.

30 (12) THAT what is stated herein above is true and correct to the best of my knowledge save for paragraph 11 that was disclosed to me by the source named therein."

In response Dr. Rubinga E. Patrick, the present respondent, opposed the motion and swore an affidavit on 16th March, 2015 in support of his opposition to the Notice of Motion. Though

the affidavit is long it is informative and we think it is better to reproduce most of its parts. The relevant paragraphs state as follows—

“

5 **(2)** *THAT I have perused the Applicant’s application for: a Declaration that the judgment of the High Court in Civil Appeal No. DR. MFP 11 of 1995 is null and void; an Order setting aside the said judgment; and an Order for vacant possession of the suit land therein.*

10 **(3)** *THAT I have thoroughly discussed the legal and factual matters arising for the Applicant’s said application with my advocate Mr. Tibaijuka K. Ateenyi Charles; and I do reply thereto as hereunder.*

15 **(4)** *THAT the Applicant has no tenable cause against me before this Honourable Court, or at all; more so, after a lapse of over twenty years from the date of the impugned judgment, which the Applicant has never appealed against.*

(5) *THAT the chronology of events was as hereunder—*

20 **(a)** *The Applicant and one Yakobo Kato filed Civil Suit No. 60 of 1986 against me in the Magistrate’s Court of Kibito at Kibito, seeking to recover the suit land from me; and I counterclaimed for the recovery of the suit land from them.*

25 **(b)** *The said suit was heard by a Magistrate GII, who on the 10/09/1987 dismissed it and held that the suit land has been acquired by me through inheritance.*

30 **(c)** *A subsequent appeal against the said judgment, Civil Appeal No. 54 of 1978, was allowed by the Chief Magistrate of Fort Portal, who held that the Applicant and the said Yakobo Kato had proved a superior title over forty hectares of the land and set aside the judgment of Magistrate GII.*

(d) On 06/01/1989 I filled an application for review of the Chief Magistrate's judgment; but the application was later dismissed with costs.

5 *(e) After dismissal of my application for review, I sought leave from the Chief Magistrate's Court to appeal to the High Court, vide Misc. Civil Application No. 36 of 1989; but the application was on 18/12/1989 dismissed with costs.*

10 *(f) Thereafter, I sought leave from the High Court to appeal to the High Court, vide Misc. Civil Application No. Dr. MFP 05 of 1989; and leave having been granted on 20/02/1990, I filed Civil Appeal No. DR. MFP 1 OF 1990 in the High Court against the said judgment of the Chief Magistrate. But the appeal was struck out on 13/04/1991 on ground*
15 *that it was incompetent, having been filed without an extracted decree.*

(g) Then I filed Misc. Civil Application No. DR. MFP of 1991 in the High Court, seeking an extension of time which to appeal to the High Court against the said judgment of the learned Chief Magistrate; but the
20 *application was on 03/12/1991 dismissed with costs.*

(h) I appealed to this Honourable Court against the High Court's Ruling dismissing my application for extension of time, vide SCCA No. 35 OF 1992; and the appeal was determined on an interlocutory matter, not the
25 *merits of the decision of the learned Chief Magistrate regarding ownership of the suit land.*

(i) In its judgment in the said appeal, delivered on 02/07/1993, which judgment I have read over and over again, this Honourable Court—

30

(i) Did not go into the merits of the appeal, but based its decision on a finding that the entire appeal process right from the Chief Magistrate's Court was fatally flawed since the initial

leave to appeal was applied for in the latter Court outside the prescribed period without any extension of time having been granted;

5 **(ii)** *Did not go into the merits of the judgment earlier entered by the Chief Magistrate’s Court regarding ownership of the suit property; and*

10 **(iii)** *Did not hold that the appeal process could not be re-started in the Chief Magistrate’s Court by applying for an extension of time within which to apply for leave to appeal to the High Court, but open the possibility of doing so.*

15 **(6)** *THAT at the time this Honourable Court made its decision it was the Court to which decisions of the High Court were directly appealable; but the Court of Appeal has now been interposed between them.*

20 **(7)** *THAT after the judgment of this Honourable Court, I went back to the Chief Magistrate’s Court and re-started the process by successfully applying for an extension of time within which to apply for leave to appeal to the High Court, vide Civil Misc. Application No. 36 of 1993 (See Annexure “A₁” & “A₂”).*

25 **(8)** *THAT upon securing the said extension of time I successfully applied for leave to appeal to the High Court, vide Misc. Civil Application No. 33 of 1994, whereupon I lodged Civil Appeal No. 11 of 1995 wherein I was the successful party, and the judgment of the trial Magistrate GII under which I was declared owner of the suit land was restored (See Annexures “C”, & “D” to the Affidavit attached to the Applicant’s application).*

30 **(9)** *THAT I do repeat paragraphs 5 (1) (i), (ii), (iii), 7 and 8 hereinabove and further aver that by taking the action I took in the High Court I did not thereby re-open a matter that had been conclusively determined or brought*

to an end by this Honourable Court.

5 **(10)** *THAT at the time the High Court delivered its judgment on 30/09/1996, the Court of Appeal was already in place and operational; but to-date the Applicant and the said Yakobo Kato have never appealed to the latter Court or to any other Court whatsoever.*

10 **(11)** *THAT I do maintain that the leave to file the said appeal in the High Court and the ensuing judgment of the High Court are both valid and unimpeachable.*

15 **(12)** *THAT in spite of what is averred in paragraphs 7, 8 and 10 hereinabove, the Applicant and the said Yakobo Kato went on to separately sue people who were claiming part of the suit land through me, but their suit was on 08/06/2004 dismissed with costs by the then Kabarole District Land Tribunal (See Annexure “B”).*

20 **(13)** *THAT taking a cue from the decision of the said Land Tribunal, which stressed my ownership of the suit land as per the decision of the High Court in the said appeal, the Applicant and the said Yakobo Kato filed an application in the High Court seeking a re-hearing of the appeal; but their application was on 31/08/2005 dismissed with costs (See Annexure “C₁”, & “C₂”).*

25 **(14)** *THAT I have read the three documents constituting annexure “F” to the Affidavit attached to the Applicant’s application and noticed that the applicant concealed from the addressees of his letters (including officials of this Honourable Court the fact that there had been a subsequent appeal in the High Court which was decided in my favour, and kept flaunting only the judgment of this Honorable Court (See also Annexure “D”).*

30

(15) *THAT I repeat the foregoing paragraph and further aver that when the said officials eventually discovered the truth, they adopted the correct*

stance which takes into account the decision of the High Court in my favour in the said appeal (See Annextures “E₁”, “E₂”, & “E₃”).

5 **(16)** *THAT ultimately the Applicant wrote to the Hon. the Chief Justice seeking clarification of the said judgment of this Honourable Court, and hid Lordship, while wondering this was a proper case for clarification of judgment in accordance with the Rules of this Honourable Court, sought the views of another Justice of this Honourable Court; and the final communication was that this Honourable Court could not revisit its decision in the said appeal*
10 *under the Rules of this Court (See Annextures “F₁”, “F₂” & “F₃”).*

(17) *THAT I repeat paras 10 and 16 hereinabove and further aver that the Applicant now wants this Honourable Court to leap-frog the Court of Appeal and directly revisit the decision of the High Court purportedly under the*
15 *Rules of this Court, when—*

(a) *No appeal has ever been lodged against the said decision of the High Court;*

20 **(b)** *No challenge has ever been proffered in the High Court against its own decision.*

(18) *THAT the Applicant’s woes do not arise from his age or illiteracy, but from his peddling of half-truths and outright lies for many years regarding*
25 *ownership of the suit land and regardless of the final decision by the High Court in my favour.*

(19) *THAT I never at any one time abandoned my right of appeal.*

30 **(20)** *THAT it is in the interest of justice that the Applicant’s application be dismissed with cost.”*

As can be seen from the affidavits, the background to this application is involved. Although the two affidavits set it out, we think it is helpful to summarise that background. There was a land dispute during 1984 between Apollo Isingoma, (the applicant) together with his twin brother Yakobo Kato, on one side and the present respondent, Dr. Rubinga Edison Patrick, on the other side. The two instituted Civil Suit No. NFP 60 /86 in Kibito Grade II Magistrate's Court. On 10/09/1987, H/Wor. I. R. Rwecunguma, Magistrate Grade II, dismissed the suit and gave judgment in favour of the present respondent. The two appealed to the Chief Magistrate, Fort Portal. On or about 20/10/1988, H/Wor. Byaruhanga Paul, the then Chief Magistrate, Fort Portal, allowed the appeal by the two brothers and gave judgment against the present respondent in respect of 40 hectares of the disputed land. We shall be referring to Apollo Isingoma as the applicant and Dr. Rubinga as the respondent.

Strangely, instead of appealing to the High Court against that decision, the respondent filed a Notice of Motion in same Fort Portal Chief Magistrate's Court in January, 1989, asking the Chief Magistrate to review the judgment of the Chief Magistrate (Byaruhanga). The application for review was heard and dismissed by H/Wor. Maniraguha, the successor Chief Magistrate. The respondent who was dissatisfied with that dismissal sought leave to appeal to the High Court.

On 18/12/1989 Maniraguha, the Chief Magistrate, dismissed the application for leave to appeal. The respondent was dissatisfied with that decision. So he instituted Miscellaneous Application No. RFP 05 of 1989 in the High Court at Fort Portal seeking leave to appeal to the High Court. On 20th February, 1990, Mukanza J., (RIP) granted leave allowing the present respondent to appeal to the High Court (see page 85 of the record). The present respondent filed Fort Portal High Court Civil Appeal No DR HCFP 01 of 1990 on 22/02/1990. When the appeal came up for hearing, the respondents in that appeal (now the present applicant and another) objected to the competence of the appeal. Mukanza J. (RIP) accepted the objection because the appellant in that appeal had not extracted a decree in respect of the decision of the Chief Magistrate as required by law. So the learned judge struck out the appeal on 13/04/1991. This is reflected in pages 92 to 97 of the record of the Notice of Motion.

Subsequently the present respondent instituted in the High Court at Fort Portal Miscellaneous Application No. MFP 01 of 1991 seeking leave to appeal out of time which was dismissed by Mukanza, J., on 03/12/1991 as shown from pages 108 to 112 of the record.

5 On 16/12/1991 the present respondent instituted a Notice of Appeal against the said decision of Mukanza, J. However, on 21/10/1995 H/Wor. Ruhinda Asaph Ntengye, another successor Chief Magistrate in Fort Portal surprisingly granted the present respondent leave to appeal to the High Court. So the respondent instituted Fort Portal High Court Civil Appeal HFP No 11 of 1995. Katutsi, J., with some reservations allowed the appeal on a date not easy to see on the
10 record but there is a rubber stamp on the judgment to suggest it was on 30/09/1996. This is because there is a stamp certificate of that year. Counsel also seems to rely on that stamp. There is no proper explanation given for this judgment because on 02/07/1993, the former Supreme Court of Uganda gave judgment in Civil Appeal No. 35 of 1992 dismissing an appeal by the present respondent against the ruling arising from the ruling of Mukanza, J., in
15 High Court Miscellaneous Application No. MFP 01 of 1991 where the present respondent was the appellant was dismissed. It is because of that background that we find this application interesting.

Mr. Tibaijuka, counsel for the respondent raised a preliminary point of objection challenging
20 the competence of the application. Counsel contended that this application is not properly before this court. He pointed out that the judgment in Fort Portal High Court Civil Appeal No. 11 of 1995 (*Dr. Rubinga E. D. Vs. Yakobo Kato and Another*) which is being challenged in this application was delivered on 30/09/1996. Counsel observed that the applicant had two options. First the applicant could have applied to the High Court for review of its decision.
25 That option was not taken up. Counsel submitted that the second option open to the applicant was for the applicant to appeal to the new Court of Appeal which was operational then. For this proposition counsel relied on respondent's authorities **No. 15 (Bakunda D. Vs. Dr. Kinyatta S. and Another, Court of Appeal Civil Appeal No. 27 of 1996)**. His second authority is **No. 16: Administrator General vs. George Mwesigye Sharp (Court of Appeal
30 Civil Miscellaneous Application No. 12 of 1996)**. Both these appeals were decided by the then recently established Court of Appeal in November, 1996.

Counsel contended that the applicant should have filed Notice of Appeal by 14th October, 1996, followed by a Memorandum of Appeal by 13th December, 1996. The applicant did not do either. Counsel contended therefore that it is after twenty (20) years that the applicant has now raised the matter by asking this Court to set aside a High Court judgment instead of
5 seeking to set aside Court of Appeal decision and even then the application is made under the authority of the inherent jurisdiction of this Court. Counsel contended (correctly in our opinion) that exercise of this Court's inherent power under Rule 2 is to set aside this Court's own decisions but not to set aside decisions of lower courts. He contended that the application is novel and would require new legislation. He submitted that the inherent jurisdiction of this
10 Court is circumscribed. He argued that it is only appellate courts which do what the applicant is seeking. Counsel cited his authority **No. 07, Mandegyere & Ors Vs. Y. Kasikura & Ors (Supreme Court Civil Application No. 08 of 1991)** for the view that 3rd appeals were introduced by an amendment of the relevant law. He prayed that the application be struck out.

15 In reply Mr. Ekirapa, counsel for the applicant submitted that this application arises from a decision of this Court. He pointed out that this Court concluded litigation between the present parties in the Court's judgment delivered in Supreme Court Civil Appeal No. 35 of 1992. He submitted that despite that decision, the respondent went back to the lower courts and reopened the litigation. When court inquired why that step was not challenged at that time, *i.e.*,
20 *in the lower courts at the right time*, learned counsel seemed to suggest that there was no formal Court decision. He referred Court to a portion of page 121 of the record of the Notice of Motion which is part of page 3 of the judgment of Katutsi, J., in Fort Portal High Court Civil Appeal No. 11 of 1995. That portion reads as follows —

25 *“In any event, as leave has not been granted by the Chief Magistrate within time, the Judge's refusal to grant an extension of time was not unreasonable.”*

30 *Perhaps taking a clue from the passage I have just quoted, defendant's counsel went back to Court of the Chief Magistrate and first sought leave to apply for leave out of time. This was granted, despite the guided words of Platt, JSC. (supra). Leave to appeal to this Court was later given. Hence, this appeal. **There was no appeal both against the extension of time to apply for leave and against the grant of leave to appeal to this Court. In the circumstances, I find my hands tied. This aspect of the suit has caused me a lot of anxiety. Plaintiffs are illiterate and obviously poor men.***

Since however, it would appear to me that the appeal before me is competent, I will cast aside all feelings of compassion and proceed to discuss it on merit.”

During the hearing we pointed out to counsel the fears expressed by Katutsi, J., in the above
5 passage and the long delay by his client not to take proper course of action in time as argued by
Mr. Tibaijuka.

Mr. Ekirapa in effect argued that Katutsi, J., should not have heard and decided the appeal
before him because that would be challenging the decision of the former Supreme Court made
in 1993 on the relevant issues. So learned counsel argued that Katutsi, J., decision is “null and
10 void.” In effect Mr. Ekirapa argued that this Court has powers to set aside null judgments.
That the inherent powers do not limit this Court’s inherent powers to set aside judgments that
emanate from the Court of Appeal only. Learned counsel appear to contend that, to quote his
words “any one out there can file an application to this Court but this particular appeal was
handled by this Court and that it would be wrong to go back to the Court of Appeal.” With
15 due respect to learned counsel, we think it is not true that anybody can just file any application
in this Court. There are limits to the right to seek redress by relying on the exercise of inherent
power of this Court.

Counsel agreed that Katutsi, J., made his decision on 30/09/1996. He accepted that the
20 decision reversed or reviewed the judgment of this Court delivered in 1993. Counsel agreed in
effect that it is unreasonable to take so long (20 years) before appealing against a wrong
decision. Counsel referred us to pages 130 to 132, i.e., Annexures E, F and a letter of the
record of the Notice of Motion. These are—

- (1) (a) a warrant to give vacant possession (page 130),
- 25 (b) the intervention by the Registrar of this Court dated 23/02/2012 and
- (c) the letter dated 30/06/2010 from State House.

Counsel prayed that despite the time lag, we should consider the application and decide it on
merit.

30

In rejoinder Mr. Tibaijuka referred Court to—

- (a) the Annexure such as another letter dated 19/07/2010 also from State House [E (1)].

(b) Assistant Registrar's letter dated 12/04/2011 [E (2)],

(c) And F3, a letter dated 23/02/2012 written to the Chief Justice by the Registrar of this Court.

5

All the aforementioned documents were annexed to the respondent's affidavit in reply and they show contrary views from the views in the documents relied on by Mr. Ekirapa. According to Mr. Tibaijuka, annexures such as F (1) to F (3) annexed to the respondent's affidavit in reply do not support the application. According to Mr. Tibaijuka, Annexure F (3),
10 a memo (or letter) by the Registrar of this Court indicated that this Court could not revisit Supreme Court Civil Appeal No. 35 of 1992 under any of the Rules of this Court.

After hearing both sides on the preliminary point of objection concerning the competence of the application, we decided to hear the application on its merits and promised to give reasons
15 for that decision.

Essentially the reasons given in support of the objection to the competence of the motion go to the merits of the Notice of Motion. We were therefore of the considered opinion that the best course is to hear the reasons for and against the application to enable us decide the fate of the
20 application on its merit. The **Bakunda Case** (*supra*) and that of the **Administrator General** (*supra*) cited by counsel for the respondent support the respondent's view that by 1996, the new Uganda Court of Appeal was operating and, therefore, the present applicants should have taken appropriate steps through that Court for that Court to give a decision about what the applicant (or the respondent for that matter) thought was wrong.

25

Clearly the two authorities (*supra*) cited by Mr. Tibaijuka constitute evidence of the fact that the new Uganda Court of Appeal created by the 1995 Constitution was by November, 1996, operational and that therefore the applicant could have taken steps to enforce his legal rights which were perceived to have been breached by the High Court.

30

The arguments advanced in support of or against the preliminary point of objection would better be considered in regard to the merits of the main application. It was because of this that

we allowed the parties to argue the merits of the application itself. We now proceed to consider the merits of Notice of Motion on the basis of arguments presented by each side.

On the merit of motion, Mr. Ekirapa raised four issues.

5 *The first issue is whether this application is properly before this Court.*

The second issue is whether in Supreme Court Civil Appeal No. 35 of 1992, this Court held that no extension of time would be granted to the respondent.

10 *The third issue is whether the Chief Magistrate’s Court of Fort Portal and the High Court were bound by the decision of the former Supreme Court in Civil Appeal No. 35 of 1992.*

The last point concerns remedies.

15 Mr. Ekirapa submitted that the arguments made while arguing the preliminary point of objection namely, whether this application is properly before this Court are relevant here.

We are compelled to point out that in some aspects the record of the Notice of Motion was not properly prepared. Take for example the judgments and rulings annexed to the affidavit of the
20 applicant. They do not bear relevant headings and even dates showing when they were delivered. We were forced to get relevant particulars from elsewhere. This contributes to delays in doing our work.

Ground One or First Issue:

25 As pointed out earlier, both sides presented arguments for and against the competence of the Notice of Motion. The application was instituted under Rules 2 (2), 41 and 42 of the Rules of this Court.

The most important and relevant rule in the matter before us is **Rule 2 (2)** which reads as
30 follows—

2(2) *“Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the Court, and the Court of Appeal to make such orders as may be necessary for achieving the ends of justice or prevent abuse of the process of*

any such Court, and that power shall extend to **SETTING ASIDE JUDGMENTS WHICH HAVE BEEN PROVED NULL AND VOID** after they have been passed, and shall be exercised to prevent an abuse of the process of any court caused by delay” (emphasis is ours).

5

On the face of it the applicant is asking this Court to use its inherent powers to declare that the decision of the High Court (by Katutsi, J.) in Fort Portal Civil Appeal No. MFP 11 of 1995 which was given on 30/09/1996, that is nearly twenty years ago, is null and void and the same be set aside.

10

We must point out from the start that what the applicant is attempting to do is in effect to make a 4th appeal which is not recognized under our Constitution and or our other laws. See Article 132 which created the jurisdiction of this Court. Also see S. 232 of the Magistrates Courts Act; Part VII of Civil Procedure Act, Part IV of the old Judicature Act and indeed S. 6 (2) of the current Judicature Act (Cap 13 of the Laws of Uganda).

15

As far as we are aware, since 1996, possible appeals, if any, arising from trials by Courts of Magistrates Grade II end in the current Court of Appeal. In any case appellate jurisdiction is created by statute as the following cases, among others, illustrate—

20

(a) **Erias Lukwago Vs. Attorney General & Kampala Capital City Authority** (Supreme Court Civil Appeal No. 06 of 2014).

(b) **Anifa Kawoya Vs. National Council for Higher Education** (Supreme Court Misc. Application No. 06 of 2013).

25

(c) **Natendegyere & Others Vs. Y. Kasikiwa & Others** (Supreme Court Civil Application No. 08 of 1991_ - See judgment of Platt.

30

(d) **Taparu vs. Rottei (1968) EA 618** where a judge of the High Court of Kenya held that “*the court’s inherent jurisdiction should not be invoked where there was a specific statutory provision to meet the case.*”

In Lukwago case (*supra*) at page 14 of the ruling, this Court referred to the exercise of inherent jurisdiction of this Court.

5 *“The substantial issue is, therefore, whether a decision of a single Judge of the Court of Appeal is appealable to this Court. Our opinion is that such an appeal is not possible because of S. 12 (2) of the Judicature Act. The appropriate action the applicant can take is to refer the matter to the bench of three Justices of the Court of Appeal for review Rule 2 (2) of the Rules of this Court providing for inherent powers of this Court to make such orders for achieving the ends of justice cannot be applied to override the clear provisions of the Judicature Act, which is the parent and superior law.”*

10

The inherent jurisdiction which the applicant is relying on in Rule 2 (2) has got limitations. It does not replace appellate jurisdiction created by Statute. If inherent jurisdiction can be relied upon by anybody from anywhere as contended by Mr. Ekirapa, the Supreme Court will be swarmed with all types of applications which can make it impossible for the Supreme Court to properly perform any duties at all or properly as prescribed by relevant laws.

15

In 1996, the **Civil Procedure Act** was amended by the **Judicature Statute, 1996 (Statute 13 of 1996)** by introducing 3rd appeals under the new S.74 (*Which is now S.73 in 2000 revision of the Civil Procedure Act.*) The section reads as follows—

20

*“Where an appeal emanates from a judgment of a Magistrate Grade II but not including an interlocutory matter, a party aggrieved may lodge a **third and final appeal to the Court of Appeal on the certificate of the High Court** that the appeal concerns a matter of law of great public or general importance, or if the Court of Appeal in its over all duty to see that justice is done considers that the appeal should be heard.”*

25

This provision was enacted in 1996 by Statute No. 13 of 1996 after the current Constitution of Uganda had been promulgated on 22nd September, 1995. The current Court of Appeal to which the said S. 74 refers was created in 1995 under the said Constitution before Katutsi, J., decided the appeal under consideration on 30/09/1996. Therefore the applicant should have lodged the appeal to the Court of Appeal either with the leave of the High Court or of the Court of Appeal in 1996 which is nineteen (19) years ago.

30

We are not aware of any law which allows appeals to this Court from decisions of Magistrates Grade II. And as this Court has stated in many decisions, the right of appeal is created by Statute (See **Lukwago Case**) (*supra*). Furthermore we are not aware of any law which allows
5 appeals to this Court using its inherent jurisdiction.

Consequently, Mr. Tibaijuka's objection succeeds. This means ground one of the applications fails. In effect that means the Notice of Motion fails. We do not find it necessary to consider arguments on grounds 2 and 3 because success on the first ground which was the substantial
10 one wholly disposes of the application.

In the result we dismiss the application. The facts set out in this application place blame on both sides for long drawn out litigation. Therefore, considering its background and other factors, it is our considered opinion that it is just and reasonable for each party to bear their
15 own costs.

Delivered at Kampala this 15th day of October, 2015.

20 **B.M. Katureebe,**
Chief Justice.

25 **J. Tumwesigye,**
Justice of the Supreme Court.

Dr. E. Kisaakye,
Justice of the Supreme Court.

30

J.W.N. Tsekooko,
Ag. Justice of the Supreme Court.

G.M. Okello,

Ag. Justice of the Supreme Court.