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

4
CORAM: BYAMUGISHA, KAVUMA & ARACH-AMOKO, JJA

8
ELECTION PETITION APPLICATION NO.24/11

BETWEEN

12 1. BAKALUBA MUKASA PETER
2. ELECTORAL COMMISSION:.....APPLICANTS

AND

16 NALUGO MARY MARGARET SEKIZIYIVU:.....RESPONDENT

RULING OF THE COURT

20 This application to strike out a notice of appeal was filed under Rules 82, 43(1)
(2) of the Judicature (Court of Appeal Rules) Directions S.I.13-10.

24 It is seeking two orders:

1. The appellant's Notice of appeal and intended appeal be struck out
2. Costs of the application be provided for.

28 The application is premised on the following grounds:

1. The respondent failed to file a memorandum of appeal within seven days after the notice of appeal was filed,
 2. The respondent failed to serve the memorandum of appeal in this
- 32 court within the stipulated time.

3. The respondent failed to lodge a record of appeal within 30 days.

The above grounds were supported by an affidavit dated 3rd October 2011
36 deponed by Mwebya Mathias, an advocate with M/s Ssekaana Associated
Advocates & Consultants representing the applicant.

The respondent opposed the application and she deponed an affidavit dated 16th
40 November 2011. In the affidavit she tried to explain why she has failed to file
her appeal within the time stipulated by the rules. in particular that her lawyers
applied for a copy of the record of appeal and the same has not been availed to
the said lawyers for purposes of formulating grounds of appeal. She further
44 stated in paragraph six that she has been informed by Benon Kirigola, a court
clerk with M/s Lukwago & Co. Advocates that on several occasions the said
clerk checked with the court registry about the progress of the proceedings and
judgment but was informed that the judge went on leave and could not be traced
48 to proofread the proceedings and sign the typed judgment.

When the matter came before us for disposal, Mr Ssekaana learned counsel for
the first applicant made brief submissions. He stated that the respondent filed a
52 notice of appeal on 27th July 2011 against the decision of the High Court and the
same notice was served on the applicant on 2nd August 2011. The notice of
appeal was served with a letter requesting for a typed copy of the proceedings.

He pointed out that under **rule 30 of The Parliamentary Elections (Petitions)**

56 **Rules** the respondent was supposed to file a memorandum of appeal within 7 days and the record of appeal within 30 days. She has not done so to date.

Learned counsel cited the following authorities in support of his argument:

(1) **Hon. Rose Akol Okullo & another v Among Annet Anita –Election**

60 **Petition Application No.35/07.** He stated that this authority falls on all fours with the instant application.

(2) **Mparo General Contractors Ltd v Uganda National Examination Board- Civil Application No. 82/04.**

64 He invited court to strike out the notice of appeal with costs.

In reply, Mr Katumba learned counsel for the respondent, submitted that the respondent took the necessary steps to have the appeal filed. He pointed out that

68 the notice of appeal and the letter requesting for the record of proceedings were filed within the time allowed by law. He further submitted that **rule 36** of the

Parliamentary Elections Petitions Rules permits the application of Court of Appeal Rules to election petition appeals. He claimed that the seven days

72 mentioned in rule 30 starts to run from the date the record of appeal is availed.

He, too, cited the following authorities:

(1) **Wanume David Kitamirike v Uganda Revenue Authority-Civil Application No.138/10** and

76 (1) **Mabosi v Uganda Revenue Authority-Civil Application No.16/95.**

He distinguished the authorities cited by Mr Ssekaana as being inapplicable to the facts of the instant application.

80 He invited court to dismiss the application. He added that in the event of the application being allowed each party should bear its own costs.

84 Rule 82 under which the application was filed provide:

88 *"A person to whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the court to strike out the notice of appeal or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not been taken or has been taken within the prescribed time."*

92 This rule has received judicial consideration by this court in numerous authorities. In the case of *John Kyeyune v Administrator General - Civil Application No.064/11* and *The Environmental Action Network v Joseph Eryau- Civil Application No.89/05* the circumstances under which the rule can

96 be invoked were set out. In the former case the court at page 3 said:

100 *"The rule provides for two instances in which a person who has been served with a notice of appeal, either before the institution of an appeal or after the appeal has been filed, can take to have the notice of appeal or the appeal itself struck out.*

104 *The first instance is where the person claims that no appeal lies. The second instance is where the person applying claims that no essential step has been taken in the proceedings or has not been taken within the time prescribed by the rules."*

108 In the matter now before us, the applicant is claiming that the respondent failed to take two essential steps in the proceedings within the time prescribed by the

rules. The first step is that she failed to file a memorandum of appeal within seven days in accordance with rule 30(supra). The rule states:

112 *"A memorandum of appeal shall be filed with the registrar-*

(a) in a case where oral notice of appeal has been given, within fourteen days after the notice was given and

116 *(b) in case where written notice of appeal has been given, within fourteen days after notice was given."*

The respondent filed a written notice of appeal on 27th July 2011. The computation of seven days began to run from that day. The memorandum of
120 appeal ought to have been filed on or before 10th August 2011.

The second essential step which the applicant claims was not taken within the time prescribed by the rules was failure to file the record of appeal within 30 days after filing the memorandum of appeal in accordance with rule 31 of **The**

124 **Parliamentary Elections Petitions Rules-S.I 141-2.** The rule provides:

"The appellant shall lodge with the registrar the record of appeal within thirty days after filing by him or her of the memorandum of appeal."

128 This rule which is couched in mandatory words was not complied with by the respondent.

The respondent in the affidavit filed opposing the application more or less
132 admitted failing to take the essential steps mentioned within the prescribed time but contended that her lawyers M/s Lukwago & Co Advocates applied for the

record of proceedings and the same has not been availed to them-thus the failure to file the memorandum and record of appeal.

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Matters concerning elections litigation by law are supposed to be heard expeditiously. This is contained in **Article 140** of the Constitution which provides:

140 *“(1) Where any question is before the High Court for determination under Article 86(1) of this Constitution, the High Court shall proceed to hear and determine the question expeditiously and may, for that purpose suspend any other matter pending before it.*

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(2) This article shall apply in a similar manner to the Court of Appeal and the Supreme Court when hearing and determining appeals on questions referred to clause(1) of this article.”

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The wording of this article are reproduced almost in similar terms in sections 63(2) and 66(2) (4) of the Parliamentary Elections Act. The rules of procedure which were made under the Act also use similar words of expeditious disposal of election matters- see **Rules 13 and 33** of the Parliamentary Elections Petitions Rules.

156 The rules of procedure were made to enable the expeditious disposal of election related matters and therefore the luxury provided by rule 83 of the Court of Appeal rules are not available, in our view, to the respondent. Moreover the application before us is not for enlargement of time.


While we agree with Mr Katumba that under rule 36 of the Parliamentary
160 Elections Rules this court can, in the interest of justice and expedition of
proceedings, apply the procedure and practice in civil matters when dealing
with election appeals, this can only be done with modifications and where the
justice of the case so demands.

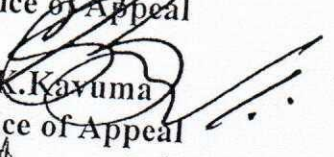
164 The authorities which Mr Katumba cited concerned ordinary civil matters and
are inapplicable to the matter now before us.

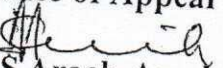
Delay in taking the right step in litigation at the right time hinders successful
168 parties from enjoying the fruits of their judgment which was obtained in their
favour. The respondent has delayed in taking the right step at the right time with
the result that the application would be allowed and the notice of appeal will be
struck out with each party bearing its costs.

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Dated at Kampala this 20th day of Nov 2011

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C.K. Byamugisha
Justice of Appeal


S.B.K. Kavuma
Justice of Appeal

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M.S. Arach-Amoko
Justice of Appeal