

THE REPUBLIC OF UGANDA

Strike out
out w/A

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 15 OF 2007

(ARISING FROM ELECTION PETITION APPEAL NO. 0010 OF 2006)

1. LOI KAGENI KIRYAPAWO
2. ELECTORAL COMMISSION:.....:APPLICANTS

VERSUS

GOLE NICHOLAS DAVIS:.....:RESPONDENT

[CORAM: ODOKI, CJ; TSEKOOKO, JSC; MULENGA, JSC
KANYIEHAMBA, JSC; KATUREEBE, JSC]

RULING OF COURT

This is an application to strike out a notice of appeal and the appeal on the ground that both the memorandum of appeal and the record of appeal were filed out of time.

The applicant contends that the Parliamentary Elections (Election Petition) Rules apply to election appeals lodged in the Supreme Court. According to these rules a memorandum of appeal must be filed within 7 days and a record of appeal must be filed within 30 days of receipt of the record.

In the present case, the memorandum of appeal and record of appeal were filed on 1st October 2007, 45 days after receipt of the record, and therefore out of time.

On the other hand, counsel for the respondent argues that the Parliamentary Elections (Election Petition) Rules do not apply to the election appeals in the Supreme Court, but it is the Supreme Court Rules which apply. These rules require memorandum and record of appeal to be filed within 60 days of receipt of the record of proceedings. Therefore, according to counsel for the respondent the memorandum of appeal and record of proceedings were filed in time.

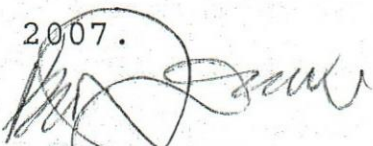
In our view the Parliamentary Elections (Election Petition) Rules are the proper rules to apply to election petition appeals since they were made with a specific objective of expediting the hearing of election petitions.


Accordingly, we find that the memorandum of appeal and the record of appeal filed on 1st October 2007 were filed out of time. The appeal is therefore incompetent. However, in the interest of justice we are not inclined to strike out the appeal, considering the apparent misunderstanding by counsel for the respondent of the applicable rules.

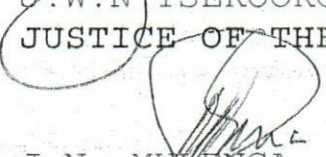
We accept the alternative prayer that the respondent be granted extension of time in which to file the appeal, up to 1st October 2007 being the day on which he filed the record of appeal.

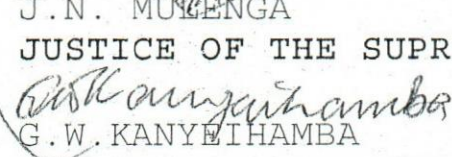
The applicant will have the costs of this application. We certify costs for one counsel only.

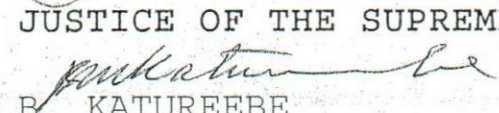
Dated at Mengo this 17th day of October, 2007.


B.J. ODOKI
CHIEF JUSTICE


J.W.N. TSEKOOKO
JUSTICE OF THE SUPREME COURT


J.N. MULENGA
JUSTICE OF THE SUPREME COURT


G.W. KANYEIHAMBA
JUSTICE OF THE SUPREME COURT


B. KATUREEBE
JUSTICE OF THE SUPREME COURT