

UGANDA / JUDGMENT

Electoral Commission v Watira Wilson (Election Petition Application No. 4 of 2022) [2022] UGCA 133 (6 May 2022) [2022] UGCA 133

COURT

Court of Appeal of Uganda

BEFORE

Luswata, J, Cheborion, JA, Madrama, JA

CASE / FILE NUMBER

Election Petition Application No. 4 of 2022

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THE REPUBLIC OF UGANDA,**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA (CORAM: CHEBORION,
MADRAMA AND LUSWATA JJA) ELECTION PETITION APPLICATION NO 04 OF 2022****ARISING FROM ELECTION PETITION APPEAL NO 49 OF 2021****ARISING FROM HIGH COURT ELECTION PETITION NO 012 OF 2021****BETWEEN**

ELECTORAL COMMISSION) APPLICANT

AND

WATIRA WILSON) RESPONDENT

RULING OF CHRISTOPHER MADRAMA, JA

The applicant filed this application under the provisions of the rule 43 (1) & (2) and 82 of the Judicature (Court of Appeal Rules) Directions and rules ³¹ & 36 of the Parliamentary Election (Election Petitions) Rules for orders that Election Petition Appeal No 49 of 21 struck out and for costs of the application and the appeal to be borne by the respondent.

The grounds of the application are that there is no valid appeal on record by the respondent. Secondly, the respondent failed to take an essential step in the proceedings and thirdly the respondent did not file a memorandum of appeal within the prescribed time.

The application is supported by the affidavit of Sabiiti Eric, an advocate employed by the applicant.

The respondent Mr. Watira Witson had filed Election Appeal Miscellaneous Application No 08 of 2021 for orders that the time within which to file and serve the Memorandum of Appeal and Record of Appeal in Election Petition No 012 of 2021 be extended. Secondly, that the late filing and service of the

memorandum and record of appeal be validated. Lastly for costs of the application to be provided for in the cause. In my ruling in Election Miscellaneous Application No 08 of 2021, the application was dismissed with costs. The effect of the ruling in that application is that there is no valid appeal in this court on the ground that the memorandum of appeal and the record of appeal were filed out of time.

Having dismissed the respondent's application for extension of time to file the memorandum of appeal out of time or to validate the late filing of the memorandum of appeal, this application has by default being allowed.

I would in the premises make an order that Election Petition Appeal No 49 of 2021 be struck out with the costs of the application and the appeal to be borne by the respondent to this application.

| Dated at Kampala the | GE
day of | 2022 | |-----|-----|-----| | Christopher
Madrama | |

Justice of Appeal

It

THE REPUBLIC OF UGANDA,

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA (CORAM: CHEBORION,
MADRAMA AND LUSWATA JJA) MISCELLANEOUS APPLICATION NO 08 OF 2021
ARISING FROM ELECTION PETITION APPEAL NO 49 OF 2021 ARISING FROM HIGH
COURT ELECTION PETITION NO 012 OF 2021 BETWEEN**

WATIRA WILSON) APPLICANT

AND

- . WAKTMONA DAVID WANENDEYA) I
- . ELECTORAL COMMISSION) RESPONDENTS 2

RULING OF LUSWATA KAWUMA, JA

- till I have had the opportunity to read in draft the judgment of my brother, Madrama, JA. This application hinged on eleven grounds. Grounds 1,3,4, and 5 stood out that the applicant was for sufficient reason prevented from taking the essential step to file and serve the notice and memorandum of appeal in time. I am in agreement with the decision of my brother Justice Christopher Madrama that the applicant's advocates were guilty of dilatory practice when they failed to file the memorandum and record of appeal within the time allowed by statute.
- 12) In addition to that decision, my brother Justice Madrama made significant reference to the time lines given to the Court of Appeal in election litigation. It is provided in Section 66 Parliamentary Elections Act (hereafter PE Act) that
 - (t) A person aggrieved by the determination of the High Court on hearing an election petition may appeal to the Court of Appeal against the decision.
 - (2) The Court of Appeal shall proceed to hear and determine an appeal under this section within 6 months from the date of filing of the appeal and may for that purpose suspend any matter pending before it.

I agree then that extensions that would place the appeal beyond that statutory period, are a violation of that specific provision. However, there is indeed a problem which may have been overlooked by the legislature and may require remedial actions by the Court. I will elaborate

- The law as well explained by my brother Justice Madrama is that lodging of §[3] documents under the PE Act, Parliamentary Elections (Interim Provisions) Rules, and Judicature (Court of Appeal Rules) Directions, goes beyond a mere placing of the documents in the Court registry and procuring a receiving stamp from the registry staff. The Advocate or litigant concerned must ensure that they are properly lodged before the Registrar and the Registrar's seal received. Even then, it remains squarely the duty of the Registrar to endorse or seal all pleadings received at the registry. In practice, such endorsement is made only after a hearing date for the action, in this case the appeal, is obtained. This could explain why the application which was filed on 20/10/2021, was formerly lodged on 21/3/2022, five months later. It will not be judicious to blame the applicant or their counsel for that long lull of delay.
- Again, once a Registrar has received due notice that an intending appellant §[4] requires certified copies of the judgment/ruling and proceedings, they must act upon that request in haste, and in line with the spirit of election litigation, that requires expediency in all steps taken. Indeed, according to the Parliamentary Elections (Election Petitions) (Production of Records of Appeal) Directions SI 114-4, a secretary to the Judge or any other person in charge of preparing a record, must put aside all other pending work until preparation of the proceedings is completed. They may need to work beyond working hours. For that reason, the Court must facilitate such person with all necessary equipment and stationary to ensure that the record is ready in time as required by Rule 2 of the Election Petition (Interim

Provisions) Act. In the same vein, Judges are enjoined to institute a method by which typing of the records begins and continues during the course of hearing the petition.

- Registrars and the Courts in general should not abdicate that important duty. \$[5]\$
- Having said so, I maintain my decision above. The crux of the matter in this \$[6]\$ case is that the applicant's counsel failed to file the memorandum and record

within the time set by statute. In such a case, the acts of those advocates who erred, are visited on the applicant, their client. By failing to take the necessary step, the applicant forfeited his right to appeal the ruling of the Learned Judge.

Dated, signed and delivered at ^athi&,* rt1 ²⁰²² EVA K. L A Justi Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Cheborion Barishaki, Christopher Madrama & Eva Luswata, JJA)

MISCELLANEOUS APPLICATION NO.8 OF 2021

ARISING FROM ELECTION PETITION APPEAL NO.49 OF 2021

ARISING FROM HIGH COURT ELECTION PETITION NO.012 OF 2021 10

BETWEEN

WATIRA WILSON:.....

AND

1. WAKIKONA DAVID WANENDEYA

2. ELECTORAL COMMISSION:..... 15

RULING OF CHEBORION BARISHAKI, JA

I have had the benefit of reading in draft the ruling in the above application prepared by my learned brother Justice Christopher Madrama, JA and I agree with the analysis and conclusion reached.

I also agree with the proposed orders regarding costs. 20

Since Eva Luswata, JA also agrees, this application is dismissed with costs.

It is so ordered.

