

UGANDA / JUDGMENT

Genegri Plantation Limited v SWATT Security Limited (Civil Application 193 of 2024) [2025] UGCA 2 (24 January 2025)

[2025] UGCA 2

COURT

Court of Appeal of Uganda

BEFORE

Cheborion-Barishaki, JA, Gashirabake, JA, Asa Mugenyi, JA/JCC

CASE / FILE NUMBER

Civil Application 193 of 2024

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THE REPUBLIC OF UGANDA**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA****CTVIL APPLICATION NO 193 OF 2024****(ARTSTNG OUT OF CrVrL APPEAL NO. 0236 OF 2024|.**

Coram: Cheborion, Gashirabake, Mugengi JIA

GENEGRI PLANTATION LTD APPLICANT

-VERSUS-

SWATT SECURITY LIMITED RESPONDENT

RULING OF THE COURT

The Applicant brought this application by Notice of Motion under Rules 43,82, 83 and 84 of the Judicature (Court of Appeal) Rules, SI 13-10 seeking the following orders, that;

- 1. The Respondent failed to take an essential step to prosecute its appeal, when it defaulted in filing a Memorandum and the Record of Appeal within the time prescribed by law.
- 2. The Notice of Appeal filed in this Court by the Respondent arising out of High Court Civil Suit No. 256 of 2018 be struck out
- 3. The costs of this application be granted to the Applicant

The application is supported by an affidavit deponed by Mr. Hanif Mohamed Moledina, the Managing Director of the Applicant, detailing the circumstances and grounds upon which the Applicant seeks to strike out the Notice of Appeal. Notably, though served with the pleadings in the application, and notwithstanding an undertaking on Court record from its legal counsel to file an affidavit in reply and submissions, the Respondent, did not file any affidavit in reply nor submissions and both the Respondent and its legal counsel on record, did not appear when the application was called for hearing on 8th November 2024.

Background

The background to the application can be discerned from the Notice of Motion and the affidavit in support, as well as the judgment of the trial court in Civil Suit No. 256 of 2018, which was attached to the affidavit in support.

The Respondent filed HCCS No. 256 of 2078 in the High Court of Uganda, Land Division against the Applicant, the Commissioner of Land Registration and the Attorney General. The Applicant filed a counterclaim against the Respondent in which it sought an order for cancellation of the Respondent's title for land comprised in LRV 1297 Folio 15 Plot 8 Block 917 Land situate at Bulemezi on ground that it was super imposed on the Applicant's title comprising of all land measuring approx. 1290 Hectares described as LRV 1698 Folio 2 Plot 65, formerly part of original Plot 4 Bulemezi Block 917 land at Kibaja, Kyambogo, Kisarya, in Nakaseke District.

The suit and counterclaim were determined in favour of the Applicant. The Court made several declarations and orders. These included; a declaration that the Applicant is the owner and registered proprietor of all land measuring approx. 1290 Hectares comprised in LRV 1698 Folio 2 Plot 65, formerly part of original Plot 4 Bulemezi Block 917 land at Kibaja, Kyambogo, Kisarya, in Nakaseke District and is entitled to possession thereof. The Court ordered for the cancellation of the Respondent's certificate of title for land comprised in LRV 1297 Folio 15 Plot 8 Block 977 Land situate at Bulemezi, having found that the said title was super-imposed on the Applicant's land and title. The Court further issued an order of eviction against the Respondent and awarded damages and costs.

Being dissatisfied with the said judgment and all the orders made therein, the Respondent, through M/s Gitta & Co. Advocates, lodged a Notice of Appeal and filed a letter requesting for a certified record of proceedings in the matter in the High Court on the 1st of June 2023. The same were served on the Applicant's legal counsel, M/s Magna Advocates on the 16th of June 2023.

In the meantime, the office of the Commissioner Land Registration complied with the orders of the High Court and effected a cancellation of the Respondent's registration as proprietor of the land comprised in the certificate of title for LRV 1297 Folio 15 Plot 8 Block 917 land situate at Bulemezi and maintained the registration of the Applicant, as the lawful and registered proprietor of the suit land measuring approx. 1290 Hectares comprised in LRV 1698 Folio 2 Plot 65, formerly part of original Plot 4 Bulemezi Block 917 land at Kibaja, Kyambogo, Kisarya.

Subsequently, the Respondent applied for and obtained a conditional and partial order of stay of execution of the judgment and decree of the High Court restraining the Applicant as the decree holder from evicting the Respondent and from executing any of the remaining un-executed orders.

The trial Court prepared the typed proceedings and judgment, certified them as requested by the Respondent's legal counsel and by letter dated 14th August 2023, notified the Respondent through its counsel of availability for collection. The letter was equally copied to and served on counsel for the Applicant.

It appears that the Applicant's legal counsel awaited to be served with the Memorandum and Record of Appeal by the Respondent to no avail and the 60 days within which the Respondent ought to have done so lapsed by 13th October 2023, without the same being filed.

Having defaulted on the filing of the Memorandum and Record, on 23rd October 2023, the Respondent instructed another law firm, M/s Mugabi Shyaka & Co. Advocates to participate in the conduct of the matter, whereof the said law firm filed and served a Notice of instructions indicating that, it too, had been instructed to prosecute the appeal.

On the same day, 23rd October 2023, the said firm filed a letter in the trial court requesting for a complete certified record of proceedings stating that the initial proceedings were missing some content, which according to them was important in their intended appeal. At the time, the timelines for lodging the Memorandum and Record of Appeal had lapsed. In response to the said request, the trial court again prepared and availed a complete record of proceeding to the Respondent's counsel on the 18th day of January 2024. The Respondent again never filed the Memorandum and Record of Appeal.

The Applicant filed the instant application on 26th March 2024, seeking to strike out the Notice of Appeal on account of failure by the Respondent to take an essential step in the appeal by failing to file and serve the Memorandum and Record of Appeal within the time prescribed by the Rules of this Court.

The Grounds of the application

The grounds in support of the Application are contained in the Notice of Motion and detailed in the affidavits in support. The grounds are that:

- The Applicant was the successful party in HCCS No. 256 of 2018 in which the trial court, among several other declarations and orders, declared that the Applicant is the owner and registered proprietor of all land measuring approx. 1290 Hectares comprised in LRV 1698 Folio 2 Plot 65, formerly part of original Plot 4 Bulemezi Block 9 17 land at Kibaja, Kyambogo, Kisumu, entitled to possession thereof and therefore issued an order of eviction against the Respondent 1

- Being aggrieved by the said decision, the Respondent through its legal counsel lodged a Notice of Appeal and wrote a letter requesting for a certified record of proceedings and Judgment, all on the 15th day of June 2023 and served the same on the Applicant on the 16th day of June 2023. 11.
- The said certified record of proceedings and Judgment were made available as requested by the Respondent on the 14th day of August 2023 ut
- IV. From the date when the certified record of proceedings and judgment were made ready for picking, the time for filing the Memorandum and record of Appeal had lapsed on the 13th, of October 2023, without the Respondent filing and serving the same.
- Having defaulted on filing the Memorandum and Record of Appeal and as part of a scheme to circumvent the limitation period for lodging the appeal, the Respondent ingenuously instructed new counsel to represent it in the matter and on the 23rd day of October 2023 the said counsel requested for a complete certified record of proceedings, purporting that the earlier availed proceedings were incomplete.
- V1 The court further availed the Respondent with a complete and certified record of proceedings on the 15th day of January 2024 and the same letter was copied to the applicant's lawyers, and to date, the Respondent has never lodged to this court a Memorandum and record of appeal in order to prosecute the appeal within a stipulated time as required by law which prescribes strict time lines.
- v11 Further, the Respondent has never filed an application for leave to file the Memorandum and Record of Appeal out of time and or extension of

time within which to file the same, and continues to benefit from the order of stay of execution granted by the High Court.

- v11r That the Respondent/Appellant has failed to take essential step in the appeal, has failed to prosecute its appeal, thereby rendering the Notice of Appeal incompetent and liable to be struck out with costs.
- That it in the interest of justice this Application be allowed.

The Respondent's Case

The Respondent did not file any affidavit in reply nor submissions. By 8th November 2024, when this application was called for hearing, the Respondent or its counsel on record, M/s Mugabi Shyaka & Co. Advocates had neither filed an affidavit in reply on record nor submissions.

There is sufficient evidence on record that the Respondent was duly served with the application through its said advocates, M/s Mugabi Shyaka & Co. Advocates. The court record indicates that when the application came up on 25th June 2024, for conferencing before the Learned Registrar of this Court, Mr. Joseph Kyazze, learned counsel for the Applicant informed court that the Respondent's counsel had been duly served with both the application and the Applicant's written

submissions. Counsel further informed court that the Respondent had neither filed nor served an affidavit in reply or submissions.

In response thereto, Mr. Mugabi Cyrus, from M/s Mugabi Shyaka & Co. Advocates, who appeared for the Respondent conceded that, indeed, they had been served with the application and submissions. He prayed for leave of court to be allowed to file the Respondent's affidavit in reply and submissions by 2nd July 2024. He further informed court that the Respondent had subsequently filed the Memorandum and Record of Appeal and assigned a new appeal as Civil Appeal No. 301 of 2024. He admitted that he had not yet served the Memorandum and Record of Appeal on the Applicant or its counsel.

In the orders made by the learned registrar of this Court, the Respondent's counsel was directed to serve the appeal and conferencing notes on the Applicant's counsel. It appears that, all the orders/ directions of the Court were not complied with by the Respondent or its said counsel. By letter dated 9th Jtly 2024, the Applicant's counsel notified court that the Respondent had not complied with the directions of the court and prayed that the application be placed before a panel of this court for hearing.

Reprerentation

At the hearing of the application, the Applicant was represented by learned counsel, Mr. Joseph Kyazze. The Applicant's managing director was present in court. Mr. Ojambo Bichachi, the learned State Attorney from the Attorney General's chambers, who informed court that, the Attorney General was one of the Defendants in the suit from which the intended appeal arises, was listed in the Notice of Appeal and served with the same, as one of the intended respondents and was served with the hearing notice for the instant application. That the attorney General was thus an interested party in the matter.

The Respondent and its legal counsel were not in Court. Applicant's counsel informed court that the hearing notice had been served through the Court process server on the Respondent through its legal counsel on record M/s Mugabi Shyaka & Co. Advocates. There is on record, an affidavit of service deponed by Ms. Namusoke, the process server of this Court.

Applicant's counsel further informed court that he, too, had instructed his law firm's process server to serve the said M/s Mugabi Shyaka & Co. Advocates with the hearing notice and that service was duly acknowledged. There is on record an affidavit of service deponed by one Calvin Odhiambo, a process server attached to Magna Advocates confirming that service had been effected on the Respondent's counsel.

The Applicant's counsel submitted that such service on counsel for the Respondent on record was sufficient in the context of Rule 18 (2) and (3) of the Rules of this Court and therefore prayed that this Court be pleased to invoke its powers under Rule 56 (2) of the Rules of this Court and allow the hearing of the application to proceed.

Court was satisfied that there had been effective service of the hearing notice upon the Respondent through its said legal counsel, M/s Mugabi Shyaka & Co. Advocates, who represented the respondent during the conferencing of the application before the Registrar of this court and because there had been no change of counsel, rendered its ruling and granted an order, allowing the applicant to proceed and argue its application in the absence of the respondent. The matter proceeded by way of written submissions filed by the Applicant's counsel, which were adopted at the hearing and have been considered in the determination of this application, together with the authorities cited therein.

Issues for determination by the court.

It is apparent from the application and the Applicant's submissions that two issues merit consideration and determination by the Court, namely;

- i. Whether the Respondent, having filed a Notice of Appeal, failed to take an essential step by not filing the Memorandum and Record of Appeal within the time prescribed by the Rules of this Court and if so;

II Whether Civil Appeal No. 236 of 2024 subsequently renumbered as Civil Appeal No. 301/2024 commenced by the Notice of Appeal ought to be struck out?

Applicant's Submission

The gravamen of the applicant's contention is that, the Respondent being the intending Appellant, having filed a Notice of Appeal and requested for typed and certified proceedings from the trial court failed to take an essential step in the appeal when it neglected to file and serve a Memorandum and Record of Appeal within the time prescribed by the Rules of this Court. The applicant's contention is thus grounded in the provisions of Rule 82 of the Judicature (Court of Appeal Rules) Directions, that empowers this court to strike out a Notice of Appeal or the appeal itself on the grounds that no appeal lies or that some essential step in the proceedings has not been taken or has not been taken within the prescribed time.

It is the Appellant's further contention that, upon lodgment of the Notice of Appeal, the Respondent being the intending Appellant was required pursuant to Rule 83 of the Court of Appeal Rules, to file in this Court, the Memorandum and Record of Appeal within sixty days from the date of lodgment of the Notice of Appeal. It was argued for the Applicant that the only exception under Rule 83 (2) & (3) of the Court of Appeal Rules is that, where the intended Appellant files in the High Court, a letter requesting for certified typed proceedings, and serves the letter upon the intended Respondent, the time that it has taken

court to prepare and avail the proceedings to the intended appellant is excluded from computation of the sixty days, save that the computation resumes immediately the intended appellant is notified by court that the proceedings are ready for collection. The Applicant relied on Rule 83 (2) & (3) of the Judicature (Court of Appeal Rules) Directions, applied in the case of *Bakaluba Mukirisa & Another v Ndlugo Mdya Ifalyoret Sekitzi*, Court of Appeal EPA

No.24 of 2017. According to the Applicant's counsel, the failure by the Respondent herein to file the Memorandum and Record of Appeal and subsequent failure to file the same within the prescribed time constitutes failure to take an essential step, and a ground to strike out the Notice of Appeal and the appeal itself.

Counsel referred court to the affidavit in support of the application and submitted that the Record of Proceedings as requested for by the Respondent herein was first made available on the 14th day of August 2023, and that the Respondent did not lodge the Memorandum and Record of Appeal in this court, within the prescribed sixty days as required by Rule 83 (2) & (3) of the Court of Appeal Rules. Instead, on 23 October 2023, the Respondent instructed new counsel M/s Mugabi Shyaka & Co. Advocates, who filed a Notice of instructions and further, applied to the High Court to be availed with a complete Record of Proceedings alleging that the initial one was missing some content, which was important to their intended appeal.

Applicant's counsel pointed out that the Court had obliged and on the 15th day of January 2024, it notified the Respondent's counsel that the complete record was ready and available for collection. By 26th March 2024, the Respondent had not filed the Memorandum and Record of Appeal in this court, hence the instant application.

Learned counsel submitted that, by failing to file the Memorandum and Record of Appeal, within the prescribed time, the Respondent had failed to take an essential step in the proceedings, within the meaning of Rule 82, rendering the Notice of Appeal and the appeal arising therefrom liable to be struck out. Counsel cited the decision of this court in, *Andreu v Jonayi Property Consultants Ltd* CACA No. 274 of 2014, contending that there is no evidence that any steps were taken by the Respondent to cure the defect through seeking and obtaining any order granting extension of time to file and serve the Memorandum and Record of Appeal out of time. Counsel prayed that Court be pleased to allow the Application and strike out the Notice of Appeal and the appeal subsequently filed but not served, premised on that Notice of Appeal, with costs.

Analysis

The law governing applications to strike out a Notice of Appeal or an appeal before this Court is Rule 82 of the Judicature (Court of Appeal Rules) Directions. The Rules empower a party on whom a notice of appeal has been

served

to apply to this court to strike out the said notice of appeal on the ground that no appeal lies or that some essential step in the proceedings has not been taken at all or within the prescribed time. See *Jannes Bahlinguza & Anor v Attorney General* Civil Application No. 269 of 2013. The instant Application was brought under the said provision seeking to strike out the Respondent's notice of appeal and the appeal.

Rule 82 of the Rules of this Court provide as follows:-

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

In our view, Rule 82 can only be invoked by this court, where the Applicant seeks to strike out a Notice of Appeal or the appeal if subsequently filed, on any of the two grounds therein; either, that no appeal lies or that the intended Appellant or Appellant has failed to take an essential step in the appeal within the prescribed time. This includes instances, where the appeal has been subsequently filed out of time, without the appellant applying for an order of extension of time or one for validation of the belatedly filed Memorandum and Record of Appeal. We are fortified by the decision of this court in *Bokila Petitioner & others V Nalugo Mary Udugrict S, Elizabeth Court of Appeal EPA No. 24 of 2077*.

This court has in several decisions explained what amounts to taking an essential step in the proceedings in the context of Rule 82 of the Rules of this Court. In *Andrew Maviri V Jotnagi Property Corporation Ltd C.A. No. 274 of 2074*, it was explained by this court to mean; the performance of an act by a party, whose duty it is, to perform that fundamentally necessary action demanded by the legal process, so that, subject to permission by court, if the action is not performed as by law prescribed, then whatever legal process that has been done before, becomes a nullity, as against the party who had the duty to perform that act.

In the instant case, the failure to take an essential step is stated to be the neglect by the Respondent to file a Memorandum and Record of Appeal within the 60 days prescribed by the Rules of this Court. It behooves this Court to consider the law that governs the filing of a notice of Appeal, the Memorandum and Record of Appeal in an appeal to this court.

In a civil appeal to this court, the Notice of Appeal is the notice in writing lodged by one who desires to appeal to this court a civil court decision of the High Court and is lodged in duplicate with the registrar of the High Court under Rule 76 (1) of the rules of this court and is subsequently transmitted to this Court. It has to be lodged within 14 days after the date of the decision against which it is desired to appeal. See Rule 76 (21). As noted by this court in *James Bahnglaza & Anor versus Attorney General (supra)*, the Notice of Appeal expresses one's intention to appeal against the whole or part of the High Court decision, gives the address for service of the appellant and states the names and addresses of those intended to be served with copies of the notice. A copy of the notice of appeal has to be served upon the one affected by the appeal within a period of seven days after its lodging.

Given its critical legal nature, it would follow that a party that lodges in this court a notice of appeal is enjoined by law to follow up the prosecution of the intended appeal with due diligence and without dilatory conduct on his/her part. This is required by Rule 83 (1) - (3) of the rules of this court.

Rule 83 of the Rules of this Court, provides as follows: -

- (1) an appeal shall be instituted in court by lodging in the registry within sixty days after the date when the notice of appeal was lodged, a memorandum of appeal, in six copies, or as the registrar shall direct; the record of appeal in six copies, or as the registrar shall direct; The prescribed fee; security for the costs of the appeal.
- (2) Where an application for a copy of the proceedings in the High Court has been made within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which to appeal is to be instituted, be excluded such time as may be certified by the registrar of the High Court as having been required for the preparation and delivery of the appeal of that copy.
- (3) An appellant shall not be entitled to rely on sub rule (2) of this rule, unless his or her application for the copy was in writing and a copy of it was served on the respondent, and the appellant has retained proof of the service".

It is quite evident from the above provisions that Rule 83 (1) requires that an appeal be instituted within 60 days of the date of the date of lodgment of the Notice of Appeal. The Appeal is instituted by the filing of ^a Memorandum and Record of Appeal. On the other hand, Rule 83(2) and 83 (3) permit an Appellant to exclude from the computation of the 60 days' limit, the time taken by the Registrar to prepare and avail copies of typed proceedings to the Appellant, provided the application for the proceedings was in writing and that a copy of the said letter/application was served upon the respondent. That is the same interpretation adopted by this Court

in NHCC Ltd 9S Scione Kgonankama C./vll Application No. 733 of 2009,

It follows therefore, that, where the Memorandum and Record of Appeal is not filed, in this Court, within the prescribed 60 days as required under Rule 83 (1) -(3) highlighted herein above, or is filed after the expiry of the said 60 days, without any order granting extension of time or validating the belated filing or service, a Respondent who was served with a Notice of Appeal may move court to strike out the said Notice of Appeal, and, or the appeal. Consequentially, where the Notice of Appeal is struck out, no appeal can be validly filed, if it was commenced by that Notice of Appeal.

We say so, because a notice of appeal is a critical document expressing one's intention to appeal. It is the foundation for an appeal and without it an appeal cannot be said to exist. Its existence is the basis upon which this court, as the first appellate court can be said to have the power to entertain the appeal from the decision intended to be appealed from. Thus and as was held in *James Bahinguzi & Anor v Attorney General*,¹ (supra), a notice of appeal is a jurisdictional legal instrument. We are therefore of the firm view that, a decision striking out the notice of appeal would end any appeal commenced by the said Notice of Appeal, including one subsequently filed, unless there is an order validating the belated filing. We are fortified by the decision of the Supreme Court in *Kansime K. An. dreyu v Hlmalaga Traders Ltd & Ors* SCC² of 2027.

Turning to the instant Application, we have carefully perused it and the supporting affidavit deponed by Mr. Hanif Mohamed Moledina, together with all the annexures thereto and established that;

Judgment Ln HCCS No. 256 of 2018 was rendered on 12th June 2023 and delivered by email to the parties on 13th June 2023. A copy of the judgment was annexed to the affidavit. We are able to ascertain from the judgment that the Respondent's suit against the Applicant herein was dismissed with costs and the Applicant's counter-claim was allowed with costs.

The trial court made several declarations and orders including; ^a declaration that the Applicant herein is the lawful owner and registered proprietor all land measuring 1290 Hectares comprised in LRV 1698 Folio 2 Plot 65, formerly part of original Plot 4, Bulemezi Block 917 land at Kibaja, Kyambogo, Kisagya and is entitled to uninterrupted possession thereof. The trial court further ordered that registration of the Respondent on the certificate of title for land comprised in LRV 1297 Folio 15 Plot 8 Block 917 Land situate at Bulemezi, as proprietor thereof, be cancelled by the Commissioner Land Registration. This was premised on the finding of the court that the Respondent's title was super-imposed on the Applicants' land and title. The court further issued an order of eviction against the Respondent, awarded mesne profits, general damages and costs of the suit to the Applicant herein.

The Respondent was dissatisfied with the said judgment and all the orders made therein. Through, its counsel, M/s Gitta & Co. Advocates, the Respondent lodged a Notice of Appeal and filed a letter requesting for a certified record of proceedings in the matter in the High Court on the 15th of June 2023 and served the same on the Applicant's legal counsel, M/s Magarra Advocates on the 16th of June 2023. Copies were attached to the affidavit in support. The Notice of Appeal was transmitted to this court and registered under Civil Appeal No. 0236 of 2024. In response to the Respondent's request for proceedings and by letter dated 14th August 2023,

the High Court availed another certified record of proceeding and judgment for collection by the Respondent. The letter, marked annexure "C" was copied to and also served on counsel for the Applicant.

We notice that the instant application was filed in this Court on 26th March 2024. By that time, the Respondent had not filed any Memorandum and Record of Appeal in the matter, whether physically or electronically.

The question we are invited to determine is, whether the Respondent, by failing to file the Memorandum and Record of Appeal within the prescribed 60 days or in any case by 26th March 2024, when the application was filed, had failed to take an essential step, rendering the Notice of Appeal or the appeal liable to be struck out. In determining that question, it is critical to establish as a fact when the record of proceedings was ready for collection and from there establish the legally prescribed timelines by which the Memorandum and Record of Appeal in the instant matter ought to have been filed. See *Okuanga Valentino & others VS Gulu District Local Council* (other) Court of Appeal Civil Appeal No. 265 of 2013.

Since the Notice of Appeal in the instant matter was lodged in the trial court on 15th June 2023, going by the provisions of Rule 83 (1), the Memorandum and Record of Appeal ought to have been filed within 60 days from 15th June 2023. However, it is provided in Rule 4(a) of the Judicature (Court of Appeal Rules) Directions, which in computing time, the period of days from

the happening of an event or the doing of any act or thing shall be taken to be exclusive of the day on which the event happens or that act or thing is done. In that context, the 60 days would be computed from 16th June 2023 and are deemed to have expired on 17th August 2023.

However, the foregoing would only apply if the Respondent had not requested for certified typed judgement and proceedings or had not served the request on the Applicant's counsel. We have already found that by letter dated 15th June 2023, the Respondent applied for the certified record of proceedings. These were made available by the trial court to the Respondent herein by the High Court vide annexure 'C' a letter dated 14th August 2023.

We note that, at the time, the Respondent or its legal counsel, did not query the availed proceedings on account of being incomplete or on ground that there were any missing any parts, whether by itself or through its counsel, yet it had the benefit of being represented by two law firms in the lower court, being M/s Giita & Co. Advocates and M/s Ruyondo & Co. Advocates. No action was taken by the Respondent or its legal counsel.

Following the provisions of Rule 83 (1) -(3) of the Rules of this Court, in computing the sixty days, the time from 1st June 2023 was frozen until 14th August 2023. In line with Rule 4(1) of the Rules of this Court, the 60 days would then be computed from 1st August 2023 to 1st October 2023. Further, we note from the court record, that by 15th October 2023, the Respondent had not filed any Memorandum and Record of Appeal in this Court and no explanation was afforded either to the court or to the Applicant and or its counsel for the failure to file the Memorandum and Record of Appeal at the time. The prescribed time therefore lapsed.

It appears that, aware of the default, the Respondent tactfully opted to instruct new counsel M/s Mugabi Shyaka Advocates, who filed a Notice of instructions on 23rd October 2023. On the same day, the Respondent's new counsel filed a letter in the High Court requesting to be availed with a complete Record of proceedings, asserting that, the record hitherto availed to the Respondent was missing some parts. By 21st October 2023, when this new request was made, the 60 days for filing the Memorandum and Record of Appeal, computed from 14th August 2023, the date court had availed the initial proceedings had long lapsed.

In our view, the Respondent, having received the proceedings and discovered errors, and since time was running out, the remedy was to seek leave of court to extend time and state the reason for the application as the errors having been discovered. We also find it absurd that it took the Respondent from 14th August to 23rd October 2023 to detect the alleged missing parts in the proceedings. This speaks to the dilatory conduct on the part of the Respondent and its legal counsel.

We cannot rule out a high probability that, the Respondent, having realized that they were out of time, decided to instruct new or additional counsel to claim that the record was incomplete. In order to circumvent the mandatory provisions of the rules, the Respondent had to claim through its additional counsel that the proceedings had errors after warehousing the record of proceeding for over 60 days without taking the necessary steps to file the appeal. The Respondent is deemed to have failed to take an essential step in the proceedings within the meaning of Rule 82 of the Rules of this Court.

Ordinarily, we would have been inclined to find that the new request of 23.d October 2023 was an afterthought. We have however, given some benefit of the doubt to the Respondent on its allegations of missing parts in the record of proceedings. We have established that the trial court heeded to the Respondent's new request, prepared and made available to the Respondent, a complete record of proceedings, notified the Respondent through a letter marked annexure "G" dated 1st day of January 2024 and requested Respondent's counsel to collect the proceedings. The said letter was equally copied to counsel for the Applicant. If we are to take it that the Respondent got the complete certified copy of the proceedings and judgement on 15th January 2024. and in the context of Rule 4 (1) and 83 (1)-(3), the 60 days would run from 166 January and lapse 16th March 2024. See *Elizabeth Kobuslingge v Annet Zimblha*. CACA No. 245 of 2079.

However, the evidence on record is that by 26th March 2024, when this application was filed, the Respondent had not filed any Memorandum and Record of Appeal. This amounted to failure to take an essential step in the proceedings in the appeal. It has been held by this court and the Supreme Court in numerous decisions that, it is the duty of the intending appellant to actively take the necessary steps to prosecute his/her intended Appeal. It is not the duty of the court or any other person to carry out this duty for the intending appellant. Once judgment is delivered, the intending Appellant has to take all the necessary steps to ensure the appeal is brought in time. The decision in *Utex Industries Ltd vs Attorney General*: SCCA IV.52 of 1995 is very instructive on the matter.

In our view, an intending appellant is not at liberty to flout the rules of this court at v^11, by taking their time and deciding when to file their appeal. The law is that the timelines fixed by the Rules of this court for filing an appeal must be followed. That is the position re-echoed by this court in *Abirga Ibrahim Y. A Vs. Mosclana Mudc,th;lr Bntce Elcdlon Petltlon APPlcdtton* No. 24 of 2076. There is no evidence on record at any level of due diligence exercised by the Respondent or its counsel in ensuring that the appeal is filed in time, despite retaining three law firms in the matter.

We come to the conclusion that the Respondent has not demonstrated any interest in pursuing the appeal. Our conclusion is fortified by the proceedings at conferencing of this application and the subsequent

conduct of the Respondent and its counsel. We note from the said proceedings of 25th June 2024, that learned counsel for the Respondent appeared in court, conceded to have been served with the pleadings and submissions in the instant application and undertook to file and serve both the

affidavit in reply and submissions by 2nd July 2024. Respondent's counsel also indicated to court that the Memorandum and Record of Appeal had subsequently been filed and registered under Court of Appeal Civil Appeal No. 301/2024. However, the Applicant's counsel informed court that they were not aware of any Memorandum and Record of Appeal filed in the matter and had not been served at all by the Respondent. In response, Mr. Mugabi conceded that the Memorandum and Record of Appeal had not yet been served on the Applicant's counsel and sought the indulgence of the court to serve the Memorandum and Record of Appeal on Applicant's counsel. The court directed that the Respondent serves both the Memorandum and Record of Appeal and the conferencing notes by 2nd July 2024, and the Applicant herein would file conferencing notes in reply, by 8th Jul' 2024.

We have cross checked the court record and found no evidence on record that the Respondent or its legal counsel took any step in complying with the directions of court. The Respondent did not file an affidavit in reply and submissions to the instant application by 2nd July 2024 as directed by Court. The Respondent did not serve the belatedly filed Memorandum and Record of Appeal unto the Applicant's advocates by 2nd July 2024 as directed by this Court. No reason whatsoever was assigned for this default in compliance with the directions of the court.

What is surprising in this matter is that, even upon being served with this application seeking to strike out the notice of appeal and the appeal, the Respondent did not take out any remedial action to validate the belated filing of the Memorandum and Record of Appeal. Indeed, the nonappearance in court by the Respondent or its counsel when this application was called for hearing on 8th November 2024 compounds the dilatory conduct exhibited by the Respondent and its legal counsel.

We are alive to the duty and mandate of this court to consider substantive justice as enshrined in Article 126 of the Constitution. Nevertheless, in doing so, the court must not overlook or fail to act firmly against acts or omissions that result in failure to take an essential step and thus subvert the expeditious disposal of cases or appeals. Therefore, mistakes and lapses, negligent acts or dilatory tactics or acts of counsel or the client of counsel, that amount to abuse of court process ought not to be tolerated by a court of law. Once the court is satisfied that there has been intentional and or continuous default on the part of the offending party, then it must act firmly against the offending party. The Court should therefore, not tolerate disobedience of the law out of sympathy to the offending party, or

on the mere assertion that no prejudice has been caused to the innocent party. Absence of prejudice is no excuse for disobeying the law. Rules and timelines set by law must be complied with by all. It is such compliance and clarity that form the bedrock of Court adjudication of causes. In that way the rules and regulations become the means guiding the Court and the Parties in obtaining justice from the Courts. Every party to a cause must therefore, take care and pay scrupulous attention to complying with the Court Rules: See *Mcholas Xiptoo Ardp Norr Salt as Independent Electoral and Boundaries Commission & Wllfred Rottlch v/srrn Court of Appeal of Kenga*: Civil Application No. 228 of 2013.

We understand the position of the law to be that, a party dissatisfied with a decision ..,f any court is required to take essential steps within the prescribed time to file an appeal against the decision. A losing party who only springs into action when a successful party sets in motion, the process of realizing the fruits of his judgement cannot be allowed to use the court to frustrate or delay execution. See *Kencnzra Andteut tr,ansllme rnrsus Rlchard Henry t,alJuk,a Chtll Reterence* No. 75/2076.

In the insl ant matter, there is no evidence of any step taken by the Responderr- to remedl' ';he defaii-, within the confines of the law. This is clearly conduct of a disinterested Appellant, unfairly benefitting from a subsisting order of stay of execution restraining the Applicant as judgment/decreed holder from enjoying the benefits of the judgment. As was rightly noted by this court in *Okwanga Valcntlno & others yS Ghrfu Dlst'tct Loc('l cou cll eiotjf,l',tment (s.tpral delay in taking the appropriate steps in the appeal within the prescribed time hinders successful parties from enjoying the fruits of their judgment, which was obtained in their favour.*

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We accordingly come to a conclusion that any further delay, given the dilatory conduct of the Respondent in pursuing the intended appeal only deprives the applicant of the benefit of the fruits of the judgment. It would not serve the interest of justice for this court to allow the Respondent to unconventionally use the court process for the purpose of continuing to dilly dally with the appeal in order to frustrate execution and continuously delay and deny the Applicant, the benefit of the fruits of its judgement.

We are of the firm vierv that allou'rng litigants to circumvent the rules would set a dangcrous precedent in this court as it would lead to abuse of court process. Litigation must come to an end and protracted litigation based on dilatory conduct amounts to abuse pf court process which this court cannot condone.

In the circr,rrnstances and for the rcersons set out herein above, we find merit in ttre application. We find that the Respondent did not take an essential step in the proceedings within the prescribed time, when it failed to lodge in this court, the Memorandum and Record of Appeal within the prescribed time. Accordingly, the application is allowed with the following orders;

- Civil Appeal No.30l 12024 filed by the Respondent subsequent to this application on the basis of the impugned Notice of Appeal is struck out. 1
- The order of stay of execution of the judgement and decree in High Court Civil Suit No. 256 of 2018 hitherto issued by the High Court vide; HCMA No. 117212013 pending determination of the Respondent's appeal to this Court be and is hereby vacated. 11
- ¹¹¹ The Appiicant is awarded costs of the application.

We so order.

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Dated this ^ r Day of. ...2025 Cheborion Barishaki

Justice of Appeal

\- Ch stopher Gashirabake

Justice of Appeal

Dr Mugeyi

Justice of Appeal

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Prepared on 13 October 2026 · Esheria