

UGANDA / JUDGMENT

Kiviiri v Mubiru (Election Petition Application No. 30 of 2022) [2022] UGCA 149 (21 March 2022)

[2022] UGCA 149

COURT

Court of Appeal of Uganda

BEFORE

Kiryabwire, JA, Musota, JA, Gashirabake, JA

CASE / FILE NUMBER

Election Petition Application No. 30 of 2022

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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA (COA) AT KAMPALA

ELECTION PETITION APPLICATION NUMBER 0030 OF 2022

KIVIRI TUMWEHE GEOFFREY===== [APPLICANT]

VS

MUBIRU ELIPH =RESPONDENT

CORAM: HON. MR. JUSTICE GEOFFREY KIRYABWIRE, JA

HON. MR. JUSTICE MUSOTA STEPHEN, JA

HON. MR. JUSTICE GASHIRABAKE CHRISTOPHER, JA

RULING OF COURT

This is an Application by way of Notice of Motion under Rules 2(1), 43(1), 44(1), 82, 83 (2) and (3) and 8a (a) of the Judicature (Court of Appeal Rules). Directions (hereafter referred to as the Rules of this Court) and seeks Orders that the Notice of Appeal lodged in the High Court at Mpigi on the 28th of October 2021 be deemed to have been withdrawn or in the alternative it be struck out.

The grounds are that at the time of filing the Notice, the Respondent did not as required under rules of this Court apply by a letter for a record of proceedings to be availed to them. That being the case the Respondent failed to institute the intended appeal against the applicant within the prescribed time.

It is also the case for the Applicant therefore that the Respondent failed to take an essential step in the proceedings. At the hearing Mr. Anthony Bazira appeared for the Applicant, the Respondent and his lawyers were absent they did not file an affidavit in Opposition to the Motion, there is an Affidavit of Service dated 11th

March 2022 paragraph 4 there of whereby service was effected on counsel for the Respondent Mr. Nuwagaba Kansiime Filbert. Mr. Nuwagaba declined service on grounds that he no longer had instructions in the matter. There is no evidence on Court record of leave to withdraw from representation by Mr. Nuwagaba.

A hearing notice for today's hearing was again served on Mr. Nuwagaba on the 17th of March 2022 and Affidavit of Service by Atuhairi Immaculate is on file dated 19th March 2022, In paragraph 4 Mr. Nuwagaba told the process server that this matter had been withdrawn.

In paragraph 5 when the Process Server called the Respondent, she was told by him that the matter was settled out of Court.

It appears to us that it is not denied that an essential step in this matter has not been taken, it is also evident that the intended Appellant has lost interest in the intended Appeal.

This is therefore a matter that can be said to have become moot, we therefore in accordance with Rules 4 and 84(a) of the Rules of this court deem the Appeal to have been withdrawn. The Notice of Appeal in Election Petition Number 30 of 2022 is accordingly struck out by reason of withdrawal.

As to costs we award them to the Applicant.

We so order.

Dated at Kampala this 21st day of March 2022.

HON. MR. JUSTICE GEOFFREY KIRYABWIRE

JUSTICE OF APPEAL

HON. MR. JUSTICE MUSOTA STEPHEN

JUSTICE OF APPEAL

HON. MR. JUSTICE GASHIRABAKE CHRISTOPHER

JUSTICE OF APPEAL

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