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THE REPUBLIC OF UGANDA

\par IN THE HIGH COURT OF UGANDA

\par AT MBALE

\par HCT-04-CV-MA 0055 OF 2011

\par [{\rtlch\fcs1 \af0 \ltrch\fcs0 \b\i\insrsid1315775\charrsid6956767 FROM PARLIAMENTARY ELECTION PETITION NO 10 OF 2011]

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\85\85APPLICANT

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COMMISSION\85\85\85\85\85. RESPONDENTS

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\par BEFORE: THE HONOURABLE MR. JUSTICE PAUL MUGAMBA

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\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \b\ul\insrsid1315775\charrsid6956767 RULING

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Mukoni Collins filed this application by Notice of Motion seeking for enlargement of time for him to serve the respondents with his Petition. The application is }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid13254357\charrsid6956767 made under}{\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid1315775\charrsid6956767 rule 19 of the }{\rtlch\fcs1 \af0 \ltrch\fcs0
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\insrsid1315775\charrsid6956767 (Election Petitions) Rules}{\rtlch\fcs1

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\insrsid1315775\charrsid6956767 is supported by }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid13254357\charrsid6956767 an affidavit}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767 of Annet Namutosi, a lawyer }{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid13254357\charrsid6956767 employed as}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767 a legal assistant with M/S Nyote & Co., Advocates based in Mbale Municipality. It is upon }{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid13254357\charrsid6956767 the averments}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767 in that affidavit grants of this application are being justified.

\par

\par The background }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 to this }
{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 application is not }{\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid13254357\charrsid6956767 that complicated}{

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 . Parliamentary Elections were }
{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 held nationally}{\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid1315775\charrsid6956767 and for the }

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 Constituency of}{\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid1315775\charrsid6956767 Bubulo East }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid13254357\charrsid6956767 in particular}{\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid1315775\charrsid6956767 on }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid13254357\charrsid6956767 18}{\rtlch\fcs1 \af0 \ltrch\fcs0
\super\insrsid13254357\charrsid6956767 th}{\rtlch\fcs1 \af0 \ltrch\fcs0
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February}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 2011. On 23}{\rtlch\fcs1 \af0
\ltrch\fcs0 \super\insrsid1315775\charrsid6956767 rd}{\rtlch\fcs1 \af0 \ltrch\fcs0
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March 2011 Ms Namutosi aforesaid received applicant\quote s }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid13254357\charrsid6956767 Petition from}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767

Kampala for filing against the Respondents. She states in her affidavit that she was able to file }
{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 the process}{\rtlch\fcs1 \af0
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at the High Court in Mbale}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 , though}
{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 she was not able to pay the fees owing
to the absence of the cashier. It was }{\rtlch\fcs1

\af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 on the}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767 followin

g day she received assessment forms from the cashier. She made the necessary payment and
returned the receipts to the High Court the same day, }{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid13254357\charrsid6956767 24}{\rtlch\fcs1 \af0 \ltrch\fcs0

\super\insrsid13254357\charrsid6956767 th}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid13254357\charrsid6956767 March}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767 2011. It was then }{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid13254357\charrsid6956767 clerks told}{\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767 her to return on the 25}{\rtlch\fcs1 \af0 \ltrch\fcs0
\super\insrsid1315775\charrsid6956767 th}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid1315775\charrsid6956767 March 2011 for signed copies of the Notice of presentation of the Petition. On the 25}\rtlch\fcs1 \af0 \ltrch\fcs0 \super\insrsid1315775\charrsid6956767 th}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767

March 2011 the }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 deponent was}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 told she}\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid1315775\charrsid6956767 could not have the signed copies, given that the Registrar had not signed the Notice. Similar checks with court happened on 28}\rtlch\fcs1 \af0 \ltrch\fcs0 \super\insrsid1315775\charrsid6956767 th}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 , 29}\rtlch\fcs1 \af0 \ltrch\fcs0 \super\insrsid1315775\charrsid6956767 th}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 , 30}\rtlch\fcs1 \af0 \ltrch\fcs0

\super\insrsid1315775\charrsid6956767 th}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 and 31}\rtlch\fcs1 \af0 \ltrch\fcs0 \super\insrsid1315775\charrsid6956767 st}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767

March 2011 and the response given by Catherine was not different. It was on 1}\rtlch\fcs1 \af0 \ltrch\fcs0 \super\insrsid1315775\charrsid6956767 st}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767

April 2011 she finally received the Petition with the Notice, which showed it had been signed as far back as 24}\rtlch\fcs1 \af0 \ltrch\fcs0 \super\insrsid1315775\charrsid6956767 th}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767

March 2011. It is the evidence of Ms Namutosi that the }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 days for}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 service of the petition had }\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid13254357\charrsid6956767 expired when}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 she received the Notice of }\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 presentation of}\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid1315775\charrsid6956767 petition on 1}\rtlch\fcs1 \af0 \ltrch\fcs0 \super\insrsid1315775\charrsid6956767 st}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 April 2011. Failure to serve the petition within the statutory time }{

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 is attributed}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 by the deponent to what she refers to as the mix up at the court registry.

\par

\par }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 Rule 19}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 which is alluded }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 to relates}{\rtlch\fcs1 \af0

\ltrch\fcs0 \insrsid1315775\charrsid6956767 to enlargement or abridgement of time and provides;

\par

\par } \pard \ltrpar \qj \fi-720\li720\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin720\itap0\pararsid1315775 {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 \tab \lquote

The court may of its own motion or on application by any party to the proceedings, and upon such terms as the justice of the case may require, enlarge or abridge the time appointed by the Rules for doing any act if, in }{\rtlch\fcs1 \af0

\ltrch\fcs0 \ul\insrsid1315775\charrsid6956767 the opinion of the Court, there exists such special circumstances as make it expedient to do so\rquote .}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767

\par } \pard \ltrpar \qj \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid1315775 {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767

\par The emphasis above is added but the essence of the provision is that any discretion ought not to be }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 exercised lightly} {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767

but very sparingly. This is particularly so in the circumstances of this application where S. 62 of the parliamentary Elections Act, ordains:

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\par } \pard \ltrpar \qj \li720\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin720\itap0\pararsid1315775 {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 \lquote }{\rtlch\fcs1 \af0 \ltrch\fcs0

\i\insrsid1315775\charrsid6956767 Notice in writing of the presentation of petition accompanied by a copy of the petition }{\rtlch\fcs1 \af0 \ltrch\fcs0 \i\ul\insrsid1315775\charrsid6956767 shall} {\rtlch\fcs1 \af0 \ltrch\fcs0

\i\insrsid1315775\charrsid6956767 , within seven days after the filing of the petition, be served by the petitioner on the respondents, as the case may be.\rquote

\par

\par } \pard \ltrpar \qj \li0\ri0\sl360\slmult1\widctlpar\wrapdefault\aspalpha\aspnum\faauto\adjustright\rin0\lin0\itap0\pararsid1315775 {\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 Again, }{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid13254357\charrsid6956767 the emphasis}}\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767 on '93shall}}\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid13254357\charrsid6956767 '94 in}}\rtlch\fcs1 \af0 \ltrch\fcs0
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the }}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 above text}}\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid1315775\charrsid6956767 is }}\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid13254357\charrsid6956767 added.}}\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid1315775\charrsid6956767 }}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767
However, it}}\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 is clear from

the provision that notice of the presentation of the petition and its accompaniments ought to be
served within seven days of the filing of the petition. According to the evidence in the affidavit
the petition was filed on 23}}\rtlch\fcs1 \af0

\ltrch\fcs0 \super\insrsid1315775\charrsid6956767 rd}}\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767 March 2011 but fees for filing was paid on 24}}\rtlch\fcs1 \af0
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March 2011. Effectively therefore the petition was filed on the day the fees was paid. At the time
of presenting the petition for filing rule 5 (a) provides for payment of a fee as well as a deposit for
security of costs. It i

s not correct therefore to say that the petition was filed on 23}}\rtlch\fcs1 \af0 \ltrch\fcs0
\super\insrsid1315775\charrsid6956767 rd}}\rtlch\fcs1 \af0 \ltrch\fcs0
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March 2011. What is more, the averment regarding filing and payment of fees is not backed up by
any other evidence in this application. Also unsupported is the alleged role }}\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid13254357\charrsid6956767 of court}}

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 staff such as Catherine }}\rtlch\fcs1
\af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 and other}}\rtlch\fcs1 \af0 \ltrch\fcs0
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clerks, the cashier as well as the Registrar. It is }}\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid13254357\charrsid6956767 very difficult}}\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767 to believe the evidence of the deponent in view }}

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 of all}}\rtlch\fcs1 \af0 \ltrch\fcs0
\insrsid1315775\charrsid6956767 that, particularly when it is observed that the }}\rtlch\fcs1 \af0
\ltrch\fcs0 \insrsid13254357\charrsid6956767 date borne}

by the notice of presentation of the petition is 24th March

2011. It appears in the circumstances

that after due payment was made on 24th

th March 2011 the Registrar signed the Notice but it remained

uncollected until 1st April 2011. That is evidence of

dilatory conduct on the part of the Petitioner. Was it a one

-off?

\par

This application refers to what transpired at the time of filing the petition and the

fact out. Curiously no disclosure is made concerning when the election results for Bubulo East Constituency appeared in the Gazette. This is important bearing in mind

Section 60 (3) of the Parliamentary Elections Act which requires every election petition to be filed within thirty days after the day on which the result of the election is published by the Commission in the Gazette. This court takes judicial notice of the

fact that for Bubulo East Constituency the results were published in the Gazette of 21st

\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 February 2011. Clearly the thirty days started running on 22}{\rtlch\fcs1 \af0 \ltrch\fcs0 \super\insrsid1315775\charrsid6956767 nd}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid1315775\charrsid6956767 February 2011 and the period in which the }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 petition had}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 to be filed ended on 23}{\rtlch\fcs1

\af0 \ltrch\fcs0 \super\insrsid1315775\charrsid6956767 rd}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 March 2011. In }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 light of}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid1315775\charrsid6956767 all this fees and }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 effective filing}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 of the }{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid13254357\charrsid6956767 petition transpired}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 outside the statutory period of filing. It is idle to contend that time ran }{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid13254357\charrsid6956767 out on}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 the applicant after 24}{\rtlch\fcs1 \af0 \ltrch\fcs0 \super\insrsid1315775\charrsid6956767 th}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid1315775\charrsid6956767 March }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 2011 following}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 the various }{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid13254357\charrsid6956767 excuses the}{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid1315775\charrsid6956767 application seeks }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 to grandstand}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid1315775\charrsid6956767 . I am not persuaded a person seriously intent on prosecuting a petition, like the app

licant wants this court to believe he was, would approach his mission in such a band aid fashion. He had 30 days within which he should have accomplished his desired goal. Once again he procrastinated. Perhaps his evidence would have better explained

why he was tardy throughout. Such evidence sadly is missing by design or by default.

\par

\par Having taken into account all the above manifestations on one hand and this application seeking enlargement of time on the other I find no }{\rtlch\fcs1 \af0 \ltrch\fcs0 \insrsid13254357\charrsid6956767 special circumstances}{\rtlch\fcs1 \af0 \ltrch\fcs0

\insrsid1315775\charrsid6956767 why I should grant this application. It is accordingly dismissed with costs.

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\b\insrsid1315775\charrsid6956767 Paul Mugamba

\par Judge

\par 2}{\rtlch\fcs1 \af0 \ltrch\fcs0 \b\super\insrsid1315775\charrsid6956767 nd}{\rtlch\fcs1 \af0 \ltrch\fcs0 \b\insrsid1315775\charrsid6956767 June 2011.

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