

UGANDA / JUDGMENT

Ssemakula v Asiimwe (Civil Reference 4 of 2023) [2023] UGSC 22 (11 August 2023)

[2023] UGSC 22

COURT

Supreme Court of Uganda

BEFORE

Tibatemwa-Ekirikubinza, JSC, Tuhaise, JSC,
Madrama, JSC

CASE / FILE NUMBER

Civil Reference 4 of 2023

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THE REPUBLIC OF UGANDA.**IN THE SUPREME COURT OF UGANDA AT KAMPALA****(CORAM: TIBATEMWA – EKIRIKUBINZA, TUHAISE & MADRAMA, JJSC)****CIVIL REFERENCE NO 04 OF 2023**

HERMAN SSEMAKULA}

VERSUS

<table>

IVAN ASIIMWE}

RESPONDENT

(Reference of the Ruling of Hon. Justice Mike Chibita JSC dated 14th April 2023 in Miscellaneous Applications Nos 16 & 18 of 2022)

RULING OF COURT

- The appellant made this reference from the decision of Hon Justice Mike 15 Chibita (JSC), sitting as a single Justice in consolidated Applications Nos 16 and 18 of 2022 wherein the learned single Justice of the Supreme Court in Civil Application No 16 of 2022 brought by the respondent, Mr. Ivan Asiimwe struck out the appellant's appeal and dismissed the appellant's application

- in Civil Application No 18 of 2022 for extension of time to validate the 20 Memorandum and Record of Appeal which had been filed on Court record.

The grounds of the reference are that:

- \$1.\$ The learned Justice of Appeal erred in law and fact when he failed to consider exceptional and justifiable reasons as to why the appellant/applicant was unable to file this appeal in time.
- \$2.\$ The learned Justice of Appeal erred in law when he failed to discount the December and January Christmas/court vacation days when computing the days within which the appeal had to be argued.
- 3. The learned Justice of Appeal erred in law and fact when he failed to evaluate and consider the evidence presented by the appellant in

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- ⁵ Miscellaneous Application Nos 16 & 18 of 2022 leading to the dismissal of the application and striking (out) the underlying appeal.
- The learned Justice of Appeal erred in law and fact when he struck out the appeal without statutory jurisdiction to do so. 11

10 At the hearing of the appeal, learned counsel Mr. David Ssempala appeared for the applicant while learned counsel Mr. Obed Mwebesa assisted by learned counsel Mr. Godfrey Akakimpa appeared for the respondent. The Applicant was in court.

15 Both counsel relied on written submissions on record. They addressed court orally on the additional ground of reference by way of amendment which raises a point of law as to the jurisdiction of a single Justice of the Supreme Court to strike out the appellant's appeal as he did in Civil Application No. 16 of 2022 and on the other grounds generally.

Ground 4:

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The learned Justice of Appeal erred in law and fact when he struck out the appeal without statutory jurisdiction to do so

On ground 4 of the reference, Mr. Ssempala relied on section 8 of the Judicature Act and submitted that a single Justice may exercise all powers of the Supreme Court only in an interlocutory matter but that striking out the appeal was not an interlocutory order to the appeal but disposed of the appeal itself. In the premises, he argued that the single Justice of the Court had no jurisdiction to hear Miscellaneous Application No. 16 of 2022. He submitted that the judgment of a court without jurisdiction is a nullity and relied on *Makula International Vs Cardinal Emmanuel Nsubuga* [1982] HCB ¹¹ and *Prof Syed Huq vs Islamic University*

in Kampala (Supreme Court Civil.

30 Appeal No. 47 of 1995) [1997] UGSC 3 for the proposition that no court should condone an illegality once brought to the attention of the court.

Secondly Mr. Ssemulana argued that under rule 110 (2) of the Rules of this Court, the court ought to have defined what is meant by Christmas vacation under rule 4 (e) of the Rules because it is not defined under the Rules. This

- 510 is because rule 4 (e) excludes the Christmas vacation in computation of time in that it provides that Christmas vacation shall not be taken into account. However, the term "Christmas vacation" is not defined. Mr. Ssemulana submitted that in the circumstances, recourse should be had to rule 110 (2) of the Rules of the Supreme Court which provides that in case of any difficulty or doubt a judge or registrar may informally give direction as to the procedure to be adopted or superimpose rules applicable before
- 15 the coming into force of the Judicature (Supreme Court Rules) Directions. In the premises, he contended that the learned Single Justice ought to have relied on the meaning of Christmas vacation under Order 51 rule 4 of the Civil Procedure Rules which defines it as the period between the 24th of December and 15th of January. Had he done so, the appeal would be considered as having been filed within 60 days.

Lastly Mr Ssemulana submitted that it is Order 51 rule 4 of the CPR which applies and not the Judicature (Court Vacation) Rules under which the business of the court still continues unlike in the Christmas vacation.

In reply Mr. Mwebesa submitted that the learned single Justice was dealing with an application for extension of time. In that application, the affidavit in support of the application is that of Mr. Jacob Kataabi, an Advocate practicing with KSMO Advocates who deposed to an affidavit in which he stated in paragraph 11 thereof that they had been awaited the record of proceedings on the 21st of December 2021 whereas not. The record was certified as having been received on the 2nd of December 2021. He submitted that the respondent filed the application to strike out the appeal of the appellant who belatedly realised that the appeal was out of time and filed

Civil. Application No 18 of 2022 for extension of time to validate their appeal. He contended that the applicant thereby conceded that their appeal had been filed out of time 30

With regard to the definition of "Christmas vacation" under rule 4 (e) of the Rules of this Court, Mr. Mwebesa submitted that the definition of Christmas vacation under Order 51 rule 4 of the Civil Procedure Rules was wrong because those rules do not apply to the Supreme Court. He argued that the

applicable rules were those under the Judicature (Court Vacation) Rules which defines Christmas vacation as the period between 23rd December and 7th of January with both days inclusive. Further the appellant received proceedings for purposes of the appeal on the 2nd of December 2021. Mr. Mwebesa on a question put to him by court conceded that if the days

specified in the Judicature (Court Vacation) Rules are excluded from the days within which the appeal should be filed and the appeal is found to have been lodged within 60 days, he would concede to the reference. 10

15 In rejoinder Mr. Ssempta submitted that the applicant's Civil Application No. 18 of 2022 filed an affidavit in rejoinder where Mr. Kataabi stated that the affidavit he had previously filed in support of the application had an error. He deposed that the record of proceedings was received on behalf of the applicant on the 2nd of December 2021 and not on the 21st of December as earlier deposed to. Mr. Ssempta submitted that the appeal had been lodged in time. The Court reserved ruling on notice.

20 Consideration of the Reference:

The facts on which this reference is based are not in dispute. The respondent to the reference Mr. Ivan Asiimwe filed Civil Application No. 016 of 2022 to strike out the appeal of the applicant/appl.licant to this reference on the ground that it was filed outside the time limit for the filing of appeals.

- 25 On the other hand, the applicant/appl.licant to this reference filed another application to validate the appeal by extension of time and the application was cited as Civil Application No. 0018 of 2022. The facts which are not in dispute are that the record of proceedings which had been requested for by the applicant were availed to the applicant's counsel on 2nd December 2021
- ³⁰ and subsequently the appeal was lodged in this court on 15th February 2022.

The matter was heard by a single Justice under section 8 of the Judicature Act cap 13 Laws of Uganda. The learned single Justice of this court consolidated the two applications but decided to consider Civil Application No. 18 of 2022, which was an application for extension of time to file the memorandum of appeal outside the time prescribed by the rules and to

⁵ validate the memorandum and record of appeal which had been filed on the court record on 15th February 2022 first. The judge found that the record of proceedings was received on 2nd December 2021 and the appeal was filed on 15th February 2022. In the premises, he found that the applicant's lawyers displayed a high degree of stoppiness and were guilty of laches in prosecuting the appeal. Further to the point, he held that the Christmas holiday cannot and should not be used as the reason for failure to meet statutory deadlines save for the two designated days as public holidays during that season. 10

The two designated holidays are the 25th and 26th of December. This should be taken to include 1st January. In other words, the single Justice of this court could only have excluded three days in reckoning the 60 days within which the applicant's appeal ought to have been lodged in the Supreme Court. In the premises, he agreed with the respondent's counsel that the appeal was filed out of time and no sufficient cause had been disclosed to 15

- warrant the grant of an order extending time within which to file the appeal. In the premises, the single Justice of this court dismissed Supreme Court Civil Application No 0018 of 2022 with costs to the respondent and allowed Supreme Court Civil Application No 016 of 2002 with costs. Accordingly, he struck out the appellant's appeal. In Civil Appeal No 003 of 2022, n
- We have carefully considered the reference and particularly ground 4 thereof in which it is argued that a single Justice of the court does not have powers to strike out an appeal and therefore the appellant objected to the decision on the ground of want of jurisdiction. 25

The Jurisdiction of a single Justice of the Supreme Court is founded only on section 8 of the Judicature Act cap 13 laws of Uganda which provides that:

8. Powers of a single Justice of the Supreme Court.

- (1) A single Justice of the Supreme Court may exercise any power vested in the Supreme Court in any interlocutory cause or matter before the Supreme Court.
- (2) Any person dissatisfied with the decision of a single Justice in the exercise of a power under subsection (1) is entitled to have the matter determined by a bench

of three justices of the Supreme Court which may confirm, vary or reverse the decision

We have carefully considered section 8 (1) and its wording is very clear in that it provides that "a single Justice of the Supreme Court may exercise any power vested in the Supreme Court in any interlocutory cause or matter before the Supreme Court". Only when there is an appeal before the Supreme Court could there be any interlocutory application, pending the determination of the appeal and such interlocutory application can be heard

and determined by a single Justice of the court. We accept the submissions of the appellant's counsel that the words "interlocutory application" mean an application that is made and is seeking an order that is issued in the interim pending the hearing and determination of the appeal. 15

We note that Rule 50 (2) (b) of the Rules of this Court prohibits a single Justice of the court from hearing an application for a stay of execution, injunction or stay of proceedings. However, section 8 of the Judicature Act

20 (supra) empowers a single judge of this Court to exercise any power vested in the Supreme Court in interlocutory applications. An Act of Parliament overrides any subsidiary Legislation in conflict with it and since Rule 50 (2) is in conflict with a provision of an Act of Parliament, it is void. Consequently, a single judge has power to handle all interlocutory matters.

25 The pertinent question however is whether an application to strike out an appeal results in an interlocutory order. We think not.

Rule 50 of the Rules of this Court is clear. It excludes from the purview of the powers of a single Justice, applications to strike out an appeal. The Rule provides that:

30 50. Hearing of applications.

- (1) Every application, other than an application included in subrule
- (2) of this rule, shall be heard by a single judge of the court; except that the application may be adjourned by the judge for determination by the court.
- (2) This rule shall not apply to the following-
 - (a) an application for leave to appeal, or for a certificate that a question or questions of great public or general importance arise;
 - (b) an application for a stay of execution, injunction or stay of proceedings;
 - (c) an application to strike out a notice of appeal or an appeal; or
 - (d) an application made as ancillary to an application under paragraph (a) or (b) of this subrule or made informally in the course of the hearing, including an application for leave or to extend time if the proceedings are found to be deficient in those matters in the course of the hearing.

To dispose of an appeal, the Supreme Court has to be fully constituted. The jurisdiction of the Supreme Court to deal with appeals is granted by article

132 (2) of the Constitution and that jurisdiction is wielded by a minimum of ^five justices of the Supreme Court while interlocutory applications are not the appeal itself and can be handled in terms of section I (1) of the Judicature Act, by a single Justice. 15

We therefore respectfully hold that the single Justice had no jurisdiction to strike out an appeal or entertain Supreme Court Civil Application No. 016 of 2022 and his decision thereunder is a nullity and of no effect. We hereby set it aside. The granting of the application in Civil Appeal No. 016 of 2022 follows the finding of the single Justice in Civil Application No. 018 of 2022 that the appeal of the applicant had been lodged out of time and there was no sufficient cause to extend time to validate the appeal. 20 25

Having held that the learned single Justice had no jurisdiction to hear Civil Application No. 016 of 2022, there would be no need to consider the other grounds of the reference as the appeal would be restored. Nevertheless, we wish to comment on a matter of fact as well as of law on whether there

is need to consider Miscellaneous Application No. 018 of 2022 as to whether the appeal was lodged out of time. 30

The record of appeal was served on the appellant on the 2nd of December 2021 and the appeal was filed on 14th Feb 2022. The computation of time depends on what is meant by Christmas vacation under rule 4 (e) of the Rules of this court which stipulates that.

⁵ 4. Computation of time

Any period of time fixed by these Rules or by any decision of the court for doing any act shall be reckoned in accordance with the following provisions-

- (a) a 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;
- (b)
- (e) unless the court otherwise directs, the period of the Christmas vacation shall not be reckoned in the computation of time.

Under rule 79, an appeal is supposed to be instituted with sixty days after the date the notice of appeal was lodged. In computing time, the rule also factors in the period taken to prepare and deliver to the appellant a copy of the certified record of proceedings of the Court of Appeal. 1.5

Rule 79 provides that:

79. Institution of appeals.

20 (1) Subject to rule 109 of these Rules and subrule (4) of this rule, an appeal shall be instituted in the court by lodging in the registry, within sixty days after the date when the notice of appeal was lodged- ...

- (2) Where an application for a copy of the proceedings in the Court of Appeal 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 the appeal is to be instituted, be excluded such time as may be certified by the registrar of the Court of Appeal as having been required for the preparation and delivery to the appellant of that copy.

The question of law presented is what is meant by Christmas vacation under rule 4 (e) of the Rules of this Court? We have considered the ruling of the single Justice and with due respect to his consideration of the "Christmas holiday", we note that what is meant under the rules is "Christmas vacation" and not holiday. Holidays are separately provided for under rule 4 (b) which caters for public holidays. The way public holidays are factored in the computation of time is different from that for the Christmas vacation. It is

- sufficient for us to find that it was erroneous to consider excluded days under rule 4 of the Rules of this Court on the premise of public holidays. What should be considered is exclusion of the Christmas vacation period under rule 4 (e) and the only question being what period of the calendar this entails.

- Mr. Ssempata urged us to consider rule 110 (2) of the Rules of this Court in conjunction with Order 51 rule 4 of the Civil Procedure Rules for purposes of defining Christmas vacation. On the other hand, Mr. Mwebesa urged us to consider the Judicature (Court Vacation) Rules to reach a conclusion in the matter. 10
- Under Order 51 rule 4 of the Civil Procedure Rules, the period between 24th December of any year and 15th of January of any year is a court vacation. On the other hand, under the Judicature (Court Vacation) Rules S.I. 13 - ³⁰ vacation periods include that from 23rd December to 7th January. 15

Both the Civil Procedure Rules and the Judicature (Court Vacation) Rules do not apply to the Supreme Court. Under rule 2 of the Judicature (Court Vacation) Rules, the word "court" thereunder means the High Court or any court constituted under the Magistrates Courts Act. In terms of the Civil Procedure Rules, rule 2 on application of the rules provides that: 20

These Rules shall apply, as far as practicable, and unless otherwise expressly provided, to all matters arising and to all proceedings taken on any matters under the Act, or any Act amending the Act.

The Civil Procedure Act and section 1 thereof inclusive and provides that:

This Act shall extend to proceedings in the High Court and magistrates courts

The Civil Procedure Act is a Parent Act governing civil procedure and it even has provisions on appeals to the High Court and to the Court of Appeal on the issue of jurisdiction as far as first and second appeals are concerned generally. The Court of Appeal envisaged therein was the highest appellate court before the Supreme Court was created as an appellate court hearing appeals from the Court of Appeal under the 1995 Constitution. The Supreme 30

- ⁵ Court was not envisaged under the Civil Procedure Act. Section 2 (b) of the Civil Procedure Act which defines "court" to mean any court exercising civil jurisdiction could not have envisaged the Supreme Court and word "rules" which is defined by section 2 (t) to mean rules and forms made by the rules committee to regulate the procedure of courts does not include the
- Judicature (Supreme Court Rules) Directions S.I 13 11 on the question of court vacations. 10

The Rules of this Court were made under rule 4] (1) of the Judicature Act cap 13. Moreover, section 41 (1) of the Judicature Act Cap 13 which gives general powers to the Rules Committee to make rules to regulate the procedure of this court, makes express provision giving specific powers to make rules regulating the procedure of the High Court for purposes of court vacations but is silent about similar rules for the Court of Appeal and the Supreme Court. In section 41 (2) (b) of the Judicature Act the Rules Committee is empowered to make rules on court vacations for the High Court while the section is silent about the Supreme Court. Section 41 of the Judicature Act in so far as is relevant provides that

41. Functions of the RuLes Committee.

(1) The RuLes Committee may, by statutory instrument, make ruLes for regutating the practice and procedure of the Supreme Court, the Court of AppeaL and the High Court of Uganda and for a[[other courts tn Uganda subordinate to the High Cou rt.

(2) Without prejudice to the generalI apptication of subsection Committee may make ruLes of court under that subsection for- (1), the Rutes

(a) regutating the sittings of the High Court and of its judges cha m bers; in court or in

(b) regul.ating vacations and hearings during vacations by judges of the High Court of aL[such applications as may be required to be immediately or promptty heard;

The above power to make rutes reguLating court vacations does not give express power to make rutes regutating vacations in the Supreme Court.

⁵ We note that the term "Christmas vacation" is not def ined by Rutes 4 (e) of the RuLes of this Court which are the rutes appticabte for appeats todged in thrs Court. We have atso considered rules 110 (2) which provide that:

110. Transitional provisions.

- (1) In aLt proceedings pending in the court...
- (2) Notwithstanding subru[e (1) of this ruLe, in any case of difficul.ty or doubt, ^a judge or the registrar may informatty give directions as to the procedure to be adopted, where it is impracticabte to superimpose these Rules on the practice and procedure obtaining before the coming into force of these Rutes. 10

15 Rute 110 (2) appties to a situation where it is difficut to superimpose the Ru[es on the practice and procedure obtaining before the coming into force of the RuLes. We find that rule 110 generatl.y is inappticabte to computation of time where the controversy rs about what is meant by Christmas vacation as provided for under rule 4 (e) of the Rutes of this Court.

We have further considered rule 21 of the Rutes of this Court which provides that:

21. Vacat ions

(1) The vacations of the court and the arrangement of business during the vacations shall be determined by the Chief Justice, and those arrangements shatl be advertised or notified in a manner directed by the Chief Justice.

²⁵ (2) No business wiL[be conducted during a vacation, unLess the Chief Justice otherwise directs, except the deLivery of judgments and orders, when the matter is shown to be one of urgency, the hearing of applications and the taxation of bit[s.

30 Rule 21 deals with other vacations of the Court other than the Christmas vacation which is separately provided for. There is therefore no definition of the term Christmas vacation as used under rule 4 (e) of the Rules of this Court. Because the term Christmas vacation is taken for granted and is not defined, we are left with the option establishing the meaning of the term by considering how the term has been used before, if at all, under other rules of Procedure governing courts of judicature. The term Christmas vacation

- is not defined or even referred to under the Judicature (Court Vacation) Rules. It is further not defined under Order 51 rule 4 of the Civil Procedure Rules which gives the period around the Christmas holiday a specific court vacation period which includes the period before Christmas and after the 1st of January every year. We note that the Judicature (Court Vacation) Rules
- does not define the term "Christmas vacation" while Order 51 rule 4 of the Civil Procedure Rules also does not define the term and prescribe a definite period around the Christmas holiday season. The Judicature (Court Vacation) Rules provide for two vacations of the court one of which is between 23rd December and 7th January and can be taken to be approximately 10
- to a Christmas vacation period. 15

The practical issue is whether we should take the term Christmas vacation as used under rule 4 (e) of the Rules of this Court to mean the period from 23rd of December or 24th of December of any year and whether it extends up to 7th of January in accordance with rule 3 of the Judicature (Court Vacation) Rules or to 15th of January in accordance with Order 51 rule 4 of the Civil Procedure Rules.

Rule 3 provides of the Judicature (Court Vacation) Rules that:

"In each year the court shall be in vacation from the 15th July to the 15th August inclusive and from 23rd December to the 7th January inclusive".

On the other hand, Order 51 rule 4 of the Civil Procedure Rules provides that: 25

4. Time expiring between 24th December and 15th January.

Unless otherwise directed by the court, the period between the 24th day of December in any year and the 15th day of January in the year following, both days inclusive, shall not be reckoned in the computation of the time appointed or allowed by these Rules for amending, delivering or filing any pleading or for doing any other act; except that this rule shall not apply to any application for an interim injunction, or to any business classified by the registrar or by a magistrate's court as urgent.

5 The Court of Appeal in their decision in *Byeitima and 2 Others Vs Asaba* (Civil Appeal No. 264 of 2013) [2015] UGCA 86 defined Christmas vacation when they held that

> Rule 4 of the Rules of this Court requires that in reckoning time the period of Christmas vacation shall not be taken into account subject to direction of this Court. Order 51 r.4 of the Civil Procedure Rules defines Christmas vacation to mean the period from 24th December to 15th January in the year following.

We are not bound to follow this ruling but may if we find it to be persuasive. For purposes of the applicant's appeal, if we go by the two weeks' period from 23^d December to 7th January, the period of 60 days under rule 79 shall be reckoned as follows:

Firstly, if the period between 23^d December and 7th January 2022 is excluded in reckoning the 60 days, the appeal was filed in time because the appellant had spent about 21 days out of the 60 days with effect from 2^d December before the excluded court vacation days and thereafter after the

- 7th of January to 15th February is 37 days. If 37 days is added to 21 days, it makes 58 days. Even if one adds another two days to the 58 days, it will be 60 days rendering the appeal filed timely on the 60th day from the date certified by the Registrar as the time when the record was availed to the appellant. It follows that the main issue is whether the learned Justice erred 20
- not to consider various periods prescribed for lower courts under the Judicature Court Vacation Rules and under the Civil Procedure Rules respectively as the Christmas vacation which ought to be excluded in computing time. 25

The above rules are however inapplicable as rule 2 of the Judicature (Court Vacation) Rules provides that: 30

2. Interpretation

In these Rules, "court" means the High Court and any court constituted by or under the Magistrates Courts Act.

Moreover, rule 21 of the Rules of this Court provides that the vacations of this Court and the business during vacation shall be determined by the Chief 35

- ⁵ Justice. On the Other hand, rule 4 (e) allows the Court not the Chief Justice to otherwise direct whether the period of Christmas Vacation shall be reckoned in computing time. The Court is defined by rule 3 (g) of the Rules of this Court as the Supreme Court of Uganda established under article 29 of the Constitution. It follows that unless the Supreme Court otherwise directs, the period of the Christmas vacation shall not be reckoned in the computation of time. The directions of the Chief Justice under rule 21 (1) of the Rules of this Court does not include direction relating to whether the Christmas vacation should be included in the computation of time prescribed by rules or ordered by Court, 10

- Finalty rule 4 (e) of the Judicature (Supreme Court Rules) Directions and Order 51 rule 4 of the Civil Procedure Rules both give the relevant courts to which the rules apply, discretionary power to make orders that something could be done within a time specified by court by order, and the computation of the time prescribed as a court vacation may be reckoned in computing 15
- such time ordered within which some may be done. On the other hand, rule 3 of the Judicature (Court Vacation) Rules uses mandatory language by stating that the prescribed two periods of court vacation "shall" be court vacations. It provides that in that period: "In each year the court shall be in vacation..." and specifies the two periods. 20
- Considering that the term Christmas vacation is not used except under rule 4 (e) of the Rules of this Court, there is lacunae in the Law which makes it impossible to operationalise rule 4 (e) of the Rules of this court without giving a specific period which ought to reflect a customary Christmas vacation period as envisaged in the rules. 25
- We find that the most proximate rule from which we can import the meaning of Christmas vacation is Order 51 rule 4 of the Civil Procedure Rules which gives the period within which the lower courts had excluded days for purposes of filing unlike rule 3 of the Judicature (Court Vacation) Rules which only specifies court vacations without dealing with exclusion of days 30
- for purposes of computation of time. We therefore borrow the period used under Civil Procedure Rules as reflecting the customary Christmas vacation 35
- ⁵ period to determine what is meant by the term Christmas vacation under rule 4 (e) of the Rules of this Court as held under a rule in pari materia by the Court of Appeal in *Byeima and 2 Others Vs Asaba* (supra). This means that the traditional Christmas vacation which allows for travel and holiday time would best accommodate the meaning of Christmas vacation of the
- Supreme Court under rule 4 (e) unless and until otherwise prescribed. Unless otherwise ordered by the Supreme Court duly constituted, the period of the Christmas vacation shall not be reckoned in computing time. 10

In any case, we find that the appellant's appeal was filed within 60 days and allow the reference on this point alone.

- In the circumstances, there was no need for the appellant to file or argue any application to vary his appeal and we accordingly strike out Civil Application No. 018 of 2022 with no order as to costs. Civil Application No. 016 of 2022 which was an application to strike out the appeal, cannot be disposed of by a panel of three Justices and shall be put before the full constituted bench of this court for final resolution together with the appeal. 15 20
- The appellant's reference succeeds with costs.

Dated at Kampala on the 11th day of August ²⁰²³

U. - , to ^ 1 - t " , -- r . - Prof. Littian Tibatemwa - Ekirikubinza

Justice of the Supreme Court

Percy Ntuhaise

Justice of the Supreme Court

Christopher Madrama Izama

Justice of the Supreme Court

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