

UGANDA / JUDGMENT

Turyamureeba Julius and Others v Nakaseke District Local Government (Miscellaneous Cause 10 of 2024) [2025] UGHC 368 (2 June 2025)

[2025] UGHC 368

COURT
High Court of Uganda

BEFORE
Bukirwa, J

CASE / FILE NUMBER
Miscellaneous Cause 10 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT LUWERO

MISCELLANEOUS CAUSE NO. 0010 OF 2024

TURYAMUREEBA JULIUS & 19 OTHERS :::::::::::::::APPLICANTS

VERSUS

NAKASEKE DISTRICT LOCAL GOVERNMENT:::::::::::::RESPONDENT

RULING

BEFORE: HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI

This is a ruling in respect of a preliminary point of law raised by Counsel for the Applicant to the effect that the Respondent's affidavits in reply to this Application were filed out of time and as such should be struck out by the court. During this hearing, the Applicants were represented by Mr. Tumwebaze Ivan and Mr. Okello Henry while Mr. Allan Mukama represented the Respondent.

Mr. Tumwebaze submitted that, according to Rule 7 (3) of the Judicature (Judicial Review) Rules of 2009, a Respondent in an application for judicial review is required to file his or her affidavit in reply within 56 days after being filed with the Application. He further submitted that the Respondents were served with the Application on 11th November 2024 but only filed their response on ECCMIS on the 20th of March 2025 instead of 27th December 2024. Counsel

concluded by submitting and praying that the court should reject the affidavits in reply of the Respondent deposed by Mukasa Kityo Zephania and Sarah Nakalungi and consequently proceed *ex parte* since the said affidavits were filed out of time.

Mr. Mukama for the Respondents submitted that the Respondent did not file their affidavits in reply out of time as alleged by the Applicant. He further submitted that Rule 7 (3) of the Judicature (Judicial Review) Rules only applies where the court has permitted a party to amend its motion or file a further affidavit. He also argued that since the Applicants filed an affidavit in rejoinder, this is proof that the Applicants had sufficient time to respond to the Affidavits in Reply and were therefore not prejudiced in any way. Counsel concluded by praying that this Honourable court overrule this preliminary objection and proceed to determine this matter on its merits. He relied on the decisions of *Dr. Lam Lagoro James Vs Muni University HCMC No. 07 of 2016 and Mwanguhya Fenehasi V King Oyo Nyimba Kabamba Iguru HCMA No. 33 of 2023* to bolster his submission.

In rejoinder, Mr. Tumwebaze submitted the affidavits in reply were filed out of time as the Respondent was supposed to have filed them within 56 days from the date of service.

I have taken into consideration the submissions by both parties and I have come to the conclusion that the major issue before this court is whether the affidavits in reply were filed out of time, and if so should they be struck off the court record.

I should make it clear from the onset that much as there is a time line fixed within which an application for judicial review can be made, there is no provision in the Judicature (Judicial Review) Rules which specifies the period within which the Respondent to an application for Judicial Review should file their affidavit in reply. I am not persuaded by the submission by Mr. Tumwebaze that an affidavit in reply should be filed within 56 days from the time the Respondent is served with the Application. He based his submission on Rule 7(3) of the Judicature (Judicial Review) Rules in isolation of Rule 7 (1) of the same rules. For a better understanding, I shall quote **Rule 7 of the Judicature (Judicial Review) Rules**, which states;

"7. Motion and affidavit

(1) The Court may, on the hearing of the motion, allow the applicant to amend his or her motion, whether by specifying different additional grounds or reliefs or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of any affidavit of any other party to the application.

(2) Where the applicant intends to ask to be allowed to amend his or her motion or to use further affidavits, he or she shall give notice of his or her intention and of any proposed amendment, to every other party.

(3) Any respondent who intends to use any affidavit at the hearing shall file it with the Registrar of the High Court as soon as practicable and in any event, unless the Court otherwise directs, within fifty six days after service upon the respondent of the documents required to be served by subrule (1).

(4) Each party to the application shall supply to every other party on demand and on payment of the proper charges, copies of every affidavit which he or she proposes to use at the hearing."

Rule 7(3) of the Judicature (Judicial Review) Rules is couched in two limbs, which I have tried to highlight in the above quote. The first limb states that any Respondent who intends to use any affidavit at the hearing shall file it with the Registrar of the High Court as soon as practicable. It is my understanding that this first limb is

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intended to address the filing of affidavits in reply after the Respondent has been served with the initial Notice of Motion and the Affidavit in Support of that Motion. This is the limb that covers the Affidavits in Reply that were filed by the Respondent after having been served with the application in the instant case.

The second limb states that unless otherwise directed by the court, the Respondent shall be required to file an affidavit in reply within 56 days after service upon the respondent of the documents required to be served by subrule 1 of rule 7. To give full meaning to the second limb, rule 7(1) of the rules must be understood. Rule 7(1) of the Judicature (Judicial Review) Rules simply means that during or after the hearing of the motion but before the ruling is given by the court, the court may on application by the Applicant allow the Applicant to amend his or her motion to change or include new reliefs and make additional grounds upon which the application is brought. The court may also allow the applicant to file affidavits to cover the new issues that the Affidavit in Reply may raise. The import of the second limb of rule 7 (3) of the Judicature (Judicial Review) Rules is that where the Applicant files an amended motion or extra affidavit, then the Respondent is required to file an Affidavit in Reply within 56 days of service, unless the court prescribes a schedule for filing that Affidavit in Reply. It is for this reason that I disagree with counsel for the Applicant's submission that the Respondent should have filed her Affidavits in Reply within 56 days.

Having determined that there is no specified timeframe within which the Respondent in an application for judicial review is required to file an affidavit in reply, I am more inclined to agree with my learned brother Justice Stephen Mubiru, who held in the case of **Dr. Lam Lagoro James Vs Muni University HCMC No. 07 of 2016** that;

"where the rules committee considered it necessary to specify time limits for filing of affidavits in reply, it prescribed such time periods, for example under Order 10 rule 8 of The Civil Procedure Rules, interrogatories are answered by affidavit which has to filed within ten days, or within such other time as the court may allow. That the Rules Committee did not generally specify timelines for filing affidavits in reply in my view is indicative of the flexibility with which it intended courts to deal with them.*

... An affidavit in reply, being evidence rather than a pleading in stricto sensu, should be filed and served on the adverse party within a reasonable time before the date fixed for hearing, time sufficient to allow that adverse party a fair opportunity to respond..."

Where there is no timeline specified by the law within which an Affidavit in Reply should be filed, the Respondent should always ensure to file and serve the Affidavit in

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Reply within a reasonable time to enable the Applicant rejoin to that affidavit before the hearing. In the instant case, I am satisfied that the Respondent filed its Affidavits in Reply within a reasonable time given that these affidavits were filed on 20 th March 2025, a month before the hearing which took place on 23 rd April 2025. As such, the Applicants were accorded an opportunity to file their Affidavits in rejoinder on 14 th April 2025.

I therefore overrule the preliminary objection raised by the Applicants and shall proceed to determine this Application on its merits.

I so order.

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FARIDAH SHAMILAH BUKIRWA NTAMBI

JUDGE

Delivered on ECCMIS this 2 nd day of June 2025

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