THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

MISC. APPLICATION NO. 2289 OF 2025

(ARISING FROM CIVIL SUIT NO. 522 OF 2019)

WESTERN CABLE COMPANY LIMITED……APPLICANT

VERSUS

1. **JULIET NAMULI ASIYA……RESPONDENTS**
2. **KIMBOWA ROBERT**
3. **WESTERNER CABLES COMPANY (U) LIMITED**
4. **KIMBOWA KENNTH SUUBI SEMBATYA**
5. **TENDO ELIANA**
6. **KIRABO CYNTHIA**
7. **UGANDA REGISTRATION SERVICES BUREAU**
8. **DFCU BANK LTD**

BEFORE: HON. LADY JUSTICE SUSAN ODONGO

RULING

INTRODUCTION

This application was instituted by Notice of Motion pursuant to *Sections 82 & 98* of the *Civil Procedure Act, Cap. 282; section 33 of the Judicature Act, Cap. 16; Order 46*

rules 1 & 2 and Order 52 rules 1, 2 & 3 of the *Civil Procedure Rules S.I 71-1* for orders that the dismissal Order in High Court Civil Suit No. 522 of 2019 issued on the 19th day of June, 2025 be reviewed and set aside against the plaintiff and the suit be heard on merit inter parties and the costs of this Application be in the main cause.

BACKGROUND

The applicant instituted Civil Suit No. 522 of 2019 against the respondents seeking recovery of UGX 3,849,868,242/=, declarations of conversion arising from the cashing and honouring of its cheques, general and punitive damages, interest, and costs. It alleged fraud, negligence, and unlawful diversion of its funds through unauthorised bank accounts, manipulation of accounting records, and misappropriation of company cheques by former employees and related entities, with the involvement of the 7th and 8th respondents.

The suit was dismissed for want of prosecution on 11th November 2020 but was reinstated on 4th November 2022. It was again dismissed for want of prosecution on 19th June 2025 when the parties failed to appear for hearing. The applicant contends that it was not served with a hearing notice and attributes the dismissal to mistake or inadvertence of counsel, and therefore seeks review and reinstatement of the suit. The respondents oppose the application, contending that the dismissal was proper under ***Order 17 rule 4 of the Civil Procedure Rules, S.I 71-1*** that the applicant was duly notified through ECCMIS and cause lists circulated by the Uganda Law Society, and that the application is incompetent and an abuse of court process.

APPLICATION AND AFFIDAVIT IN SUPPORT.

The application is supported by an affidavit sworn by Albert Muganga, a Director of the applicant, who states that the applicant instituted Civil Suit No. 522 of 2019 against the respondents jointly and severally seeking recovery of UGX 3,849,868,242/=, declarations of conversion arising from the cashing and honouring of its cheques, general and punitive damages, interest, and costs. He avers that in its Written Statement of Defence, the 8th respondent admitted receiving various cheques from the 3rd respondent drawn on accounts of different companies. He further states that the applicant's advocates requested the 8th respondent for the relevant cheques and bank statements necessary for determination of the suit, but the request was unsuccessful.

The deponent states that the suit was referred to court-annexed mediation before Hon. Veronica Bichetero, which failed due to lack of consensus. He avers that the applicant subsequently filed Miscellaneous Application No. 1977 of 2024 seeking discovery on oath of original or certified bank statements and cheques deposited by the 3rd respondent with the 8th respondent, which remains pending. He states that efforts by counsel to have the application heard were frustrated by jurisdictional issues at the registry and the transfer of the Judge initially seized of the matter.

He further avers that despite these pending matters, the main suit was dismissed on 19th June 2025, and that upon checking ECCMIS, counsel discovered a hearing notice issued on 30th May 2025 of which neither the applicant nor its advocates had notice. He states that prior to the dismissal, the applicant had filed Miscellaneous Application No. 0442 of 2023 for appointment of guardians *ad litem* for the minor respondents, which was consented to, and had compromised the suit against the 9th defendant in the main suit.

The deponent maintains that neither the applicant nor its counsel received any hearing notice, ECCMIS notification, or email alert regarding the hearing of 19th June 2025. He contends that the dismissal was an error apparent on the face of the record given the lack of notice, the pending discovery application, and the applicant's compliance with pre-trial requirements, including filing a joint scheduling memorandum and witness statements, while several respondents failed to file theirs. He avers that the suit was not determined on its merits, that it has high chances of success, and that the application for review is brought in good faith, without inordinate delay, and in the interest of justice, equity, and fairness, seeking reinstatement of the suit for hearing on the merits.

2ND RESPONDENT'S AFFIDAVIT IN REPLY

The 2nd respondent opposes the application and avers, on advice of his Counsel Emet Advocates, that it is grossly incompetent, misconceived, and should be struck out with costs. He states that the applicant has no valid claim and that the main suit is frivolous and vexatious, as demonstrated by a joint defence already on record. He contends that the applicant and its advocates failed to appear in court to prosecute the suit when it was fixed for hearing, despite it being the applicant's duty to diligently prosecute its case.

He avers that this was the second dismissal of the suit for want of prosecution, the first having occurred on 11th November 2020, and that the court had previously reinstated the suit on 4th November 2022 in the hope that the applicant would seriously prosecute it. He maintains that the matter was duly cause-listed for hearing on 19th June 2025, that the cause list was widely circulated by the Uganda Law Society, and that service was effected through

ECCMIS. He further avers that the suit was dismissed on merits under *Order 17 rule 4* of the *Civil Procedure Rules*.

The 2nd respondent states that there is no notice or record of appeal challenging the dismissal on merits, despite more than five months having elapsed since the dismissal, and that the suit is a 2019 backlog matter. He contends that filing applications does not excuse a party from attending court when a main suit is fixed for hearing. He further avers that the dismissal is not amenable to review and does not disclose any grounds for review, and that the applicant has persistently abused court process by filing applications to revive the dismissed suit instead of appealing, including Miscellaneous Application No. 1498 of 2025, which was withdrawn. He therefore prays that the application for review be dismissed with costs.

AFFIDAVIT IN REJOINDER TO THE 2ND RESPONDENT'S AFFIDAVIT

The applicant rejoins that the application is meritorious, competent, and properly brought to enable its valid main suit to be heard on the merits. It denies that the main suit is frivolous, vexatious, or frail, and states that its non-appearance at the hearing was due to lack of notice, which explains why none of the parties were present when the matter was called for hearing.

The applicant avers that it complied with the summons for directions and took all requisite procedural steps, including filing its witness statements and joint scheduling memorandum, and that it has consistently been vigilant and serious in prosecuting the suit since its reinstatement. It contends that mere circulation of the hearing date through the Uganda Law Society and ECCMIS was

insufficient in the absence of a specific ECCMIS notification or email alert to its advocates.

The applicant maintains that the dismissal of the main suit was erroneous given the pending application for discovery and its compliance with pretrial procedures. It further avers that it properly elected to seek review rather than appeal, and therefore no notice of appeal was required. The applicant attributes delays to systemic challenges within the judiciary, including understaffing and backlog, which were beyond its control.

It further contends that a litigant may fail to attend court for various reasons and, in the instant case, the absence was occasioned by lack of notice. The applicant maintains that the application discloses sufficient grounds for review and ought to be heard inter partes in the interest of justice. It further avers that Miscellaneous Application No. 1498 of 2025 was withdrawn in good faith and in pursuit of justice, and its filing was not an abuse of court process.

8TH RESPONDENT'S AFFIDAVIT IN REPLY

The 8th respondent, through an Affidavit sworn by Muhammad Lusiba, its Legal Officer, opposes the application and contends that the applicant's suit against it is barred by limitation under the Limitation Act and that a preliminary objection shall be raised at the earliest opportunity. It denies any allegations of wrongdoing and avers that no specific allegations are disclosed against it in paragraph 1 of the Affidavit in support. While admitting that the applicant filed Civil Suit No. 522 of 2019 against the respondents jointly and severally, it maintains that, as banker to the 3rd respondent, it received and cleared cheques drawn in favour of the 3rd respondent in good faith, without negligence, and in accordance with standard banking practice.

The 8th respondent states that it informed the applicant that the original cheques requested were in the custody of the Uganda Police Force and that it could not release bank statements without a court order. It avers that court-annexed mediation was a court initiative and not a procedural step taken by the applicant. It further states that it was never served with, and has no knowledge of, Miscellaneous Application No. 1977 of 2024 or any application for discovery against it.

The 8th respondent maintains that the main suit was dismissed on 19th June, 2025 under *Order 17 rule 4* of the *Civil Procedure Rules* due to failure by the parties to appear and to take steps to prosecute the suit. It contends that the applicant has not demonstrated sufficient cause for non-attendance, given that a hearing notice was issued and served on ECCMIS on 30th May 2025 and the matter was duly cause-listed and circulated by the Uganda Law Society. It further avers that the applicant failed to show diligence in fixing the suit for hearing after summons for directions and after filing the joint scheduling memorandum.

The 8th respondent asserts that the dismissal ruling was reached after proper evaluation of the record and discloses no apparent error on the face of the record amenable to review. It contends that the law does not envisage review in the circumstances and that the proper remedies were appeal or filing a fresh suit. It further avers that the applicant has been wilfully negligent in prosecuting the suit, which has now been dismissed twice for want of prosecution. It maintains that the dismissal was a final disposal of the suit and prays that the application be dismissed for incompetence and abuse of court process.

AFFIDAVIT IN REJOINDER TO THE 8TH RESPONDENT'S AFFIDAVIT

The deponent, Albert Muganga, Director of the applicant, states that the Application is competent, meritorious, and not barred by law, with the applicant having a valid claim and high chances of success in the main suit. He denies that the 8th respondent followed standard banking practices in clearing the disputed cheques, contending that the acts were done in bad faith and that the cheques remain in the possession of the 8th respondent. He further clarifies that the court-annexed mediation before Hon. Veronica Bichetero was initiated at the request of the applicant and not by the court.

The deponent states, on advice of counsel that the 8th respondent was never served with Miscellaneous Application No. 1977 of 2024 due to jurisdictional issues raised by the Deputy Registrar, and that efforts to have the Discovery Application reallocated for hearing after the transfer of the presiding Judge were unsuccessful. He avers that the applicant could not proceed with the main suit before determination of the Discovery Application, which was necessary to obtain primary evidence.

He asserts that all parties and their counsel were absent when Civil Suit No. 522 of 2019 was dismissed on 19th June 2025 due to lack of notice via ECCMIS or email. He emphasizes that the applicant has been diligent, vigilant, and not wilfully negligent, having taken all necessary steps including filing a Joint Scheduling Memorandum, witness statements, trial documents, applications for discovery and appointment of guardians *ad litem*, and participating in mediation.

The deponent states that cause lists circulated by the Uganda Law Society do not constitute proper service and that neither he nor his lawyers received any

notification. He underscores the applicant's interest in prosecuting the suit to recover UGX 3,849,868,242/= allegedly illegally taken by the respondents. He concludes that the dismissal of the suit was an error apparent on the face of the record, that sufficient cause existed for non-attendance, and that the application for review is properly before court, discloses a legal basis, and is not an abuse of court process.

REPRESENTATION AND HEARING

At the hearing of this application, counsel Enos Buluma appeared for the applicant, counsels Derrick Bazekuketta and Andrew Mumpenje for the 1st and 2nd respondents, and counsel Jeffrey Kaddu for the 8th respondent. was represented by M/s. M. A. Kajubi and Co. Advocates. The 2nd respondent, Mr. Kimbowa Robert, was present in court.

The court issued schedules for the filing of submissions and the parties complied. The applicant, the 2nd and 8th respondents filed submissions. I have duly considered the pleadings, the evidence of the parties, their submissions and authorities cited.

APPLICANT'S SUBMISSIONS

Counsel argued that only the 2nd respondent filed an Affidavit in reply. That although the 8th respondent was granted leave to file a reply by 12th December 2025, it failed to comply and instead filed the Affidavit on 15th December 2025, outside the timelines set by the Court. He prayed that the 8th respondent's Affidavit be expunged from the record and that the Court proceeds ex parte against the 8th respondent pursuant to ***Order 9 rule 11(2)*** of the ***Civil Procedure Rules, S.I 71-1***.

Counsel relied on ***section 82*** of the ***Civil Procedure Act, Cap. 282*** and ***Order 46 rule 1*** of the ***Civil Procedure Rules, S.I 71-1*** to submit that these provisions empower the court to review its judgment where there is an error apparent on the face of the record or other sufficient cause.

Counsel submitted that the applicant avers that neither it nor its counsel received notice of the hearing scheduled for 19th June 2025, when Civil Suit No. 522 of 2019 was dismissed. No ECCMIS notification or email service was received on the applicant's registered email address. This assertion is not denied by the 2nd and 8th respondents and is therefore deemed admitted in accordance with ***Samwiri Massa v Rose Acen*** **(1978) HCB 297**.

It was counsel's submission that under ***Regulation 16(1)*** of the ***Judicature (Electronic Filing, Service and Virtual Proceedings) Rules, 2025***, service of hearing notices is to be effected electronically. Due to lack of notice to all parties, none appeared in court, resulting in dismissal under *Order 17 rule 4* of the *Civil Procedure Rules, S.I 71-1.*

Counsel submits that the dismissal was made in error, as the record demonstrates continuous and meaningful steps taken to prosecute the suit. These include court-sanctioned mediation, a pending application for discovery on oath, filing of a joint scheduling memorandum and witness statements, an application for appointment of guardians *ad litem*, and negotiations culminating in a compromise with the 9th defendant.

Counsel argued that it is the applicant's averment that the Court overlooked these pending processes and dismissed the suit for want of prosecution despite the absence of a hearing notice, amounting to an error apparent on the face of the record. The applicant maintains readiness to proceed and asserts that

reinstatement will occasion no prejudice to the respondents.

Relying on ***Article 28*** of the ***Constitution of the Republic of Uganda, 1995*** and ***section 98*** of the ***Civil Procedure Act, Cap. 282***, the applicant urges the Court to exercise its inherent powers in the interest of justice and fairness by reviewing and setting aside the dismissal order, reinstating the suit for hearing on the merits, and ordering that costs abide the outcome of the main cause.

2ND RESPONDENT'S SUBMISSIONS

Counsel relied on the *Judicature (Electronic Filing, Service and Virtual Proceedings) Rules, 2025 (S.I. No. 21 of 2025)*, which came into force on 7th March 2025, and were applicable at the time the suit was dismissed on 19th June 2025. Under ***Rules 17*** and ***5***, a party who initiates proceedings as a registered user is deemed to have consented to electronic service of all court documents, including hearing notices, through the ECCMIS system.

It is submitted that the Court lawfully served the hearing notice by posting it on the ECCMIS file on 30th May 2025, giving the parties twenty days' notice. The applicant admits in the supporting Affidavit that a hearing notice was indeed posted on ECCMIS. Having failed to regularly check the system, the applicant cannot attribute that omission to the Court. The record therefore shows valid service, and no error apparent on the face of the record arises. Counsel relied on ***Hajji Mutekanga v Equator Coffee Growers*, SCCA No. 7 of 1995** for the principle that an admission is the best evidence.

It was submitted further that electronic service is entirely statutory and does not impose an additional duty on Court to issue telephone calls or reminders once service is effected through ECCMIS and the cause list. The dismissal under *Order*

17 rule 4 of the *Civil Procedure Rules* was therefore regular and lawful.

On the law governing review, counsel argued that a wrong application, interpretation, or evaluation of the law or evidence does not constitute an error apparent on the face of the record but is instead a ground of appeal. Reliance is placed on ***FX Mubuuke v Uganda Electricity Board*, HCMA No. 98 of 2005**. Similarly, an erroneous conclusion or improper exercise of discretion is not reviewable, as held in ***Lalwak v Opio*, HCMA No. 0058 of 2016**.

Counsel submitted that the learned trial Judge exercised judicial discretion under *Order 17 rule 4*, noting party non-appearance and case backlog, and concluded that the failure to attend the hearing amounted to failure to take necessary steps to advance the suit. Such exercise of discretion cannot be challenged by way of review, even if perceived to be erroneous.

On remedies, counsel prayed that the application for review be dismissed with costs for want of an error apparent on the face of the record. Further that the application was filed after an inordinate delay of approximately four months following dismissal and is on that ground alone liable to dismissal.

8TH RESPONDENT'S SUBMISSIONS

The 8th respondent opposed the Applicant's prayer to expunge its Affidavit in reply, contending that the alleged late filing resulted from inadvertent oversight of counsel rather than bad faith. Relying on ***Ben Kiwanuka v Haji Nudin Matovu* SCCA No. 17 of 1990**, it is submitted that mistakes of counsel should not be visited upon a litigant so as to deny a hearing on the merits.

The 8th respondent further submits that it was served on 5th December 2025 and filed its Affidavit in reply on 15th December 2025, well within the 15-day

statutory period prescribed by ***Order 12 rule 3(2)*** of the ***Civil Procedure Rules***. It is contended that the Affidavit is properly on record, no prejudice has been demonstrated by the applicant, and the matter ought to be heard on its merits without undue regard to technicalities.

Counsel raised a preliminary point of law on the competence of the Application for review and reinstatement. It is argued that once a suit is dismissed under *Order 17 rule 4* of the *Civil Procedure Rules*, the Court becomes *functus officio*, and the only remedies available to the aggrieved party are to appeal or to file a fresh suit subject to limitation. The respondent relies on ***Pentecostal Assemblies of God Lira Ltd v Pentecostal Assemblies of God Ltd*** **HCMA No. 014 of 2018**.

Without prejudice to the preliminary objection, the respondent submits that the applicant has failed to demonstrate any error apparent on the face of the record to justify review. The application merely seeks a re-evaluation of the merits, service of notice, procedural fairness, and the trial judge's discretion under *Order 17 rule 4* all of which are matters for appeal, not review. Reliance is placed on ***Nyamogo & Nyamogo Advocates v Kago*** **[2001] 2 EA 173**.

The respondent concludes that the applicant has failed to identify any self-evident error on the record and instead invites the Court to sit in appeal over its own decision. The application is therefore incompetent, legally untenable, and ought to be dismissed with costs.

SUBMISSIONS IN REJOINDER

Counsel submitted that this Honourable Court already pronounced itself on the preliminary objections, raised by the 8th respondent when the matter came up

for hearing on 10th December, 2025. Further that it is misconceived, as it addresses reinstatement of a suit dismissed under *Order 17 rule 4* of the Civil Procedure Rules, whereas the application before Court is properly one for review of the dismissal.

The applicant disputes the assertion that parties were served with a hearing notice on 30th May 2025 for the hearing of 19th June 2025, contending that no evidence of such service has been adduced by the 2nd or 8th respondents. The absence of all parties on the hearing date, including the respondents themselves, is said to confirm lack of service, and the applicant denies having made any admission to the contrary.

It is further argued that *Regulation 16(1)* of the *Judicature (Electronic Filing, Service and Virtual Proceedings) Rules, 2025* requires notification through registered email, telephone, or instant messaging applications. Upon perusal of the ECCMIS record in the suit, none of these modes of service was complied with.

The applicant contends that the dismissal on grounds of failure to take necessary steps to prosecute the suit was erroneous and constitutes an error apparent on the face of the record, since the record clearly shows active prosecution. These steps include filing a joint scheduling memorandum, trial bundle, pursuing an application for discovery against the 8th respondent, and compromising the suit against the 9th defendant. These actions are said to be self-evident upon the court record.

The applicant further submits that it is not unprecedented for courts to review orders made under *Order 17 rule 4*. Relying on *section 98* of the *Civil Procedure Act*, the applicant urges the Court to exercise its wide discretionary powers to meet

the ends of justice, arguing that denial of the application would unjustly shut out the applicant from substantive justice.

Accordingly, the applicant reiterates the prayer that the dismissal order be reviewed and set aside, the suit reinstated for hearing inter partes, and costs to abide the outcome of the main cause.

ISSUES FOR DETERMINATION

The rules provide guidance on the materials to be considered in the framing of issues. The court may frame issues from all or any of the following materials; (a) allegations made on oath by the parties or by any persons present on their behalf, or made by the advocates of the parties; (b) allegations made in the pleadings or in answers to interrogatories delivered in the suit and (c) the contents of documents produced by either party. (*Order 15 rule 3* of the *Civil Procedure Rules S.I 71-1).* Therefore, the issues for court's determination are:

1. Whether the 8th respondent's affidavit should be expunged from the record for being belatedly filed
2. Whether the Application raises grounds for review.
3. Whether there are sufficient grounds for setting aside the dismissal of Civil Suit No. 522 of 2019 and reinstating the same for hearing inter parties.

COURT'S DETERMINATION

Issue 1: Whether the 8th respondent's affidavit should be expunged from the record for being belatedly filed

Counsel for the applicant argued that only the 2nd respondent filed an Affidavit in reply. That although the 8th respondent was granted leave to file a reply by 12th December 2025, it failed to comply and instead filed the Affidavit on 15th

December 2025, outside the timelines set by the Court. He prayed that the 8th respondent's Affidavit be expunged from the record.

The 8th respondent's counsel opposed the applicant's prayer to expunge its Affidavit in reply, contending that the alleged late filing resulted from inadvertent oversight of counsel rather than bad faith. Further that the 8th respondent was served on 5th December 2025 and filed its Affidavit in reply on 15th December 2025, well within the 15-day statutory period prescribed by *Order 12 rule 3(2)* of the *Civil Procedure Rules*.

A substantial body of judicial decisions exist regarding the late filing of affidavits. Jurisprudence in this area tends to vary. I am alive to the fact that this court's stance has differed:- some rulings have emphasized that the justice of a case requires a strict and rigid application of procedural rules, while others have applied flexibility, prioritizing the administration of justice over rigid adherence to technicalities.

In ***Stop and See (U) Ltd vs Tropical Africa Bank Ltd. HCMA 0333 of 2010***, Justice Madrama while leaning towards the strict application of procedural rules held that:

"A reply or defence to an application has to be filed within 15 days. Failure to file within 15 days would put a defense or affidavit in reply out of time prescribed by the rules. The general rule is that where the defendant does not file a defense or file it within time, the court will proceed in default of the defense... a defendant who fails to file a defence puts himself out of court and cannot be heard"

The learned Judge expressed the view that whereas under Article 126(2)(e) of the Constitution the courts are called upon to deliver substantive justice without undue regard to technicalities, the rules and timelines for filing defences are not technicalities. They regulate the conduct of the courts business and ensure not

only fairness but an orderly manner of disposal of cases.

The procedural rule upon which the finding is premised is couched in the language of ***Order 12 rule 3 (2) of The Civil Procedure Rules*** which provides that; *"Service of an interlocutory application to the opposite party shall be made within fifteen days from the filing of the application, and a reply to the application by the opposite party shall be filed within fifteen days from the date of service of the application and be served on the applicant within fifteen days from the date of filing of the reply".*

Grounded in this provision, affidavits in reply that were clandestinely filed out of time and without leave were struck off with costs awarded, and the matter proceeded ex parte (***Senyonjo v Wakiso District Local Government Council & Another (Miscellaneous Cause 232 of 2023) [2024] UGHCCD 171 (17 October 2024)***.

In contrast, my learned brother, Hon. Justice Mubiru in ***Dr. Lam Lagoro James v. Muni University HCMC No. 007 of 2016),*** differed from the rigid application of the procedural rules that relate to time for filing affidavits. In his view *"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. For that reason, an affidavit in reply filed and served in circumstances which necessitate an adjournment to enable the adverse party a fair opportunity to respond, should not be disregarded or struck off but rather the guilty party ought to be penalised in costs for the consequential adjournment."*

According to the learned Judge, the evidential purpose of an affidavit distinguishes it from pleadings such as written statement of defense and therefore, the rules on time applicable to pleadings do not apply to affidavits.

For this reason, in the wisdom of the drafter, it was not necessary to set timelines

for the filing of affidavits in reply. In distinguishing a written statement of defense from an affidavit, the learned Judge explained;

"Unlike a written statement of defence which serves only one purpose of disclosing the case a defendant proposes to put forward or serving as a means of disclosing the facts which support particular issues raised by each party, an affidavit can be used in a number of important ways, most often as containing evidence to support or oppose an application. The affidavit becomes evidence in the case. This is illustrated by Order 52 rules 3 and 7 of The Civil Procedure Rules which indicate that the filing an affidavit alongside a motion or chamber summons is optional, only when evidence is required in support of the application. Whereas a written statement of defence presents allegations of facts the defendant will rely on, an affidavit in reply presents evidence on oath. Affidavits are a way of giving evidence to the court other than by giving oral evidence. They are intended to allow a case to run more quickly and efficiently as all parties know what evidence is before the Court. Consequently, time constraints applied to defences may be misplaced when applied to affidavits."

The Dr. Lam case centers on 3 key areas: the role of affidavits as admissible evidence, the importance of evaluating the dispute based on its merits, and the absence of any prejudice-or, if any exists, whether it can be remedied by an award of costs.

From the facts at hand, the 8th respondent was granted leave to file its reply by 12th December 2025, it failed to comply and instead filed the Affidavit on 15th December 2025, outside the timelines set by this Court but within 15 days. However, filing was done 3 days outside the time set. The respondent concedes the delay in filing the affidavit. Notwithstanding the period taken by the respondent to file a reply and the failure to adhere to the requirements for

submitting evidence, the applicant has not demonstrated how they have been or could be prejudiced if the replying affidavit is considered in deciding this application. Absent any assertion, claim, indication or reference that the applicant has suffered, or likely to suffer any prejudice, or if any exists that it cannot be remedied by an award of costs, I am inclined to concur with the holding in Dr. Lam (supra) and adopt a more flexible approach that places greater emphasis on the administration of justice rather than strict adherence to technicalities. Accordingly, to the extent permitted by my discretion, I allow the affidavit in reply, so that the substantive issues between the parties can be determined without being hindered by technicalities related to late filings.

In light of the foregoing, I answer the issue in the negative.

Issue 2: <u>Whether the Application raises grounds for review</u>.

Both counsel for the 2nd and 8th respondents argued that a matter dismissed under *Order 17 rule 4* cannot be brought back to the same court for review. I respectfully do not agree with this line of argument because of the following.

Order 17 rule 4 is the equivalent of ***Order 17 rule 3(a)*** of India CPC. In the Indian context it was held that a decision made under *rule 3(a) Order XVII* is a decree. The remedy of a party aggrieved by an order under this rule is by way of appeal or review and not by way of an application for restoration under *Order IX rule 9* or *Order IX rule 13*. ***(See: Mamata Samantaray v Saraswati Patra C.M.P No.64 of 2023; Ashok Kumar Singh v Sri Prabhat Kumar Ghose and The Jharkhand State Housing Board AIR 2008 Jhar 76: (2008) 1 JCR 445)***

Under ***Section 82*** of the ***Civil Procedure Act, Cap. 282*** any person considering

himself or herself aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or by a decree or order from which no appeal is allowed may apply for a review of judgment to the court that passed the decree or made the order. ***(See: Mohamed Alibhai v E.E. Bukenya Mukasa SCCA No. 56 of 1996).*** An aggrieved is a person who has suffered a legal grievance. ***(See: Mohamed Alibhai v E.E. Bukenya Mukasa SCCA No.56 of 1996; In Re: Nakivubo Chemists (U) Ltd and in the matter of the Companies Act (1979) HCB 12; Yusufu v Nokrach (1971) EA 104)***. A person suffers a legal grievance if the judgment given is against him or affects his interest. ***(See: Mohamed Alibhai v E.E. Bukenya Mukasa SCCA No.56 of 1996; Ladak Abdallah Mohammed Hussein v Isingoma Kakiiza SCCA No. 8 of 1995)***

Order 46 rule 1 (1) of the ***Civil Procedure Rules S.I No. 71-1*** specifies who has the authority to apply for review, and outlines the conditions under which such application can be lodged. The provision states:

(1) Any person considering himself or herself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order. ***(Underlined for emphasis)***

The Supreme Court in ***Mohamed Alibhai v E.E. Bukenya Mukasa*** **SCCA No. 56 of 1996** held that in any of these three situations, an aggrieved person may apply for review of the judgement only if the decree or order affects him; (a) Discovery of new and important matters of evidence previously overlooked by excusable misfortune; (b) Some mistake or error apparent on the face of record; (c) For any other sufficient reason.

The applicant in the instant case relies on the situation of mistake or error apparent on the face of record. She argues that the suit in question was dismissed under *Order 17 rule 4* which would imply that time was accorded by court but there was noncompliance and nonattendance however that was not the case. That applicant contends that it was not served with a hearing notice and attributes the dismissal to mistake or inadvertence of counsel, and therefore seeks review and reinstatement of the suit.

The Supreme Court in ***Edison Kanyabwere v Pastori Tumwebaze*** **SCCA No. 6 of 2004** held that in order for an error to be a ground for review, it must be one apparent on the face of the record, i.e. an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on the record. ***(See: F.X Mubuuke v UEB, HCMA No. 98 of 2005).***

A mistake or error on the face of the record must be one that stares one in the face, as it were, and on which there cannot be two opinions. ***(See: Kenyan High Court in Kishor Kumar Dhanji v Ndeffo Limited Civil Case No.170 of 2009)***.

The applicant argues that it was an error to dismiss a suit pursuant to *Order 17 rule 4* where neither the applicant nor counsel had notice of the hearing date. The 2nd and 8th respondents adduced evidence to court that in fact the hearing

notice had been issued on the 30th day of May, 2025 and that in fact Uganda Law Society circulated a cause list that this Honourable Court has had the benefit to scrutinise. The applicant first denied having received such notification neither by email nor SMS and that it was waiting for the application to be reallocated.

However, in paragraph 10 of the Affidavit in support, the applicant expressly states that upon their counsel checking the ECCMIS to ascertain whether the application had been re-allocated to another Judge, they discovered that a hearing notice had been issued on 30th May 2025 in the main suit. This averment constitutes an admission that the hearing notice existed on the court record, notwithstanding the applicant's assertion that they had no actual notice of the same.

Where a civil case has been electronically filed through the System, summons, notices and other court documents may be served on the defendant or respondent electronically through a registered e-mail address or telephone, instant messaging applications or any other electronic communication service approved by the Chief Justice. Proof of electronic service shall be the delivery of confirmation receipt of the service. ***(see: Regulation 16*** of the ***Judicature (Electronic Filing, Service and Virtual Proceedings) Rules, 2025)***

The position of the law as above provided is that it is not mandatory that for Electronic service under ECCMIS to be effective one has to receive an email or an SMS as the applicant asserts. In as long as there is delivery of confirmation receipt of the service, service is deemed to have been effected. The Court record shows that service was duly effected to the applicant and a cause list widely circulated. The failure of the applicant's counsel to constantly check their ECCMIS cannot be blamed on court.

There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. ***(See: Court of Appeal of Kenya in Nyamogo and Nyamogo Advocates v Kogo [2001] 1 EA 173)***.

Counsel for applicant argued that the dismissal was made in error, as the record demonstrates continuous and meaningful steps taken to prosecute the suit. These include court-sanctioned mediation, a pending application for discovery on oath, filing of a joint scheduling memorandum and witness statements, an application for appointment of guardians ad litem, and negotiations culminating in a compromise with the 9th defendant. That the Court overlooked these pending processes and dismissed the suit for want of prosecution despite the absence of a hearing notice, amounting to an error apparent on the face of the record.

A closer look at the ruling for dismissal reveals that the court relied on *Order 17 rule 4* to hold that the performance of any other act necessary to the further progress of the suit, may comprise, filing necessary documents, complying with procedural orders, attending hearings. The determination of the suit, forthwith, is a matter within the Court's discretion that lies with court. The Court went on to dismiss the suit.

It is trite that under ***Order 46 rule 1*** and ***8*** of the ***Civil Procedure Rules S.I 71-1***, a

review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another judge could have taken a different view of the matter. That the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of the law is not a proper ground for review. Misconstruing a statute or other provision of the law cannot be a ground for review but could be a proper ground for appeal. Otherwise, the court would be sitting in an appeal on its own judgment which is not permissible in law ***(See: Igga Godfrey & Others v The Registered Trustees of Pentecostal Assemblies of God & Another HCMA No. 11 of 2016; National Bank of Kenya V Ndungu Njau Civil Appeal No. 211 of 1996)***

Following the holdings above, if this court wrongly applied *Order 17 rule 4* of the *Civil Procedure Rules, S.I 71-1* in the prevailing circumstances as the applicant submits, then this does not amount to a mistake or error apparent on the face of record warranting the grant of an application for review of the dismissal order in Civil Suit No. 522 of 2019. This issue is therefore answered in the negative.

Issue 3: <u>Whether there are sufficient grounds for setting aside the dismissal of Civil Suit No. 29 of 2020 and reinstating the same for hearing inter parties</u>.

The doctrine of reinstatement of suits constitutes a fundamental aspect of Uganda's civil procedure regime, as it safeguards the right of access to justice by permitting the revival of actions that have been dismissed due to procedural irregularities or inadvertent lapses. This principle ensures that litigants are afforded an opportunity to have their matters adjudicated on the merits,

notwithstanding prior dismissals occasioned by technical or procedural defaults. Where the Civil Procedure Rules expressly grant the court the power to dismiss a suit, they also authorise the court to reinstate the suit for good cause or sufficient reason as demonstrated under ***Order 9*** and ***Order 36***.

In this case the court proceeded to dismiss the suit under ***Order 17 rule 4*** of the ***Civil Procedure Rules***. Under the provision the court is empowered to exercise its discretion and decide the suit promptly, regardless of any party's default to perform any act necessary to the further progress of the suit. A dismissal for non-appearance effectively constitutes a decision resulting in a decree that is both valid and enforceable. Such dismissal is not merely procedural but carries the weight of a decree, empowering the successful party to seek its execution and the unsuccessful party to have it set aside on appeal or by review.

The prevailing view holds that when a matter proceeds under ***Order 17 rule 4*** of the ***Civil Procedure Rules***, any order issued attains a degree of finality that precludes the same court from revisiting or setting aside its own decision. The only recourse available to an aggrieved party is to pursue an Appeal. ***(Pentecostal Assemblies of God Lira Limited v Pentecostal Assemblies of God Limited & Another, Miscellaneous Application No. 14 of 2018)***.

Order 17 rule 4 is the equivalent of ***Order 17 rule 3*** of our neighbours Tanzania. In Tanzania, courts are of a view that an Order of the court made under ***Order 17 rule 3*** of the CPC is one on the merits of the case and thus appealable as of right. ***(See: Diamond Trust Bank Ltd v Puma Energy Tanzania Civil Application No. 40 of 2016; Zainabu Juma Kaswaka v KCB Bank Tanzania Limited & 5 Ors Misc. Civil Application No. 20 of 2022***

Order 17 rule 4 is the equivalent of ***Order 17 rule 3(a)*** of India CPC. In the Indian context it was held that a decision under *rule 3(a) Order XVII* is a decree. The remedy of a party aggrieved by an order under this rule is by way of appeal or review and not by way of an application for restoration under *Order IX rule 9* or *Order IX rule 13*. ***(See: Mamata Samantaray v Saraswati Patra C.M.P No.64 of 2023; Ashok Kumar Singh v Sri Prabhat Kumar Ghose and The Jharkhand State Housing Board AIR 2008 Jhar 76: (2008) 1 JCR 445)***

It is therefore my finding that the Order of dismissal of Civil Suit No. 522 of 2019 pursuant to ***Order 17 rule 4*** of the ***Civil Procedure Rules S.I 71-1*** is final in nature disposing off the suit. It neither can be set aside nor be reinstated for hearing by this Court. This issue too fails.

Consequently, this application is dismissed with costs to the 2nd and 8th respondents.

Dated, signed and delivered electronically this 31st day of January, 2026.

SUSAN ODONGO
Ag. JUDGE