THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION)
MISCELLANEOUS APPLICATION NO. 261 OF 2026

ARISING FROM CIVIL SUIT NO. 222 OF 2024

1.MONITOR PUBLICATIONS LIMITED
2. AFRICA BROADCASTING UGANDA LIMITED
T/A NTV UGANDA
3. THE MANAGING EDITOR
MONITOR PUBLICATIONS LIMITED
4. DEOGRATIUS WAMALA ::APPLICANTS

VERSUS

SILVER KAYONDO ::RESPONDENT

Before: Hon. Lady Justice Dr. Ginamia Melody Ngwatu

RULING

Introduction

The applicant brought this application by way of notice of motion under section 82 and 98 of the Civil Procedure Act cap 282, section 37 of the Judicature Act cap 16, Order 52 rules 1, & 3 of the Civil Procedure Rules SI 71-1, as amended and article 126(2)(e) of the 1995 Constitution of the Republic of Uganda seeking orders of court that:

1. The order of this Honourable Court to proceed hearing *Civil Suit No. 222/2024 ex parte* be set aside.
2. The order for *ex parte* proceedings in *Civil Suit No.222/2024* be reviewed and set aside.
3. The ex parte proceedings in *Civil Suit No.222/2024* be set aside and the applicants be allowed to file their witness statements and to cross-examine the plaintiff's witnesses.
4. The filing of submissions by the plaintiff as directed by the Court be halted pending the determination of this application.
5. Costs of this application.

Background

The application is supported by an affidavit in support deponed by Timothy Ntale, the Company Secretary and the Head Legal and Administration of the 1st and 2nd applicants. He stated that:

1. In February 2024, the respondent sued the applicants in the above suit for among others a declaration that the latter infringed his copyright and personality rights.

2. On 21st March 2024, the applicants filed a joint written statement of defence in which they denied the allegations.
3. In the course of 2025, being interested in the effectual closure of the dispute, the applicants participated in mediation proceedings but unfortunately did not reach resolution with the respondent.
4. He is advised by the applicants' Advocates, M/s Nangwala, Rezida & Co. Advocates which advice he verily believes is true that in November 2025, the parties were directed to file a Joint Scheduling Memorandum, their respective Trial bundles as well as witness statements and a Joint Scheduling Memorandum signed by Counsel for all parties was filed in Court on 4th December 2025. Further that the applicants' Advocates having no documents to exhibit did not file any Trial bundle but intended to rely on selected documents exhibited by the respondent, a fact which they indicated in the Joint Scheduling Memorandum.
5. Their advocates were unable to meet with their witnesses hence failing to file the required witness statements within the time allocated by Court.
6. On 10th February 2026 when the matter came up for hearing, the applicants' advocates sought an adjournment to enable them comply with the directions of the Court in respect of filing pre-trial documents.
7. Court rejected the adjournment and instead ordered that the matter proceed for hearing ex parte.
8. As an advocate and having studied the proceedings, he knows that in determining the application for an adjournment as was made by Counsel for the applicants, the Court did not address itself to the relevant law, that is, the Constitution (Adjournments for Courts of Judicature) (Practice) Directions, 2019 as was required in the circumstances.
9. The order of court effectively locked out the applicants from the hearing despite their demonstrated interest in defending themselves in the suit.
10. As an advocate, he knows that the applicants' failure to file witness statements did not and could not stop the hearing of the case from commencing with the participation of the defence on the day the hearing proceeded ex parte.
11. There was everything available for the hearing of the day to proceed with the participation of all the parties and their Counsel.
12. The applicants have been prejudiced by the order to proceed ex parte given that their advocates have not had a chance to test the veracity of the plaintiff's witness testimonies and to also present their witnesses.
13. He is advised by the applicants' Advocates, M/s Nangwala, Rezida & Co. Advocates which advice he verily believes is true that the order of Court having not resulted in a final decree, the Court is still clothed with the power and locus to vary it.
14. The applicant will suffer substantial loss and great inconvenience if the orders sought are not granted.

The respondent opposed this application through an affidavit in reply deponed by himself wherein he averred that:

1. It is true he instituted *Civil Suit No. 222/2024* against the applicants in February 2024 and has been diligently following up the matter and complying with court directives whereas the applicants were always not complying with court directives and trying to frustrate the progress of the matter.
2. With the guidance of court, he prayed that the matter be referred to mediation but mediation failed following the applicants' non-attendance and lack of interest in the mediation.
3. The matter came up for summons for directions on 14th June 2024 and the learned Registrar issued directions for filing the Joint Scheduling Memorandum and Trial Bundle.
4. His lawyers generated the draft scheduling memorandum and shared it with the applicant for their input but the applicants did not give their input nor did they respond to his lawyers.
5. On 29th October 2025, a draft joint scheduling memorandum was re-shared with the applicants for their input but the applicants did not respond.
6. The matter came up for mention on 3rd November 2025 and the applicants were not in court despite having been served and court issued directions for filing the joint scheduling memorandum, trial bundles and witness statements by 5th January 2026 and the matter was adjourned to 10th February 2026 at 10:00am for scheduling and hearing.
7. His lawyers shared the court directives with the applicant's lawyers together with the draft Joint Scheduling Memorandum.
8. The applicants did not share their input in the Joint Scheduling Memorandum despite several reminders as reflected in the email exchanges.
9. He aware his lawyers sent constant reminders to the applicants' lawyers reminding them of the court directives and their readiness to proceed with the scheduling and hearing on 10th February 2026 but the applicants failed/refused to comply with the court directives.
10. He is aware from his training and practice as an Advocate, the pre-trial directives and procedures such as filing of trial bundles and witness statements were introduced by the judiciary to minimise case backlog and facilitate speedy trials, which is one of the major tenets of judicial economy, fair hearing and judicial efficiency/key performance indicators.
11. He is aware from his practice of law that the Electronic Court Case Management Information System (ECCMIS) is used to send notifications to Advocates concerning hearings and case progression reports and that the applicants' Advocates were always informed through such notifications, but they did not even file draft versions of documents that could later have been refined into final versions that would have been adopted with leave of Court.
12. The alleged failure to meet with the witnesses is an afterthought and not the reason communicated to court on 10th February 2026 when the matter came up for hearing.
13. He is aware from his training and practice as an Advocate that failure of witnesses to meet their Counsel/failure of Counsel to meet their witnesses to conclude their pre-trial and trial documents such as trial bundles and witness statements constitutes dilatory conduct which is a valid ground for Court to order an ex parte proceeding.

14. He has been advised by his lawyers, M/S Ortus Advocates and M/S Adalci Advocates whose advice he verily believes is true and correct, that the applicants' lawyers (M/S Nangwala, Rezida Advocates) did not at any point communicate with his lawyers and/or the Court indicating that they anticipated delays in complying with Court's directives because of the alleged failure to meet with their witnesses.
15. He is aware from his training and practice as an Advocate, that the duty/responsibility of communicating with the Court and opposite Counsel in case of delays/inability of eliciting *the required information and/or statements from witnesses is part of the due diligence* requirements and fall squarely on Counsel and any lapses in executing the said duty cannot be visited on the Court/trial Judge and/or opposite party who appears in Court ready to prosecute his/her case.
16. The reason advanced by the applicants' lawyers for failure to file witness statements was that allegedly counsel in personal conduct was indisposed, and no proof of any indisposition was tendered in Court by the applicants' lawyer/appearing Counsel on that day.
17. Court considered the circumstances of the case, the reasons advanced by the applicants and addressed itself to the relevant laws and interest of justice in denying the applicants' prayer for an adjournment and in granting him an order to proceed ex parte.
18. The applicants locked themselves from the hearing by failing to comply with the orders of this honourable court.
19. As an advocate, he is aware that an order to proceed ex parte barred the applicants from further participation in the proceedings and it is not legally correct that the applicants could participate in the hearing after issuance of an order to proceed *ex parte* as alleged in paragraphs 11 and 12 of the affidavit in support of the application.
20. The applicants were given the right and opportunity to participate in the proceedings but on their own volition decided to exclude themselves by failure/refusal to comply with the court's directives.
21. He knows from his training and practice as an Advocate that Court directives/orders are not made in vain and their disobedience carries consequences such as contempt orders, ex parte proceedings, default judgments and/or costs orders.
22. The matter is awaiting final judgment, court having concluded the hearing and this application is aimed at frustrating the court process, is moot/academic and has no merit as Courts do not decide moot and academic issues that have been overtaken by events.
23. The application has been overtaken by events as it seeks to among other things stop the respondent from filing written submissions.
24. The applicants were given an opportunity to participate in the hearing of the matter and they chose to exclude themselves by failing to comply with court directives and they cannot claim to be prejudiced or inconvenienced by the orders of this honourable court.
25. He is aware from his training and practice as an Advocate that the Judge had discretion to conduct the *ex parte* proceeding as a case management/disposal tool supported by the Civil Procedure Rules and that the said discretion was judiciously exercised owing to the

applicants' delay tactics aimed at frustrating delivery of substantive justice with undue regard to technicalities.

26. It is in the interest of justice and fairness that this application is dismissed with costs.

The applicants filed a rejoinder and contended that:

1. Save for the hearing of the suit on 3rd November 2025 for which they were not served, the applicants' Advocates have at all material time been diligent and appeared in Court on all occasions when the suit was called a that is, on 14th June 2024 and on 1st July 2024 before Her Worship Christa Namutebi and on 10th February 2026 when the order to proceed ex parte was made.
2. Mediation of the suit was called before Her Lordship Anna Mugenyi on 19th and 26th August 2025 where the applicants' Advocates appeared on both occasions along with the applicants' Legal Officer, Ms. Ketra Nassimbwa. That the respondent rejected any conversation about the dispute dismissing the applicants as unserious.
3. They responded to the respondent's Advocates' communication regarding the filing of a Joint Scheduling Memorandum.
4. The applicants did not have any trial bundle to file and that no delay to hear the suit was caused based on this.
5. The singular document which was not filed was the witness statement of the 4th applicant which could not have stopped the hearing of the suit on the day it was called on 10th February 2026. The only likely proceeding on the said day was cross examination of the respondent's witnesses.
6. The import of Order 17 Rule 4 Civil Procedure Rules SI 71-1 is to determine the suit based on the material available to the court on the day it is invoked and not *ex parte* proceedings and that the sphere for *ex parte* proceedings is Order 9 of the Rules mostly for non-appearance but not failure to file a witness statement.
7. At all times, the applicants' Advocates were in direct contact with the respondent's Advocates particularly Mr. Jordan Kinyera of Adalci Advocates.
8. Based on his training as an Advocate, he knows that the right to a fair hearing is a fundamental human right and the cornerstone of justice and that a party who is physically in court, personally or by counsel should only be locked out of proceedings in the rarest of circumstances such as blatant unexplained contempt.
9. Having reviewed the proceedings of the said day as well as Order 17 Rule 4 of the Civil Procedures with the lens of his knowledge as an advocate as well as the above mentioned advice of the Applicants' Advocates, he believes that said Advocates had a right to cross examine the respondent's witnesses based on the signed Joint Scheduling Memorandum which had set out the issues for determination as well as the witness statements which were on record and had been served on them. This is the clear inalienable right to a fair hearing.

10. It is in the interest of justice and the right to a fair hearing that this honourable Court be pleased to revisit, review and reconsider its order to proceed *ex parte* with a view of allowing this application and opening the way for all parties being fully heard and justice served.

Representation and hearing

This application came up for hearing on 23rd April 2026; the applicants were represented by Mr. Richard Bwayo and Joram Sebuliba of M/s Nangwala, Rezida & Co. Advocates. The respondent was represented by M/s Ortus Advocates and M/S Adalci Advocates though neither the respondent nor his counsel appeared on that date.

Issues for determination

I have considered the pleadings and submissions of both parties and the issue for consideration is whether the application discloses sufficient grounds to review and set aside the *ex parte* order vide *Civil Suit No. 222/2024*?

Submissions

Counsel for the applicants submitted that the court locked out the applicants from the hearing despite their demonstrated interest in defending the suit effectively, violating the key principle of natural justice on the right to be heard. Counsel made reference to the case of *Farm Inputs Care Centre Ltd vs Klein Karoo Seeds Marketing (Pty) Limited High Court Miscellaneous Application No. 0861/2021*, where court held that violation of the principles of natural justice is a ground for review. That the case of *Mpungu & Sons Transporters Ltd vs Attorney General & Others Supreme Court Civil Appeal No. 17/2001* expounded on the meaning of the principle of natural justice which is that no man should be condemned unheard. He argued that per the affidavit in support of the application deposed by Mr. Timothy Ntale, it was stated that on 10th February 2026, when the matter came up for hearing, the applicants' advocates sought an adjournment to enable them comply with the directions of the Court in respect of filing pre-trial documents. That Court rejected the adjournment and instead ordered that the matter proceed for hearing ex parte. That by making orders for the matter to proceed *ex parte*, the Court locked out the applicants from the proceedings in the main suit. This was done notwithstanding the fact that everything was available for the hearing of the day to proceed with the participation of all the parties and their counsel.

Counsel asserted that determining the matter immediately as provided under Order 17 rule 4 of the Civil Procedure Rules does not by any stretch imply locking out a party who is present and that at worst, it should imply deciding the matter with what is available. Counsel also cited Order 17 rule 4 of the Civil Procedure Rules. Court ordered that the matter proceeds ex parte which runs contrary to the import of Order 17 rule 4 of the Civil Procedure Rules. Counsel submitted that this was a slip on a substantial point of law which stares one in the face and is subject of review as held in the case of Nyamogo Furthermore, counsel submitted that the court never addressed itself to the relevant law, that is the Constitution (Adjournments for Courts of

Judicature) (Practice) Directions 2019 as was required in the circumstances which is to the effect that once an adjournment was sought, the obvious course ought to have been the determination of whether the grounds for adjournment had been met. The result is allowing it or denying it. If denied, as submitted under ground one, counsel for the applicants had the inalienable right to cross-examine the plaintiff's witnesses. The consequences of failure to file the relevant defence trial documents would only arise if it turned to the defence case and it was found that there is no material for it. At that point, the court could safely condemn the defendants by having the case determined without any evidence from them. Counsel invited court to take the same course recently taken by the Commercial Court in similar applications where the court had proceeded under order 17 rule 4 of the Civil Procedure Rules.

Counsel for the respondent, on the other hand, submitted that this application does not meet any of these grounds and it is a disguised appeal aimed at overturning the orders of this Honorable Court in the main suit which is a reserve of appeal and not review and relied on the case of *Farm Inputs Care Centre Limited vs Klein Karoo Seeds Marketing (Pty) Ltd Miscellaneous Application No. 0861/2021.* Counsel submitted that there is no error on the face of the record and that the applicant was given an opportunity to be heard but opted to ignore the directives of court and locked themselves out of the hearing. Counsel further argued that the Judge's order for the matter to proceed *ex parte* was informed by the failure of the applicants to comply with court directives and the Judge gave reasons before arriving at her orders.

Counsel for the respondent submitted that court directives are court orders which must be complied with by all parties. Counsel made reference to *Kukua Agriculture Ltd vs Ahmed Tejani & Another, Civil Suit No. 0041/2019* and *Elaisah Grace Badda vs Denis Ssempebwa and Another* the applicants were given timelines to file witness statements and to present their witnesses for hearing and they failed and Court proceeded to order that the suit proceeds exp parte. Court's reliance on Order 17 Rules 4 Civil Procedure Rules was in line with the purpose and import of the rule as highlighted above and the same does not amount to error on the face of the record. Counsel asserted that where Court exercises its discretion under Order 17 Rule 4 the only remedy available is an appeal and not an application for setting aside which was emphasized in *Elaisah Grace Badda vs Denis Ssempebwa and Another Miscellaneous Application No. 622/2022.*

Counsel for the respondent cited Direction 6 of the Constitutional (Adjournments for Courts of Judicature) (Practice) Directions 2019 which provides that court shall not allow an adjournment of scheduled proceedings except in exceptional circumstances. Counsel submitted that there were no exceptional circumstances advanced by the applicants and the reason advanced by the applicants' lawyer for not complying with the court directives is not the same as the reason stated in the affidavit in support of the application. Counsel further referred to Rule 8 of the Practice Directions is to the effect that an Advocate holding brief for another Advocate shall ordinarily be expected to have instructions to proceed in the matter and therefore counsel for the applicant

who was purportedly holding brief on 10th February 2026 was deemed to have instructions to proceed.

Determination of court

Review means consideration, inspection, or re-examination of a subject or thing. It is trite law that review is a creature of statute which must be provided for expressly. In considering an application for review, court exercises its discretion judicially as was held in the case of *Abdul Jafar Devji vs Ali RMS Devji [1958] EA 558*.

The law on review *is established under section 82 of the Civil Procedure Act Cap 282 which* is to the effect that:

> *"Any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as the court considers fit."*

The grounds for review are set out under Order 46 rule 1(b) of the Civil Procedure Rules SI 71-1, as amended, and in the case *of FX Mubwike vs UEB High Court Miscellaneous Application No.98/ 2005* as follows:

1. Account of some mistake or error apparent on the face of the record.
2. 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.
3. Any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her.

Regarding the first ground, courts have expounded that a review involves a correction of an error which is either apparent on the face of the record or had become clear because of subsequently discovered circumstances. Particularly, the principle behind review is that the court would not have acted as it did if all the circumstances had been known. *(See Rutajengwa Elistariko & Anor. vs Sanyu Scovia Gatete Civil Appeal No. 467/2022.*

In the case of *Edison Kanyebwera vs Pastori Tumwebaze, Supreme Court Civil Appeal No. 061/2014*, the Supreme Court stated that for an error to be a ground for review, it must be apparent on the face of the record, that is, 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. The error may be one of fact or of the law.

However, it shall not be an error apparent on the record if it requires elaborate explanation to make out the said error.

An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. (*See Nyamogo and Nyamogo Advocates vs Moses Kipkolum Kogo Civil Application No. 322/2000; [20011 I EA 173; Muyodi vs Industrial and Commercial Development Corporation and Anor [2006] I EA 24)*.

Further, the power to review is not an appeal in disguise. In this regard, a distinction is drawn between an erroneous decision and an error apparent on the face of the record. The former can be corrected by the higher court whereas the latter can be corrected by the exercise of review of jurisdiction. If the judgment suffers from errors apparent from the face of the record, review application can be allowed. (*See Rutajengwa Elistariko & Anor. vs Sanyu Scovia Gatete Civil Appeal No. 467/2022.*

In the present application the applicants contend that the fact that the court relied on Order 17 rule 4 of the Civil Procedure rules to make an order for the plaintiff to proceed *ex parte* amounts to an error apparent on the surface of the record The counsel for the applicants asserted that the law that provides for *ex parte* proceedings is Order 9 of the Civil Procedure Rules.

Order 17 Rule 4 of the Civil Procedure Rules provides that where a party to a suit who time has been granted fails to produce his or her evidence, or to cause the attendance of his or her witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding that default, proceed to decide the suit immediately.

In *Tabaro Nelensio vs Omukwenda Kaija Bwango High Court Civil Suit No. 46/2018*, court held that:

> *"In my view the above rule should be applied taking into other principles of law so as to ensure the substantive administration of justice. Under Article 126 (1) (e) of the Constitution, the courts are enjoined to administer substantive justice without undue regard to technicalities. It is not a mandatory requirement under Order 17 rule 4 of the CPR, that if a party is given time to do a specific act and fails to do so, the court must go ahead and determine the suit immediately. This depends on the nature of the act that a party has defaulted on. Order 17 rule 4 of the CPR gives the court a discretion, which must be exercised judiciously. Thus Order 17 rule 4 of the CPR must be applied with kin regard to the facts of the matter and the interests of administering substantive justice."*

Court in the case of *Mpower Oil Company Limited vs Norvik Hospital Ltd and Another Civil Suit No. 1219/2023; Miscellaneous Application No. 934/2025* observed that:

"It follows, therefore, that the phrase 'proceed to decide the suit immediately' under Order 17 Rule 4 does not necessarily mean that the court must determine the matter at once. The court may, in the exercise of its discretion, direct that proceedings continue ex parte so as to take in the evidence of the parties present, while judgment is reserved for a later stage."

The above observation sheds more light on the discretionary power of this court to order the hearing proceeds *ex parte* so as the ready party can present their evidence under Order17 rule 4 of the Civil Procedure Rules.

In exercising that discretion, this court should consider whether sufficient time was availed to the disobeying party to perform the court's directive. This position was buttressed in the case of *Macdowell Limited vs Tampa Engineering Consultants Limited Civil Appeal No. 180/2018 [2022] UGCA 77* where the Court Appeal noted that the right to a fair hearing is a cardinal principle of natural justice supposed to be observed by the parties, the advocates and protected by the court. It is enshrined in Article 28 of the Constitution of the Republic of Uganda. And according to Article 44(c) of the Constitution the right to a fair hearing is non-derogable. On that basis the Court observed that:

"The expression to whom time has been granted, is very important The requirement to give the defaulting party time is reiterated in the expression for which time has been allowed. It is my view that the court may only proceed to decide the case 'immediately, after the party who has been given time to call his/her witnesses, or perform any other step required in the suit, fails to do so after the court is moved, or moves itself under Order 17 rule 4 CPR."

According to annexure D attached to the affidavit in reply, on 10th February 2026 when the matter came up for marking of documents and hearing of plaintiff case. Mr. Sadam counsel for the plaintiff informed court as follows:

"My Lord, the last time the matter came up, court gave directives that we shall proceed today with scheduling and hearing. On behalf of the plaintiff we are ready to proceed. We have two witnesses, Silver Kayondo and Derrick Ahabyona who is in Paris and is appearing via video conference."

Mr. Sebuliba who appeared for the applicants on behalf of counsel in personal conduct of the case stated that,

"Your Lordship, I am holding brief for Richard Bwayo. Unfortunately, we are not ready to proceed today. Counsel in personal conduct has been indisposed. As a result, we are here to file our witness statements as well as our trial bundles. We seek a short adjournment to enable us comply with court's directives and proceed with the hearing of this case we so pray."

Mr. Sadam then responded that,

> *"First of all, I would like to clarify that, per the record the name Richard Bwayo does not appear anywhere. The record shows that the last time this matter came up was on 3rd November. Before we appeared before you, the learned Registrar gave directives which were never complied with. When the matter came up we prayed to court for fresh directives in the absence of the defendants. We communicated the directives immediately to the defendants via email and via letter. This creates the presumption that counsel has been indisposed for three months now. On 4th February we wrote to our learned colleagues requesting them to comply and also informing them to be ready to proceed with the scheduling and hearing. If at all there was any challenge they ought to have communicated to court in advance. We take this failure by the defendant to comply with all the directives as aimed at delaying the matter. You had closed off this day for hearing. I object to the prayer for adjournment but if you find it fit to grant the adjournment, the defendant should pay costs for wasting court's time and the plaintiff's time. I so pray."*

Mr. Sebuliba made a rejoinder in which he stated that:

> *"Your Lordship, the day the matter came up for hearing there was a miscommunication. We assumed it was still under mediation. We have participated in terms of the filing of the JSM and given our input. All previous engagements, were with Mr. Jordan who has always engaged with Mr. Richard Bwayo who was in personal conduct of this case. We are just seeking a short adjournment to enable us comply with directions."*

The court made its decision and noted that:

> *"I have heard the submissions of both counsel and need to point out that this matter last came up on 3rd November 2025 during which sitting, the defendant nor his counsel were present. Counsel for the plaintiff was present and sought an adjournment to enable the parties file their joint scheduling memorandum and the defendants to file their witness statements and trial bundle. In light of the prayer made court granted the prayer and issued fresh timelines to enable the parties file all necessary documents required for the trial. These include:*
>
> 1. *The joint scheduling memorandum to be filed by 30th November 2025*
> 2. *The trial bundles to be filed by 15th December 2025*
> 3. *The witness statements to be filed by 15th January 2026.*
>
> *The counsel for the plaintiff also undertook to notify the defendants of the aforementioned schedule, which they did and counsel for the defendants has not disputed the same. It is unfortunate that despite the issuance of fresh timelines,*

and the lapse of a period of three months and one week, the defendants still did not file any of their witness statements or trial bundle. Following the defendant's failure to comply with the court's directives, I hereby direct that this matter proceeds ex parte under Order 17 rule 4 of the Civil Procedure Rules. It should be observed that much as counsel Richard Bwayo may be indisposed, instructions were given by the defendants to M/s Nangwala Rezida & Co Advocates. Any advocate in the said law firm could have taken the necessary steps as had been directed by court."

The above proceedings show that the applicants had neither complied with the court directives nor were they ready to proceed with the hearing of the case on that date. This necessitated the order to proceed *ex parte* as the applicants had been given ample time of 3 months to file their statements and prepare for the plaintiff's case. Further this court agrees with the respondent's submissions that the applicants' counsel did not inform court about the difficulties they were facing in meeting with their witnesses and neither did they request the court for more time than had been allocated to them.

The applicants also asserted that the matter could have proceeded and the applicants' counsel who was present in court should have been allowed to proceed. However, as shown by the proceedings and as earlier stated, Counsel Sebuliba was not ready; instead he sought a short adjournment to comply with the court directives.

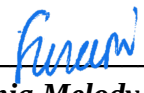
The applicants' counsel also submitted that the court did not address its mind to the Constitution (Adjournments for Courts of Judicature) (Practice) Directions, 2019. Direction 6 of the Constitutional (Adjournments for Courts of Judicature) (Practice) Directions 2019 as rightly submitted by the respondent's counsel provides that court shall not allow an adjournment of scheduled proceedings except in exceptional circumstances. The exceptional circumstances are highlighted under Rule 6(2) of the same directions. Counsel Sebuliba, for the applicants, stated that the reason for their non-compliance was further because counsel Bwayo Richard who was counsel in personal conduct had been indisposed. However, no evidence was presented to prove that fact and thus court was not persuaded to adjourn the matter any further.

The Constitution (Adjournments for Courts of Judicature) (Practice) Directions, 2019 practice directions are also in place to among others, promote the right to fair hearing. Although the right to fair hearing is non-derogable as earlier noted a party can waive the same if they do not exercise it when given the opportunity. Court cases cannot be allowed to drag for an unreasonable period of time because a party who has a right to fair hearing wants to exercise it whenever he or she pleases This right has to be balanced with the court's duty to deliver justice because justice delayed is justice denied. Therefore, it can be inferred that the applicants locked themselves out by failing to comply with court's directives without a justifiable reason that court was aware of.

Further, as submitted by the respondent's counsel, Direction 8 of the Constitution (Adjournments for Courts of Judicature) (Practice) Directions, 2019 is to the effect that an advocate holding brief for another advocate shall ordinarily be expected to have instructions to proceed in the matter. Counsel Sebuliba, who was present and had stated that he was holding brief for Counsel Bwayo was not ready to proceed with the hearing, contrary to the said provision.

From the foregoing, the applicants have not established any grounds for court to review the order to proceed *ex parte* vide *Civil Suit No. 222/2024.* This application lacks merit and is hereby dismissed with costs to the respondent.

I so order.



Dr. Ginamia Melody Ngwatu
Ag. Judge
14th June 2026

Delivered electronically via ECCMIS