

5 **Representation and Hearing**

The matter was called for hearing on the 25th June 2024.

The Applicant was represented by M/s Zenith Law Advocates while the Respondent was represented by M/s Libra Advocates & Consultants.

When the matter came for hearing, before we could get into the merits of the
10 Application, there was a debate between court and learned counsel of both Parties as to whether the time was properly computed. According to learned counsel for the Applicant, the application was filed within time given that Friday was a public holiday (Good Friday), Sunday and Monday were public holidays as well. The
15 Learned Counsel for the Respondent begged to defer and was insistent that public holidays and weekends are considered provided it was not the last day. The matter was adjourned to determine the issue of whether time was properly computed. And if indeed the Applicant had filed this application out of time, all the three application mentioned in the background above would be either overtaken by events or be struck out.

20 **Determination**

Under Order 36 rule 3(1) of the Civil Procedure Rules amended, a defendant upon whom summons and a specially endorsed plaint are served has ten (10) days within which to apply for leave to appear and defend. Under Order 36 rule 3(2) of the Civil Procedure Rules, when the defendant does not apply for leave to defend the suit
25 within the prescribed time, a default judgment is then entered.

In the present case, the Summons and specially endorsed plaint were issued by this court on the 20th March 2024 and the service of the same was effected onto

McCracken

5 the Defendant on the 25th March 2024. This implies that the Defendant ought to have filed this application by or on the 4th April 2024. This application was filed on the 5th April 2024 at 4:21pm.

In the case of **Farid Meghani versus Uganda Revenue Authority Civil Appeal No. 0006 of 2021**, Hon. Justice Stephen Mubiru in his judgment on how time is
10 computed held that:

*“When a period of limitation is stated in days or a unit of time, the day of the event that triggers the period is excluded. Every day thereafter is counted, including immediate Saturdays, Sundays and legal holidays; and the last day of the period is included. But if the last day is a Saturday, Sunday or legal
15 holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday. (see section 34 of the Interpretation Act).*

The finding of the Mubiru, J in the **Farid Meghani case supra** is also in line with **Order 51 rules 2,3 and 8 of the Civil Procedure Rules as amended.**

Failure by the Applicant to file the application for leave to appear in defend out of
20 time and in the absence of an application before court to extend the time cannot even be cured by Article 126(2)(e) of the Constitution of the Republic of Uganda. I am persuaded by the case of **Longinus Oroni Muranga versus David Masika Mafumbo, Court of Appeal Civil Appeal No. 0319 of 2013**. This was an appeal from the ruling of the High Court of Kenya where the Court allowed a preliminary
25 objection to an application for judicial review and struck out the judicial review application as having been filed outside the time limited by court. The Appellants in this matter conceded in the High Court that the application would be out of time if public holidays and weekends are included in the computation of time. It was the



5 Appellant’s case that public holidays and weekends should not be excluded from computation of time. In this present case, the Applicant argued that the application was filed within time given the Easter holidays and the weekend.

Lastly, the Appellant in **Longinus Oroni Muranga** case sought to rely on Article 159(2)(d) of the Constitution which is similar to our Article 126 (2)(e) of the
10 Constitution which is to the effect that justice shall be administered without undue regard to technicalities. The justices of appeal held that:

*“It is also true that the High Court was required to apply the overriding objective principle which is to facilitate the just, expeditious, proportionate and affordable resolution of disputes. The High Court has also inherent
15 jurisdiction. However, those principles do not apply to the time limited by law for instituting court proceedings. They apply to competent court proceedings which a court has jurisdiction to entertain. The time limited by the court which was in conformity with the law for instituting judicial review applications goes to the competence of the application and to the
20 jurisdiction of the High Court to entertain the application. Since the application was filed out of time and the time had not been extended by court, the decision of the High Court to strike out the application was correct”.*

Muranga

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5 For the reasons given above, this application is dismissed with no order as to costs. It therefore follows that **MA 0965 of 2024** – an application to set aside the default judgment, **MA 0981 of 2024** – an application for stay of execution; and **MA 0982 of 2024**- an application for an interim stay of execution are hereby struck out with no order as to costs.

10 I so find.

Dated and signed at Kampala this 3rd day of July 2024.



Harriet Grace MAGALA

Judge

15 **Delivered online (ECCMIS) this 4th day of July 2024.**