

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
MISCELLANEOUS APPLICATION NO. 008 OF 2025
(ARISING OUT OF CIVIL SUIT NO.51 OF 2026 CHIEF MAGISTRATE'S
COURT OF KABALE AT KABALE)

BEKUNDA JOHN :::::::::::::::::::: APPLICANT

VERSUS

BEFORE: HON. JUSTICE SSEMOGERERE, KAROLI LWANGA

RULING:

This is an application for leave to appeal out of time brought under **Sections 79(1) and (2), 96 and 98 of the Civil Procedure Act, Cap 282** (the “Civil Procedure Act”), **Sections 14,16 and 17 of the Judicature Act, Cap 16** (the “Judicature Act”) and **Order 44, Rules 3 and 4, Order 51, Rule 6, Order 52 Rules 1,2 and 3 of the Civil Procedure Rules, S.I. 71-1** (the “Civil Procedure Rules”).

The applicant Bekunda John, aggrieved by the decision of the Magistrate Grade I, in **Civil Suit No. 51 of 2016** filed in the Chief Magistrate's Court of Kabale delivered on August 17th, 2023. The grounds of the application briefly are:

- (a) Applicant instructed M/S Skaar Advocates to represent him in the appeal on August 21, 2023;
- (b) M/S Skaar Advocates did not take any steps to file the appeal;
- (c) The Applicant sought leave to appeal out of time in the trial court, which application was denied;

- 5 (d) This application is brought within a reasonable time; and
 (e) It is fair and equitable in the interests of justice that it be allowed.

The affidavit in support sworn by the applicant repeats the above averments and attached a copy of the proposed memorandum of appeal.

10 The application was opposed by Monday Kenneth, the respondent. His affidavit in reply states that the matter of leave to apply for enlargement of time is res judicata and barred by law, as it sought the same remedies, in Miscellaneous Application No. 009 of 2024, delivered by the Learned Magistrate Grade 1, Julius Mutabazi on February 12th, 2025 . Respondent avers that the proposed appeal has no substantial questions of law and fact to address. The affidavit in reply
15 also states in paragraph 11, that there is no proof of instructions to another firm or notice of appeal.

Representation:

20 Applicant was represented by M/S Onyango and Co. Advocates, while Respondent was represented by M/S Beitwenda and Co. Advocates. At the oral hearing of this application on May 22, 2025, parties agreed to proceed by way of written submissions. Parties have complied accordingly.

Issues for Resolution:

25 Applicant framed the following issue for resolution by this honourable court. These are:

- (a) Whether there is sufficient cause to grant the applicant leave to appeal out of time;

30 Applicant submitted that the proposed appeal had triable issues, specifically on the standing of the applicant as a beneficiary and administrator of the estate of the late Claudia Nyakayumbu vide **Administration Cause No. 64 of 1996**. This standing was necessary to sustain a claim for trespass. Applicant submitted that he was not guilty of dilatory conduct and had a reasonable basis for failing to

5 file the appeal within the time prescribed by **Section 79(1) of the Civil Procedure Act.**

Respondent's submissions reiterated the argument in the affidavit in reply to wit that the application was res judicata vide Miscellaneous Application No. 9 of 2024, a copy of which was attached to the affidavit in reply. Respondent
10 submitted that res judicata barred a fresh application under **Section 7 of the Civil Procedure Act.**

Discussion and Analysis:

I find as a matter of law, that this application is barred by law. Section 7 of the
15 **Civil Procedure Act**, states:

“No court shall try any suit or issue in which the matter directly or substantially in issue and directly in issue in a former suit between the same parties in a competent court, in which the issue has been heard and finally determined by court.”

20 A perusal of the ruling attached shows the application was considered on its merits by the learned Magistrate Grade 1, in **Miscellaneous Application No. 009** of 2014. The learned Magistrate Grade 1, found that the applicant had made no effort to prosecute the appeal from August 21st, 2023, when he allegedly instructed M/S Skaar Advocates to March 19th, 2024, when he filed this
25 application. He also found at pages 5 and 6 of the ruling that the applicant was not under any form of disability, physical or otherwise that prevented him from following up on the appeal. The learned Magistrate found that the applicant had not sufficiently explained the inordinate delay of 7 months.

The proper remedy would be an appeal from the decision of the Learned
30 Magistrate Grade 1, in Miscellaneous Application No. 9 of 2024. This appeal would also require leave of the same court under **Order 44 Rule 2 of the Civil Procedure Rules, S.I. 71-1.**

5 **Findings and Conclusion:**

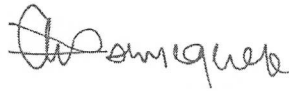
The application is dismissed.

Costs are awarded to the respondents.

I SO ORDER,

DATED AT KABALE THIS 17th DAY OF JUNE, 2025.

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SSEMOGERERE, KAROLI LWANGA
JUDGE.

